such request was made or not, but it was proved that the complainant was present at the return of the summons and gave evidence against defendant, if any intendment could be made, it might be presumed complainant had made such request.

If a warrant of commitment, issued by a Justice of the Peace, is good on its face and the Magistrate had jurisdiction in the case, it is a justification to a constable to whom it is given to be executed, and a person resisting him is guilty of an assault; and where the warrant was based on a conviction for an unlawful assault, it is not necessary, in order to make the warrant legal and a justification to the constable, that it should be stated in the conviction and warrant that the complainant had requested the Magistrate to proceed summarily.

Quære. Whether a conviction by a Justice for an unlawful assault should show a request to proceed summarily.

A conviction for an unlawful assault may adjudge defendant to be imprisoned in the first instance, under sec. 43 of the 32-33 Vict., cap. 20.

It is not necessary, before a defendant, convicted of an assault, is imprisoned, that he should be served with a copy of the minute of conviction.

UNITED STATES REPORTS.

SUPREME COURT OF RHODE ISLAND.

MARY O'RORKE v. MARY SMITH.

Easement.

M. C. owning a tract of land bounded N. by a street, conveyed to D. the west portion, whereon was a well, reserving a right to use the well by the words "excepting a privilege to the well of water on said lot which I reserve for the use of my said homestead estate," this homestead estate being the remainder of the tract. Subsequently M. C. devised to J. in fee simple the land between the house and the lot conveyed to D., together with a tenement in the house, and to S. the rest of the homestead estate. For a long period, but not for the time required to gain an easement by prescription, all the occupants of the homestead estate had crossed the land between the homestead and D.'s lot on their way to the well. In trespass *quare clausum* brought by the grantees of J. against S., *held*, that the way across J.'s lot could not be claimed as a way of strict necessity. *Held*, further, that the way could not be implied from the circumstances of the case as one reasonably necessary.

Query. Whether the grant of a way existing *de facto* can be implied except in cases of strict necessity.

Semble, that the claimant of such grant must be required to show that without the way he will be subjected to an expense excessive and disproportioned to the value of his estate, or that his estate clearly depends for its appropriate enjoyment on the way, or that some conclusive indication of his grantor's intention exists in the circumstances of his estate.

[16 Am. Law Reg. 205.]

Exceptions to the Court of Common Pleas.

This was an action of trespass *quare clausum fregit*, to which the defendant pleaded in justification a right of way. The action was tried in the Court of Common Pleas to the court, and judgment rendered for the defendant. It came up to this court by bill of exceptions, the exceptions being accompanied by a statement of facts proved on the trial; in substance as follows:—

The plaintiff and the defendant were owners of adjoining lots fronting on Weeden street, in the former town of North Providence, now Pawtucket. The two lots were formerly part of a larger estate belonging to Michael Coyle. On the 11th May 1866, Coyle sold the part not covered by the two lots to P. G. Delaney. On the part so sold there was a well. In the deed to Delaney, Coyle reserved a right to use the well in the following words, viz.: "Excepting a privilege to the well of water on said lot, which I reserve for the use of my said homestead estate." The two lots now owned by the plaintiff and the defendant were embraced in what was then the "said homestead estate." Michael Coyle lived there after the sale till his death. He died after May 16th 1866, leaving a will bearing date of that day, which was approved November 5th 1866. In the will he devised the homestead estate to his wife for life, and, after her decease, to his son, John Coyle, and daughter, Mary Smith, the defendant, in fee simple, devising to John the tenement occupied by himself, with the lot of land westerly from the house, being the lot now owned by the plaintiff, and to Mary Smith the basement and attic tenements, with the share of land belonging to the same on the easterly side thereof, being the lot which she now owns. The widow of Michael Coyle died many years ago. The part of the homestead estate devised to John Coyle came to the plaintiff by mesne conveyances previous to June 17th 1872. The part devised to Mary Smith was in her possession June 17th 1872. The lot now owned by the plaintiff is nearest the land sold to Delaney. A path leading from the defendant's lot to the well crosses the plaintiff's lot. The tenants and occupiers of all portions of the homestead house had, for some years (but not twenty years), both