Evidence

On the subject of evidence, there is no

certain variety of questions arising in a
bit of justice, in an entirely new

case, it is better to state the subject points
a decision of every one of them. But there are certain

cases where it is established, to thoroughly acquaint

one with knowledge of them, it may be

understood that there are more incorrect decisions in front of

one than in any other branch of the law. This may be

accounted for, from the necessity that a lawyer

undertakes decisions on the spur of the occasion, without
giving themselves time for mature reflection. It

therefore becomes more necessary to obtain a thorough

knowledge of this subject, than most others. I shall

make the present a preliminary lecture, shall not
give you any authorities today, but merely some gen-

eral preliminary observations.

And in the first place, I would remark, that
it is a common practice for many persons, to

themselves to confound the terms "Evidence that

means, and "Evidence of Testimony" to do by

me themselves confound them by chance, but you will under-

stand what I mean. The persons brought into court to
testify are called "Testified" what they do "Testimony" is "Evidence," that is it is so provided

it convinces or has a tendency to convince the mind

as to the fact testifies to. So it is Evidence to every one
Evidence.

In evidence a belief, it is stronger to make evidence as it contains in a greater to a degree to a belief.

The different kinds of testimony, from which the evidence is derived, are these:

1st. Written Evidence. This includes all that evidence to be derived from any writing from the lowest instrument up to specialties, as deeds, records, etc. A promissory note (for instance) made by A. is evidence what is called written. But if A. draws the writing, you must prove the fact, if this may be done by parol. That being done, the evidence is complete. It is then partly for not partly written evidence, the writing must be produced. It is therefore written testimony, the party is introduced to help it out.

2nd. Parol Testimony. This is derived from the mouth of witnesses. And here it makes no difference, which if it is delivered in the voice of only deposition. A witness sees testimony reduces to writing, does not make it written testimony. A deposition is parol testimony reduced to writing by the proper officer or person appointed. The rules relating to written testimony do not apply to depositions. The rules relating to parol testimony are the only ones which are applicable.

3rd. Presumption Evidence. This is derived from either parol or written testimony. If so, it may be asked, why make a distinct class? For this reason. In its technical sense, written or parol testimony is to be understood as going directly to prove the fact in question. But presumption testimony goes to prove
Evidence.

a fact or a set of facts from which a principle or inference is drawn. From the fact or facts proved you can only conclude that the principle fact has taken place. The existence of fact is not proved. E.g. suppose the question is whether Mr. Jones was in Town yesterday. If

saw that at 10 o'clock he saw him on a white horse coming towards the Town, viz. about one mile from it. I said I saw that at 10 o'clock he saw him going from the Town on a white horse, being there about

3/4 of a mile from the Town. The latter, who was in the Meeting house in Town, swore that about 10 past

10 o'clock he was looking out of the window, he saw a man riding past on a white horse. I believe it was Mr. Jones, but I was so stung up that I did not like the possibility. Now from all these facts it may fairly be presumed or inferred that Mr. Jones was in Town yesterday. One man saw him on the road which leads to the Town, another coming towards it. He described the Horse – another saw him on the road going from Town to a similar horse. I believe this, and that the 2 men saw him a man in Town saw somebody who he believed was Mr. Jones on a similar Horse.

Sometimes presumptive evidence is all we have in the world. Sometimes there is room to doubt, but that alone is not to hinder you from deciding. You must decide as a reasonable person would. Now in the above case there might be some loophole to get out at – it might possibly be that I was not in Town. But from all the circumstances it is
Evidence.

It is impossible for you to draw any other conclusion that that he was actually in town. This presumptive evidence is sufficiently strong.

You may frequently hear it said at the Bar that the evidence must leave the mind clear of doubt. This is not so as appears in the Example above—the proof is sufficient to satisfy the mind of a reasonable man. A doubt might exist in almost every case. There are to be seen some possible cases of according to the laws of nature are entirely clear of doubt. As suppose at 10 o'clock at night the sky is perfectly clear, i.e. in the morning we see that there has fallen a heavy snow, i.e. the Dew. Is whether there were clouds last night, some man being a clear we are to suppose no mortal actually saw the snow. Go from the circumstance of its snowing in afternoon no clouds. The case is clear of doubt. You are not to bring it to that that it must leave the mind clear of doubt. It is very important to get an exact idea of presumptive evidence. You may hear it said that the evidence must be clear, else you cannot convict. This is the presumption must be notice. Now what is the presumption? Why that which convinces the mind clearly that the thing must have taken place. It is sometimes, stronger than an oath, as will appear from the following Case. A woman was convicted for burning a house. Now if some person had sworn she burned it, his testimony might have been disbelieved, 

Evidence.
Evidence.

But from presumptive evidence it was clear that she was guilty. The facts were these: It was proved that she had been to be seen in or about the environs of the Barn. From this alone was not sufficient to convict her. But it was proved that as she walked on the ground that she kicked the track she made in her shoes exactly; that there being a defect in the heel of the shoe, the same defect was plainly visible in the track. This defect still more to the conviction of her guilt. They found far further that a short distance from the Barn they found an earthen potting with some soot in it. This being of a peculiar description of soot was known to belong to the house where the victim. This was an additional circumstance, but further they proved that in going to the Barn from where she lived she must have climbed a fence, as it climbing it her petticoat (which was of a singular kind) caught in the rail. tore a piece out of it, which piece was found. When comparing it, it appeared exactly to fit the rent in the petticoat. From all this circumstances who would not say that she was guilty? Yet some one else might have put on her shoe petticoat to get this is not probable. The circumstances were sufficient upon which to ground a conviction, the presumptive evidence was conclusive to the mind.

