

down at a table to make the writ. Pearson made several suggestions to him in regard to filling out the blank; and it was doubtful whether he would have got the writ right in all particulars without the aid of Pearson's suggestions. The plaintiff understood that he was employing N. Butler to make his writ, and that Charles was acting for and in the name of his father, and by his authority. Pearson and Charles also so understood it. As soon as N. Butler learned what had been done, he ratified it all, and entered the action in court.

From the foregoing facts the referee found, as a matter of fact, that the writ in question was made for the plaintiff by N. Butler, and not by Pearson, and denied said Gill's motion to dismiss the action.

Mugridge and Leach & Stevens, for subsequent attaching creditor.

Butler, for the plaintiff.

FOSTER, J. Section 21, c. 216, G. L., provides that "any writ * * * made by a deputy sheriff * * * for another person, shall be void." The object of the statute was to guard against abuses that might follow from allowing the same person to exercise the powers of a sheriff and an attorney at the same time. *Osgood v. Norris*, 21 N. H. 435; *Smith v. Saxton*, 6 Pick. 483; *Clarke v. Lyman*, 10 Pick. 45.

But the question before the referee in this case was, whether the plaintiff's writ was made by an attorney or by a deputy sheriff. There was evidence tending to show that Charles Butler, in writing the writ, acted as the agent or servant of his father. No exception was taken to any of the evidence; and the referee having decided the question of fact in favor of the plaintiff, there is no question of law in the case. *Cummings v. Center Harbor*, 57 N. H. 17.

Motion denied.

ALLEN, J., did not sit: the others concurred.

STATE v. DEARBORN.

Any fact is relevant, on the question of a prisoner's guilt, which supplies a motive for the criminal act charged.

INDICTMENT, for obstructing the Boston, Concord & Montreal Railroad. As tending to prove a motive, the state, against the

exception of the defendant, were permitted to show that the defendant had been twice arrested on criminal charges at the instance and on the complaint of the Boston, Concord & Montreal Railroad, once about four years and once about a year before the act charged in the indictment. The defendant was convicted and sentenced, and this bill of exceptions allowed.

Pike & Parsons, for the defendant.

Solicitor, for the state.

FOSTER, J. When there is a question whether any act was done by any person, any fact is relevant to the issue which supplies a motive for such an act. Steph. Dig. Ev., Art. 7. The question is, whether A murdered B. The facts, that at the instigation of A, B murdered C twenty-five years before B's murder, and that A at or before that time used expressions showing malice against C, are deemed to be relevant, as showing a motive on A's part to murder B. *Rex v. Clewes*, 4 Car. & P. 221. The question is, whether A burned a certain building. The fact that A had excessive insurance upon the building is relevant, as showing that A had a motive to destroy it. *State v. Cohn*, 9 Nev. 179; *Com. v. McCarthy*, 119 Mass. 354;—see, also, *State v. Lapage*, 57 N. H. 245, 294, 295. These are common illustrations of what must be regarded as an elementary proposition.

It is undoubtedly true that a motive is never required to be shown in order to establish the fact of a person's guilt, "because the motives of men are so various as to defy calculation" (Steph. Cr. L. 88); but it is also true that the absence of any apparent motive is always a fact in favor of the accused. What could have been his motive? is a question the pertinency of which will never be a matter of dispute; and so the existence of a motive becomes an important element in a chain of presumptive proof. Best Prin. Ev. 571, 572. The influences of good or ill will are constantly considered in estimating the probability of the guilt of a person charged with a malicious act. The absence or presence of motive renders the alleged fact less or more probable. In the present case, evidence tending to show a motive stimulated by revenge was clearly admissible.

Exception overruled.

ALLEN, J., did not sit: the others concurred.