

indictment to follow the language of the statute when the words of the statute are descriptive of the offence. *State v. Blaisdell*, 33 N. H. 388; *State v. Keneston*, 59 N. H. 36; *Com. v. Timothy*, 8 Gray 480; *Com. v. Anthes*, 12 Gray 29; *Com. v. Dean*, 14 Gray 99; *Com. v. Chappel*, 116 Mass. 7; 1 Bish. Cr. Proc., s. 612 and notes; Bish. Stat. Cr., s. 1038.

The repeal of s. 17 of c. 109, Gen. Laws, which restricted the enforcement of ss. 15 and 16 of that chapter to such towns as should by a majority vote decide to enforce them, instead of repealing those sections left them in force and operative as if section 17 had never been enacted.

The objection, that Catharine Thornton could not be convicted of a second offence because the police court of Concord had no jurisdiction of the first offence of which she was convicted, is not sustained. For anything appearing, the former conviction and judgment may have been upon a plea of guilty, which authorizes a justice of the peace or police court to impose sentence and judgment for any offence mentioned in c. 109, Gen. Laws. If, upon the introduction of the evidence, the judgment of the police court is found to be unauthorized, the proof of a former conviction will fail, but the indictment will be sufficient to sustain a conviction of a first offence.

In the cases of James Thornton and Taylor, the police court exceeded its jurisdiction in imposing fines. On a plea of not guilty, the court could only order the defendants to recognize to appear at the next trial term of the supreme court, and abide the order of that court, and in the meantime to be of good behavior (G. L., c. 109, s. 22), and the judgments appealed from being unauthorized and void, the appeals should be dismissed.

*Exceptions overruled*, in the first case.

*Exceptions sustained*, in the second and third cases.

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

---

PRATT v. SANBORN & Trs.

No attachment of the defendant's property and credits in the hands of a trustee can be made unless the name of the trustee is inserted in the writ at the time of service.

FOREIGN ATTACHMENT. Facts found by the court. The plaintiff gave to an officer a trustee writ not having the names of any trustees written in it, and at the same time a list of names on

a separate paper, with direction to serve the writ on the persons in the list as trustees. The officer served the writ on those persons by reading it to them, reading the name of each from the list. Afterwards their names were inserted as trustees in the writ. E. E. Graves, a subsequent attaching creditor of the funds in the hands of the same trustees, appeared, and moved that they be discharged in this suit.

*H. G. Sargent and J. H. Albin*, for the plaintiff.

*D. F. Dudley*, for Graves.

CLARK, J. An officer's authority in the service of process is derived from and limited by the precept committed to him. The list of names on a separate paper delivered to Dimond, with the plaintiff's writ, formed no part of it; and the attempted service of the writ upon the trustees before their names were inserted in it was a nullity. The officer had no power to attach the property of the defendant in their hands, because no such authority was conferred by the writ. It was an attempted attachment and service without a writ, and therefore unauthorized and void. *Bank v. Goodall*, 41 N. H. 81; *Smith v. Hill*, 45 N. H. 403.

The subsequent attaching creditors having a valid attachment, and not having waived or lost their right to object to the invalidity of the plaintiff's attempted attachment (*Johnson v. Abbott*, 60 N. H. 150), are entitled to hold the funds in the hands of the trustees.

*Trustees discharged.*

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

---

GEORGIANA P. ELA v. GEORGE W. ELA.

GEORGE W. ELA v. GEORGIANA P. ELA.

On the hearing of an application under Gen. Laws, c. 182, s. 15, for a revision of orders as to alimony, all evidence which is relevant and material to the question whether the orders should be modified, including evidence used on the original trial, and evidence not so used but which might have been then presented by the exercise of due diligence, is to be received.

1. MOTION, by the defendant, that the decrees for a divorce and alimony made in favor of the plaintiff at the April term, 1882, be