This presumptive proof may also in many instances be drawn from readings. As e.g. I Pray a Deed of Black acre to A receiving 10S [previous text]
Evidence.

I think it but it does not... I does not pay the money when due. I S. since then the replies where is my promise to pay. If you can't be compelled to pay? The writing itself proves no promise to pay, but if accepted by the lessor, I think if therefore can in place of a present that he will pay the money. I S. says, but Mr. A. did you not enter on the land about post expedet? Yes says I, but for all that I might have been a trespasser, wills says stills did you not enter on this land 3 years ago, if the two first years pay me the rent? This brings the fact I can say none. Be other circumstances prove that he agreed to pay, though the writing does not say so, then is no proof of a strict promise it is all presumption.

The case of the bloody sword is a common example given in the books of presumptive evidence, as where in a case of murder a man was coming out of the house with a bloody sword, nor who would doubt under such circumstances that it was the murderer, yet even these circumstances are not in every instance sufficient to prove the fact, as they have once failed. Such circumstances as the above is usually sufficient, upon which to ground a conviction. But I say it has once failed, there is a case in Germany in the city of a person was convicted of murder on this presumptive evidence. The circumstances were strong against him. He, the man whom he was convicted of murder, had had repeated quarrels with the man convicted.
Evidence.

Twice during the trial of a man convicted of murder, a jury of several persons ran out of the Street in this man with a blood-pregnant in his hand running out in this together with the threats he made as he ran. Before leaving prison, he was convicted and executed. Have 25 years after the person who actually committed the murder confessed. He was an old man. He was murdering a miser of a postman living in a house alone. The fellow who murdered him entered through a back door intending to have stabb'd him at once in the heart so that he would not prove he could claim to take his money. But the man on being stabbed groaned, but that money the man (who was afterwards executed) the instant entered the house and theclf he escaped. He then the back door. He drew the poignard from his breast, tore the groans of the murdered other through and found him dying with this man with the poignard in his hand. From all these circumstances he was convicted. The jury could not have done otherwise in such case if they were mistaken. The man was innocent. We ought to think in such case to be extremely careful.

There are a number of very important rules relating to this subject, which may easily be understood. I shall give them to you as I proceed.

In the first place it is a rule in all cases that the best evidence must be introduced which the nature of the case will admit of.
Evidence.

to understand by this, that the highest evidence in the grade of evidence must be introduced, no it means only the highest evidence which the nature of the case admits of. We all know that written evidence is of a better kind than parol, but if there is no written evidence, parol is admissible, as long as the best which the nature of the case ad
mits of. But you will observe that if an agreement is written, you cannot introduce parol testimony to prove it, because it is not the best evidence the nature of the case will admit of.

Again suppose a contract is reduced to writing, i.e. and B are the witnesses to it, and it is denied that A signed it, i.e. it is denied to be his handwriting, and B is brought up to prove that A did sign it. Why introduce B? On the other hand you may ask why is he not a contributive witness? Why he would be, were it not that the evidence of C is not the best which the nature of the case admits of. Why do you not introduce A & B? They must be produced if possible. But suppose A is dead, & B, out of the Country, why then B, may be a contributive witness. Again, A says it is his, & B was in the room at the time these persons were making the Con
tract, but as it does not concern me I paid no attention to it. I never saw A sign it. With a

such case, still however testimony may be produced. You may call in B to prove the wrir
ling, he swears that he is well acquainted with
Evidence.

In the hand motions of S. D. I shall cite this to you. You shall prove it by the best evidence which the nature of the case will admit of. If you cannot introduce this letter testimony as long as any higher is to be had...

There are cases where parol testimony cannot be admitted at all, being forbidden by law. As in case of a deed or record, you cannot prove it by parole; you must produce the original. Except in certain cases (which I shall mention hereafter) where authenticated papers are admitted. All contracts not forbidden by law to be proved by parole may be proved by parole, when there is no writing which can be produced.

I shall now mention what characters are excluded from being witnesses at all. 1st. Reason of exclusion is Interest. Do I mean by my or a technical sense, not meaning a marked character in society, but conviction of a crime or as I shall explain hereafter. 2d. Professed atheism is a want of discretion. These are the four great causes. There are insolvent cases which I shall notice hereafter which do not come under any of these heads.

1st. Interest. What does it mean? The interest must not be an interest of feeling. It must be a pecuniary interest, that we have nothing to do with the fact. Some will not swear falsely at all on any account; other a not for a trifle. You cannot draw a line.
There can be no line drawn between the value of one Cent & one Million of Dollars, as respects the interest. No can we draw a line as respects Character or acts alike there is great difference even in this. No relationship excludes except in one insolate case. (Surely mention that by the bye.) A Father may swear for a Son, a Brother for a Brother to helps.  
Believe that persons is to be sooner biased by relationship then by money. The relationship may may be proved to go to the credibility but not to the competency of the witnesses. However small the pecuniary interest is it excludes, but however great the interest in equity may be it does not exclude. There must be to exclude a real interest done which is certain. Eg. if by the parties loosing his action, the parties are thereby lose one Dollar, this will exclude him, but on the other hand, if a man be in his 80th year it has but one Son, if there is an action of Equity depending about a tract of Land why does man says is his Son the Son may be admitted as a witness or by trial, the two perhaps Appendix to the subject is of that Land the instant the Father dies, it may be in one month. Here is an interest in equity; it is not certain for he may be cut off, he is dues for a competent witnesses. Again it is an interest in the event which excludes not an interest in the question. There are two kinds of interest in
Evidence.

The point either of which will conclude, one of direct or the other is consequential.

