D. Foster, for the respondents, submitted the case without argument.

G. F. Hoar, for the petitioner.

By the Court. The money with which the administratrix of the guardian has charged him in the guardianship account was never received by him as guardian, and could not have been transferred from his account as executor to his account as guardian without a violation of his duty as executor, because the legacy did not become payable before the death of the guardian.

His administratrix, after his death, could not rightfully exonerate his sureties as executor, and make his sureties as guardian responsible, by settling a guardianship account and charging him in it with the receipt of that money as guardian.

Petition granted.

Nahum P. Goddard *vs.* Orrin W. Chaffee.

A violin and bow of a debtor whose sole business is that of a musician, as a member of a military and quadrille band, and who obtains most of his support by playing upon his violin, are exempt from attachment, if the value of all his musical instruments is less than one hundred dollars.

Tort against a deputy sheriff, for taking the plaintiff's violin and bow by virtue of a writ of attachment against him. At the trial in the superior court, judgment was rendered for the plaintiff, by *Morton*, J., upon agreed facts, which are stated in the opinion; and the defendant appealed to this court.

S. P. Twiss, for the plaintiff.

G. F. Verry, for the defendant.

Merrick, J. The statute exempts from attachment the implements of a debtor necessary for carrying on his trade or business and not exceeding one hundred dollars in value. Gen. Sts. *c.* 133, § 32. "Business" is a word of large signification, and denotes the employment or occupation in which a person is engaged to procure a living. The plaintiff is a musician, and

has for some years been employed in playing upon musical instruments, as a member of military and quadrille bands. He has in that way obtained his whole support and livelihood, has been engaged in no other pursuit, and has had no other trade or employment. That therefore is his business; and the only instruments owned and used by him in pursuing it are a violin and cornet, the united value of which is less than one hundred dollars. The violin is a small instrument played upon exclusively by the hand; and upon the facts agreed it is obviously essential to make his labor available, and enable him to do the work and render the service which he contracts to perform. In this view, in conformity to the interpretation heretofore given to the provisions of the statute, it was clearly exempt from liability to attachment or seizure upon execution. *Wilson* v. *Elliot*, 7 Gray, 69. The defendant must therefore be defaulted, and judgment rendered for the plaintiff for the damages agreed upon by the parties.

RUFUS CLARK *vs.* FRANKLIN T. LAMB.

Prior to Gen. Sts. *c.* 122, § 13, a magistrate had no jurisdiction of an action made returnable before him, in which the inhabitants of the town in which he lived were summoned as trustees of the defendant; and a recognizance taken in such suit is void.

SCIRE FACIAS upon a recognizance entered into by the defendant as surety for Franklin French, on an appeal by the latter from a judgment rendered against him by a magistrate in a suit in favor of the plaintiff. The defendant in his answer set forth that the suit in which the recognizance was taken was returnable before Gilman Day, a magistrate living in Templeton, and that in the suit the inhabitants of Templeton were summoned as trustees of French, by reason of which Day had no jurisdiction of the suit, and that this objection was taken before him, but overruled. The plaintiff demurred to the answer; and *Russell*, J. sustained the demurrer, in the superior court, and the defendant appealed.