A direct interest is

If the trustee & judge can ever afterwards be made use of to subject the certificate to the payment of money, as being the ground for an action as evidence in itself, it is a consequential interest in the event which will exclude his testifying. As suppose the body of T. is taken away. T. dies his last will for him. Then, the judge describes the nature of that of a debt. When they come to s. & s. set up a defence, on the trial wishes s. to be sworn as a witness. He object to be excused. And so, if the judge is at all. & if he is not surrendered up to the officer in satisfaction of the execution, s. will be liable on his bond. The bond was given not for payment of the money on the first instance, but for the payment of it pursuant to s. It was not forthcoming at the time. So that if s. does not see that this body is surrendered up, he will be liable to pay the debt, on which s. was sued.

So in any case where the present judgment can be produced as evidence to subject the certificate in a subsequent action, it is a consequential interest. It is the interest in these cases for the certificate to swear as to clear the principal, to thereby discharge themselves from liability. They are therefore excluded. But interest in the question does not exclude. There are a variety of cases in the books exemplifying an
Evidence.

interest in the Question. As e.g. the witness may have no
suit depending on the same point, will this
claim him? no. If it is not a direct nor consequen-
tial interest, the judgment cannot affect the wit-
ess, he may think that if the case goes to suit
with the point, this must stop towards be determined
the same way. As for example say T. S. lent S. 1000
at 10 per cent interest, T. also lent S. 1000 the same sum
at the same rate of interest, T. S. signs T. S. in his ob-
ligation, the knowing it unlawful defense intro-
duces T. S. as a witness. Has T. S. a direct interest
in the event of this suit? No, for he is the judge
of the suit, it can never affect him at all. Well is
he consequentially interested? No, for he can never
use the judgment in this case in his favor or any
subsequent action, neither can any one make use
of it to him. There is then no interest. This feeling
it is true may be raised. T. S. may know of the
usury in T. S.'s Contract, but T. S. may know nothing
of his. An interest in the Question this cannot
exclude a witness.

Again. Suppose T. S. beats S. in the street, or
the peace is broken. A great juror carries T. S. before
a Justice to say T. S. is done hurt forward as a witness.
The wise be admitted, for the judge by the suspi-
cion of the public can not be made as of by T. S. in this
suit he may bring for his personal injury. It can
not be given as evidence in the subsequent civil
suit. If T. S. is acquitted in the public suit, it will not
Evidence.

prove S. E. from recovering at his own cost. This is contested on the public prosecution it will not prevent him from defending at S. E.'s suit. He is therefore an interest at all.

This subject as to interest in the Question was formerly unsettled, much litigated. But since 9. E. it is settled, that a person cannot be excluded, who has only an interest in the Question, such person being only excluded as have an interest in the event either direct or consequential. Many of perhaps all of the States in the Union have adopted this rule. Some continued the old rule until 5 or 6 years, when a decision was had on "2 national lit. which settled the doctrine.

Under this head is rank'd one case, which I conceive is an isolated one. There is but one. The matter is no relationship to exclude a witness for testifying. I that is this, a Husband or wife cannot be introduced as witnesses either for or against each other. I conceive this rule is not established on the ground of interest, but on a different one. If the Husband sued for $1,000, the wife cannot be said to have a pecuniary interest, therefore excluded from testifying. The feelings might be shown by raising, as a recovery by the Husband, might concern her comfort. The principle is apparent, that she is not excluded on account of pecuniary interest, for in all other cases, a person the interest may be admitted to testify if the opposite party will agree to it. This is frequently done. It is a principle of the Common Law.
Evidence.

But a wife cannot be thus coerced if the opposite party will not consent to it. If a wife were to insist her being one word at a trial and declare that she is willing to proceed against her husband, the husband might suppose that in the manner in which she would relate the story it would operate in her favor, where contrary to his expectations, were she an honest woman, relates it before God, it militates against her. This there may be: but such a story is perhaps something which would - against all. We are very careful to guard.

To this rule there are some exceptions, for a man may swear the peace of his wife when he considers his life in danger from her. Nor do men see. The latter, i.e. the wife swearing the peace of the husband, is most common. In such ease the law considers her no longer as one of the same, but as two distinct persons. So one controversy this exception.

There is another exception, viz. when there is a public prosecution by an officer of the Government for a private abuse of the wife by the husband. Not a public abuse as if committed in the streets but a private one. In such ease the wife is admitted a witness.

Say, Judge, then, I can tell what a woman is at most every case will swear to when she contends to. Now say will be like this: "He abused me - kicked me out of bed, 6th person came to the house was my kind of polite to me - called me his Dear." This exception has been solely done.
Evidence.

Said Andrews case (Hutton 116) has for ten years denied the Law of Elementary justice, and indeed there are some obiter opinions of Judges which say it is not Law. But there are no cases decided which will warrant these obiter opinions remarks. That was a very atrocious case, but on that account say they the Judges sent the Law to that particular case. But it is not so. The Law is well settled, you may see Right case in Strange where he says the decision in Bosler's case was correct, but the Law was well established, so I would remark that Strange is a correct reporting. You may see also Brown 189, 187 where the Law is given down as settled, there is no authority to controvert it. If we look into the Consequences arising from the rule, we may see difficulties on both sides; a man may be subjected to the circumstances making it malversation of a very bad woman, on the other hand could not the wife be subjected to testify in such case, she would be obliged to bear witness to the injuries and cruelties inflicted on unnatural but hard might be disposed to infatuate upon her, privately. But when those things are done to imposition, the danger to be dreaded on the part of the bastard, is no more. An amiable woman would not be guilty of perjury, tis the character of a bad wife is generally so well known that her testimony is not be believed.

It is said, there is another exception, viz. that if a man commits treason, his wife may be admitted as a witness. I have never found a case that warrants
Evidence.

such a rule. The reason given in support of it is, that the tranquility & safety of the State is paramount to the cause. But in other cases, it is for the testimony. Lord Redcliffe Case on State Trials in Car. 7 is referred by support of the rule, but in this case, Lady Nugent was not called to testify to the treason of her Lord.

In 1835, Lord Cottenham on Brown's 27.

This is a relationship between client & attorney, which stands on a distinct principle. The attorney cannot be admitted to testify to any fact or facts which have been entrusted to him by the client. As to those facts of which he was acquainted before it is retention, as truly he may be compelled to testify. The meaning of the rule is, that he never can be admitted to testify to those facts entrusted to him by the client, of the existence of which he was ignorant until disclosed to him by the client. Neither can he, even after the termination of the present suit, be admitted to testify to them, it is forever closed doors to him. If this is necessary - it is on a notion of policy that: Law has prohibited it, for if the law was otherwise, who were willing to trust a lawyer with his secrets?

Again there is this case. A entrusted a secret to B, (who has bosom friend). A confidence, the knowledge of which secret is known to commit A & B. A now says the secret I consider it morally wrong for B ever to. B now communicates this secret to any person, it is wrong for B to admit him to disclose it, if he will. I could never have been compelled to
Evidence.

do lose no such advantage. Was a friend to entreat
with it for so long as he kept the trust faithfully
the secret ought to be considered as known to it alone.
I conceive that it is just some parts with it. If
the friend has been so licentious as to give copies up
to this secret, or entrusted it to others, brought them
consequently by being compelled to testify to the confession
of A. But as this is the case, so so long as he keeps
it, he should not on principles. It might be compelled
to come into & disclose it. But the decisions in Epp,
for Bass, are directly contrary. The rule is that if
the person communicates it to any person other than
or wholly the person that entrusted with it, may be
compelled to disclose the same in a bit of justice.
I have known the principle carried so far, that the
law has suffered one party to summon an intimate
friend of the other party to compel him to take an
oath of the confession which had been made to
him, when no other circumstances than that of the
imagery in the case, friend to the party & induce the
to believe he knew anything of the matter. These
always doubted the principle. It resisted it, as long as
possible, but it is now settled against me. It is easy
to see how this true guilty of a family may be de-
stroyed by such a rule. I do not know whether the
English Law on this subject has been adopted in
all the States in the Union, or not. In some I
know it has.
Evidence.

Sept. 2nd, 1819.

I shall go on in this Section with some preparations and considerations for locating the violation of the principles in question of interest. It is founded on the nature of that in case. From this it follows that in ordinary cases the "opposition" to the decision of a successful appeal is often founded on the principle of interest and objection to a decision. It is a common thing for jurists to treat, in order to exclude their own jurisdiction. Now you perceive that this coining, and that must be a remedy for it. E.g., if a defendant, if a defendant is calling. It is a question at the time, but at a good writing for this. We speak, perhaps that that is the subject of a second. You shall know this joint of the suit, will not losses for the purpose of being heard him from testifying. Some of the rules in this. If no testimony is of limited to that the defendant does not his name to be struck out of the suit, if that is not evidence that which is not sufficient in the opinion of the Co. to Corrupt them, they do not order his name to be struck out of the suit, and order him to be tried first, if he is found not guilty, he is now it is a matter. (See notes at this page.) This is the way the justice of the Case is to be preserved. Now the other being to know any the principles of interest from the oil. He is a competent witness for as if he is a witness. If the Co. is given to not to be held for the. I have no real interest. If this property is injurious A must one, I having no interest, he may.
Evidence.

An accused is entitled to have his case be tried by a competent judge, but for this he must be entitled to a competent jury. To that end, every person involved in the dispute, who may not be a competent witness, shall be excluded from testifying. The exceptions are those who are exonerated, by this or by the laws of the land. If a person is excluded, he must be included in the court as a witness. If a person is included, he must be excluded from the court as a witness. A person's character being bad, he may not be able to show his credibility is open to observation. If it appears upon his testimony alone, he shall not generally be believed. If his testimony agrees with other circumstances, he shall be believed. But to exclude him, he must have been actually convicted of such crimes. Of what crime? Why the crime false as it is, as the defendant is charged with. It is any crime which destroys his character for integrity. This is the meaning of the crime false. The crime of perjury is not. The crime of perjury is not. The crime of perjury is not. The crime of perjury is not. The crime of perjury is not. The crime of perjury is not. The crime of perjury is not. The crime of perjury is not. The crime of perjury is not.
Evidence.

Among men, it does not destroy all but character for integrity, as a guarantee, to testifying for false.

Manslaughter is not among the crimes which, at the trial of the accused, but if you concurred in a man of honor, he is generally bought, and this prevented from testifying. But how can it do not come under the crime? Tho. the latter, who cannot testify, he until the conviction is proved, so that you must prove the record of his conviction. As to other offenses on general rules. no inquiry is made about these, not even to prove his character, except it be to prove that he is reputed to be a man unacquainted with being given to lying, or at his general character. The sound and wise the witness's character may be examined, and if proved, this does not go to exclude him from testifying, but goes to his credibility, e.g. business and a gentleman. As keep bad houses, they are supposed to be witnesses of integrity, that they may be able to swear to any thing. Such persons are not to be disbarred from being witnesses, but the proof is introduced to impeach their integrity. This do not increase one's course of specialty, but much that they kept such houses. There is no case where a man is excluded from being a witness, under the idea of its being the criminal false, the you at, not think it was so. It in the criminal false, or an exception to the rule. It mean the crime of Baring, to mean conviction of this crime, can be as much a conviction at F.D. there if he had
Evidence.

The principle of the admission of sworn evidence is subject to the condition that it is sworn in a court of justice and requires to be given in open court. The rule requires that the additional sanction of solemnity should be imposed upon a witness. A person cannot testify unless he takes the oath, but it is not to administer an oath to a man who professes to believe there is no God? The rule requires him not because they believe in lies, or will lies, but because it is a rule of law, which cannot be dispensed with, that the witness must take an oath before he can be sworn to testify. Now the rule would in effect, would be dispensed with, if you administer an oath to an atheist, although him to testify. It is an additional sanction for him to swear "by the ever living God," when he openly professes his disbelief of the existence of such a God.

On this ground, viz., that there must be an oath, it is that forecourt testimony is not admissible. A general rule you cannot swear to what another says. If A. had in a conversation said thus I thus. B. did not come into it. He swore to A's observations. But if A. had said he was told so, as before a Court division B. may come into it. I testify that I heard A. swear thus I thus. If one of the parties had confessed fact, evidence of this is admissible, whoever is hearing on the
Evidence.

...ground that no one admits being capable to hear
...contrary to the truth. To what a man says to
...merits or ability to be sworn to (the hearing)
...person must have suffered himself dying
...words. This hearing evidence
...obligation to speak the truth, while in that situation
...to properly accept to swear an oath.

...expression of the principle, that profess
...advocates, to these have been several late
...decisions in England, which undertakings have been excluded
...because they do not believe in a future state of
...rewards and punishments... of infidels, Mahom-
...etians, Pagans if they be excluded from being undertakers.
...they may not be admitted, if they be admitted
...by their own God. The oath must be according to their
...belief and usage. A Moravian must be sworn
...by the Psalms. The reason why these persons was
...formerly excluded was that the oath was admin-
...istered, by the witnesses sworn by the Holy Evangelists, and
...the rule there was that unless the oath was thus admin-
...istered, the person is not to be admitted to testify, these
...fore a Pagan or Moravians is not to be admitted, for
...they have no belief in the Holy Evangel. But the rule
...is now altered, it supposes it happens that under such
...circumstances of New England a man was appointed for a rule, which has
...now by a course of decisions been accepted in England. Not
...swearing by the Holy Evangel, but by an alphabet, and as
...of course not what believe in a God, are admitted to testify.)
IV. Want of discretion.

This article is taken from Daniel 14, quoted as 2 Kings. It is considered in reality, that must be considered as it. Nevertheless, there is no conclusion to be derived. It depends however, on their having discretion and knowledge sufficient to know the nature of an oath. The rule of Daniel, that after 12 years of age there is no justification for their discretion, except they be durable, stands. But if the cases are treated like any other cases, they at 12 persons of either sex may be admitted, and the rules without further proving this rule, it is to be, the better opinion of the person not until 14. It is presumed that at 12 they know the nature of meaning of an oath. Under that age, the S. must inquire if the child knows the meaning of an oath, he may be admitted to testify. I have frequently known this admitted at the age of 14, 15, and these have been extraordinary instances of their being admitted at 5 years of age. I never have present in a case of this kind, but it has been done. They are excluded mainly on the ground of discretion, if this is to be examined into by the S. when under 12 years of age.

These are the 3 grand causes for the exclusion of witnesses. I have further to observe that testimony may be rejected, because it is improper to be given, not because the witness is not a proper person, if the testimony offer be admitted. On this ground stands all irrelevant testimony, it does not conclude to prove the issue. As when the issue is a Later
Evidence.

Some is usurious or not. It is introduced as evidence to prove it. Now if he cannot prove this, but can prove extortion or mistake, his testimony is invalidated. In the Court must exclude him. To in any case, when the evidence does not convince to prove the point of issue, it is rejected. In this grounds it is that hearsay evidence is not admissible. Now this do you (cases frequently, the Case) not witnesses to prove what another man said out of Court? I will explain it by an example. Suppose a man comes out, A, swear this to this. Now you may call in witnesses to swear that they had never heard him. It tells the story quite the contrary. The objection to this is, that having got it out of Court, he was not under oath, but you will observe this hearsay evidence is admissible not to prove the fact about which he testified, but to impeach his testimony. He relates the story differently, he contradicts himself. It does not now continue to prove the fact, nor can the jury find either way from this testimony. They cannot say whether A told the truth when he was relating the Story to Tom. Does it change, or whether he now tells the truth or not. You may always introduce evidence in this way to impeach another testimony. There is one set of cases where nothing else is admissible or introduced but hearsay. It is when you impeach a man's integrity for truth. You cannot prove how guilty of this or that crime on us, this he is not prepared to defend himself.
Evidence.

But you may, in his general character. It is not what you know. Believe about him. It is his general character among many that defends him. By the evidence of witnesses altogether. Have you been told a partial description of hard evidence or testimony. Then some observations to make of it.

Written Evidence or Testimony. This is the evidence of hands. 1st. Records. Any instrument or writing under seal called a speciality. Any other writing that is not sealed. We must make up the distinction between the two as to seal and to signature.

2d. Records. By this is meant the acts of legislative bodies, and the judgments of Courts. Other things are called records, but they are not so, nor known as such in the law of evidence. as you hear it once the records of a birth - a marriage - of a birth - or of a death. These are things recorded, but are not made in contemplation of law.

Records prove themselves; they are not. of witnesses; indeed they cannot be proved by any thing but the record itself. That is by inspection. The record is evidence to the Court of law; it contains in it, absolute reality, the record itself.

A record is ordinarily proved by an authentic copy of it, and by producing it in itself. The reason of this is obvious. Records are deposited in a certain place, and all persons may examine them, if it is occasion made. Trouble of possibility if they might be removed from place to place.
Evidence.

For this reason, the rule requiring the best evidence to be introduced, which the nature of the case will admit of, is on how disposed with copies as they are directed in the law directed are evidence. The principle is founded in necessity. There are States whose statutes requiring deeds to be recorded, has a general rule, where this is to take it as a copy of the deed is not evidence, for this reason - the deed is not retained or kept by the recorders, but after being recorded, it is delivered back to the party.

At C.S. Copies are admitted when the original cannot practically be had. It when a party is entitled to show a deed, and he is not bound to produce the deed, for they are in the hands of the judge at law. So courts unfortunately allow in fact to produce as evidence. I say unfortunately for it leads to bad consequences, as suppose A forged a deed, he may get it recorded, destroy the original, and when occasion requires produce a copy from the records. You would have to prove that it is a forgery. It is said the law has guarded against this by requiring the solemnity of witnesses, but how easy a matter is it for him to forge the name of witnesses too? The may put the names of persons to it as witnesses, who are persons, they will be said the law has further guarded that by requiring an acknowledgment before it is forged. But this is no more difficult to forging than any other part. The introduction of making copies as evidence, because formerly was passed by.
Evidence

It is proved by the evidence of three persons, viz., the third for the sake of the others. The two, one of them, the last, are of the same name, both of whom are present. The third is a person of good character, and the other of the same name.

I have received that evidence, and from it I have concluded that they proved the birth of the child. But with respect to other things they may be proved by other witnesses, viz., of the birth of the child. It is concerning the birth of a child, and it is not proved that it was born by force. The evidence, or the birth, is called a breach of promise. If the birth is not proved, the birth of the child was proved, so that without the evidence of the birth it could not be known.

The present evidence is only a reputation for other purposes. But records are only proved by themselves, unless they are burnt or destroyed, or taken away, so that they can not be seen.

The last evidence you may introduce much further, yet you cannot prove any thing by it. But which will make the observation of the evidence, in order to give it a different meaning. If an evidence, or proof, does admit a different meaning, you recollect there are certain objections respecting it. You recollect it is certain evidence, or it is not. You may prove the execution of it in proving any other evidence, and that is the case.

The evidence of the birth of the child was proved, so that without the evidence of the birth it could not be known. But records are only proved by themselves, unless they are burnt or destroyed, or taken away, so that they can not be seen.
Evidence.

of the Government you may by parole prevent their hand writing. Again it is not the thing to require the Deed that it be written, now you may prove that it was written by Parole, but you cannot introduce parole proof to explain the meaning of a clause condition to the Deed.

Which respect to the consideration of a Deed, you cannot prove by Parole that there was none, you may for certain purposes inquire into the question of it. The parties cannot enquire into the consideration for the purpose of destroying the validity of the Deed, but third persons who are interested may at all times inquire into the consideration. Suppose no consideration to exist in the Deed, now it makes no difference as to the validity of it solely as there is a duty which is paid in facts a consideration. I mentioned that for certain purposes the parties might enquire into the question of the consideration but this cannot be done, else it will destroy the validity of the instrument. If you thus inquire in cases which appear in damages, as if a man entered into a contract with certain conditions to perform, and in damages there was nothing but a nominal consideration, now that cannot be an enquiring into it to effect the right of recovery, but that may be as to the damages the damages accorded to be nominal paid according to the actual loss sustained.
Evidence.

Lect. 3d. Feb. 16th, 1812.

I have now concluded my prefatory remarks, and shall proceed to give you the principles with authorities. There is nothing in evidence, the nature of the case, that will not require must be produced.

Another general rule of that no person, who
summons another as a witness, has right to object him, however contrary to his expectations, that testimony of the witness may be. The rule is established on the ground that the law will not permit a person to summon another as a witness, for the purpose of impeaching his character or thus gratifying his mali
volence. The rule, however, requires qualification. You are not to understand that the party is prohibited from introducing other witnesses to prove the existence of certain facts, inconsistent with those sworn to be the truth, or therefore reason his testimony as no avails. This he may do, it is not impeaching the character of the witness, nor he may have been mistaken. The meaning of the rule is, that he is not at liberty to contest the character of the witness as to truth, the be may introduce other witnesses to prove his testimony untrue. Suppose e.g. in a assault allary, A. gives a witness in C. to testify and he the contrary to the expectations of A. describes to parties which go to con
nect him. Now if he cannot introduce witnesses to prove that C. is not to be believed, neither can he.
Evidence.

prove that the witness has before told the story differ-ently, but he may introduce witnesses to prove facts which he did not guilty.

Solicit for you that evidence was divided into three kinds: Surprised testimony, which is either given person by depositions, written testimony, which includes all writings, and uncorrected evidence, which is taken from written or prior testimony. Sufficiently explained the nature of these kinds. Surprised evidence is that which is given by the principal, and is point at issue and is lighter, or less weight accorded to the the circumstances and when it amounts to direct present in the issue, all the circumstances together, convey to a belief. Also mentioned the causes to excluding persons from testifying: the first was interest, which I repeated I mentioned also the relationship between an agent of this client, which excluded him from testifying about what he was communicating to him by his agent. Also observed that there has been a great difference of opin-ion as to this point—whether from a person made an confidential communication to a friend, the friend can be compelled to disclose it? Observed that I thought it was more allowable to compel a disclosure against the, however, otherwise. The second ground of exclusion was to the third was proved. Observed how to explain this ant of the fourth, which was hard to explain, and how to explain, and how to explain. I also mentioned the exception as a case of a witness testifying, could, unless the witness stated beyond the general rule, and will indeed,
Evidence.

To render a statement that persons were unnecessarily made debtors, I exclude them from testimony above he public, unless it is absolutely necessary to do so, and I must insist, as a rule of a trials conducted, you may see the rule in the 1st rule presented. Such 28th, 28th, it is there, sec. 4, this 512. 

The testimony of the state. The witness, in my opinion, would be in more, but this testimony, since has withstood an exception, may be admitted. If it is not for the state, but the credit of its testimony is open for objections. Such persons is sometimes entitled to, but little credit, and sometimes his testimony is entitled to full evidence, as if it is convicted of other circumstances which are known to exist too. It has not a received opinion, that if an accomplice, he cannot be prosecuted. It is so in effect. the state is no contract made with him that he will not be prosecuted. Any person he is prosecuted, this is in spite of contract, but while it is considered that the honor of Government is pledged that he shall not be prosecuted. 25th, 405.

Of Persons interested in the Exceptions from the Rule.

The interest to exclude a witness most as to he is be a pecuniary one. There is no inquiry as to the Quantum of the interest even so small, the witness interest to admit it. There is a necessity that the state should be general. Some would like to force others, they would not for the Universe, and therefore it proper that pecuniary interest should always exclude, any.
Evidence.

It will be seen, however good this rule may be, there are dangers of bias arising from relationship even in many instances much greater than that arising from pecuniary interest. The relationship between the witness and the party may be required to make the jury unbiassed and unprejudiced to the testimony as to their opinion of issue.

It was always the rule that an interest in the event excludes, but it was not always the rule that an interest in the question did not exclude. It is now settled that it must be an interest in the event which will exclude. I have explained what an interest in the event was that it was of two kinds in direct and consequential. If the person who is brought as a witness, will be either a gainer or loser on the event of the present suit his interest is direct and will exclude him or, if the witness has furnished money to carry on the suit, if he has a direct interest in the result, it is so. It is of no matter what the position is so if it is a direct interest he will be excluded. To also a consequential interest excludes. If the judgment in the present suit were the foundation for a subsequent one, as the witness, so make him liable, it is a consequential interest which will exclude, e.g., having given bond for B, cannot be admitted to testify for if the judgment goes against B. Any pecuniary interest in the bond, his interest is consequential.

An interest in the question will not exclude; what is this interest? Why is it real if it is no interest at all. It is a strong feeling, a bias, or the moral.
Evidence.

Here it is seen, in his having a case depend upon the principles, e.g. if a person e promised to go on, I wish to form a will. It was entered in the first, same condition with the same voyage. He died and his defence is that he was guilty of a fraud as that in material to form the same case to the (Fed.) had heard of his business, and that the hand was not at the pumps. The act this fact he did state that he had as he was bound to do. To prove this it introduces it the it will be admitted for his interest in neither direct nor indirect, the judgment in this case cannot be in favor in any action. In the same case. The Act has an interest the De. was a part to the wine. If the danger of admitting persons interested in the De. to testify, it that there may be a combination among men. The De. how would be no prejudice this. The judgment combination to clearly provide their testimony, if such witness will be wholly destroyed. It is an interest in the De. where there is this strong bias on the mind, as in the case of fraud and battery. There before mentioned, where the part her in as directed to testify in the public preservation. His interest is neither direct nor consanguineal, it is an interest in the De. merely. It has sometimes been perplexing to draw a line between, this case, between interest, an interest in the De. that all the rules are strictly attended to there will be but little difficulty. On the one hand, if the witness day
Evidence.

may possibly be made liable, as it is not certain that he will be, his interest is consequent on the other hand if he has only a strong bias, it cannot be affected either way by the others in the event of the suit. It is only an interest in the question.

If the party a man is prosecuted for using the party to this contract may be admitted as a witness in the public prosecutions. Again, if he has never bought packages of goods from C. D. claims the goods to be his. I say they were belonged to D.

The suit A. v. D. may be admitted as a witness in the trials, he has only an interest in the case. This question in the present cause, cannot be introduced in any action between D. & B. I may have a verdict in his favor & yet B. may lose his case. They have no connection with each other. On the trials of the suit, as A. B. may completely establish the fact that the goods were the property of C. & that D. had no right to them. Now when D. sues B. if he may be able to prove the same which he has proved for A. & the cause dies go to him. I may know nothing respecting B.'s conduct, tho B. may be well acquainted with A. He has then only an interest in the question.

The need of ascertaining whether a witness is interested or not are good. In any case you may introduce testimony to prove that the witness is interested in leaving this alone, you may challenge his testimony & put him in his place as a litigant to testify whether he is interested or not. This last certainly
Evidence.

contradicts the C.S. precedent. viz. that no person is
obliged to testify concerning himself. It is however an established principle that both these modes are not to be adopted; if you fail to prove his interest by adopting one of them, you must not be permitted to adopt the other. The reason is obvious: a man will not be permitted to take this method of bringing an
other to shame if indulged in his own prevision. Whim the witness is on his own side, the party may ask him as many questions as he pleases, but the Law will not permit him afterwards to bring his
witnesses to prove that he has so often prevailed on him. It will be only fair, but it would be no
more than just that he should be left to shame, still the witness is not his, or his Lucas. But how it came to be established, that after introducing testimony for the purpose of proving an interest in
the witness, if failing in the proof, that you are not free at liberty to put the witness in his own
dice, I know not. The rule however is well established
is that you cannot adopt both modes. 1 Blou 388, 4 Boc.
225, 1 Blac 282, 5 Blat 724.

If it turns out on the Trial that the witness
considers himself bound in honor, he is excused as much
as if he were bound in Law. As suppose A makes a
parol agreement to pay the debt of B. now this is not
binding on him in Law, for the Stat. of Frauds
Purifies exactly — that a contract or agreement to
pay the debt of another is not good at law if it is in
writing.
Evidence

witness, but if A fails himself to be honest, in making it, he cannot be a witness for it, he is interested of course excluded. 1630, 34, 4 De.. 327...[MD.21.]

The questions usually put in a case are, do you have an interest in the event of this suit? He answers No. Do you in any way affected by the result of this case? Answer No. Then this person is inquired into the state of the case, and it may appear that he had an interest, so he was ignorant of it. It being shown to the inquiry, he might feel as if he had no interest at all, but that he was not bound out that there is a possibility of his being wronged, more liable to. In case therefore he is excluded.

I state to you, that an interest in the case, as formerly, is not in all civil cases, and never excluded in Criminal cases except in those instances where it is using, forgery, & perjury. To the person, affected, it is by using of. Could not be a contempt in the public prosecution. The rule has been altered as to all kinds of cases. The new rule has generally obtained. Now, it obtained universally that the several States in the U.S. if it would be a matter of inquiry, but it has not. Several years ago, it was decided by the Southern Circuit. that no interest in the question, did not exclude. It was decided in the same way, on the Norfolk and Eastern Circuit, but on the Middle Circuit it was decided. Contrary to the other two instances, as from that time it was carried up to the National Ct. where it was decided, that such an interest did not exclude.
Evidence.

So that we have now the consideration of the question of what is exactly the same as that given in the case of Reed v. Westmoreland, 3 F.R.R. 495. For the purposes of the case, the question is decided in this Court, in this case, at the House of Lords, and it is that case that determines the rule in question.

The line is easily drawn, but it is difficult to give a reason for it. And why should it have a direct interest in criminal cases, or not in others, seems the more difficult. I have never much trouble to find the reason for it. I regret to say, they have certain reasons which I have not got at. In case of forgery, there was a good reason for it, as a rule among them, and has founded in some very ancient statute, that every man who convicts another of forgery is entitled to the fine that the witness has a direct interest should be excluded. But how do you account for it in case of forgery? Why should not a man whose name is forged be allowed a witness to prove the forgery? In answer to it, on first view an interest in the question, I think the reason is this, that I infer it from an express provision, which has in one or two cases fallen from the statute, it is this on a conviction of the person forging the forgery, the note or bond that is cancelled and if this is the case, it decides the point, furnishing a sufficient reason. The same reason will as doubt apply in case of using a false or false to which you refer, if the rule is not so wide that it introduces a
Evidence.

is not cancelled, the person may be an aider and abettor. See no other way for accounting for it. For
the above, that which I have given, and if I have found out the reason in case of Forgery, it will no
mean result apply in case of Usury. See 2d. 331.

It was always the case (even before the case of
Bent & Baker 5 T. 162) that in using the person
who was affected by it might be a witness in the
public prosecutor if all the money was paid. So
this must certainly proceed on the ground that the
money could not be recovered back. We may then
take the Rule to be that an interest in the Pec
does not exclude. The same rule holds in crimi-
al or civil cases. The whole of this Law is apparent
in the Case of Bent & Baker (before). And allow
that is a case by itself. It has settled the Law, yet the
very case is founded on the Case of Abre. 3d. 100
at 224. See 3d. 396. Hume's lengthy opinion:
that. There is no case since that of Bent & Baker's
rules from it. You may see a Case in Vermont. And
3d. 396. Hume gave a hasty opinion. Not Law. Although was
perhaps as great a judge as ever sat upon yonder,
Yet he more misstates than almost any others,
by being always ready to decide, it sometimes too hastily.
He was however always willing to retract, so finding
he had committed an Error of Judgment. See 3d. 396.
6d. 332. 3d. 652.

To be a general rule that I have state that a per
sample interest Excludes there are some Exceptions.
Evidence.

On the ground of necessity. What must that necessity be? Not such necessity that the party must get his case. It must be such case where the debt was not dischargeable with us or Eng. under the Stat. of Insolvency. If there is a Robbery committed, the hundred and castle of the debtor do not apprehend the robber. But how is the man to prove that he was not robbed and the amount? The man is entitled in such case the robber is not apprehended to recover of the hundred. But from the necessity of the case the person robbed is entitled as a victim in an action to the hundred. For otherwise the Law might be to Robby negatory, as it was formerly be enacted that a Robbery could be committed in the presence of Witsheps. If the principles is the same (I think) where a Traveller stops at the Tourn of an Innkeeper, and is robbed. Now in such cases the Traveller made the Innkeeper liable, if the Traveller can prove that he was robbed to what an act, but how is it to prove it? Why he must to admit it as a theft in the Shard Law on the subject would be Negatory. It would be a hard thing if the traveller were compelled to have witnesses at every Inn to prove that be delivered over to the Innkeeper it would be putting travelling in the power of Innkeepers. On the other hand, it is said if you establish this rule you put justice in the power of every man who travels the road; but how can one Innkeeper be there charged to produce witnesses to prove the Traveller's character it?
Evidence.

is often for inspection. The danger to be apprehended is much greater if the rule is not established as I have laid it down, than it would be under such a rule.

[McQuaide, Jr., Division Co. v. St. Louis Union R.R.
2 Volume Page 1. 23, 331. 2 Pet. 585. 2 Hald. 144. 10 C.C. 193.]

Under the head of necessity a question was raised whether the daughter who was present could be a witness in an action by her father vs. the President. She may be a witness, and some say it is from the necessity of the case, but it does not proceed on the ground of necessity. She is a witness like any other person; she has no interest in the suit is lost by the father, and he (or she) is entitled to whatever is recovered. The court not being the action, as she is parties in rem. She has no interest it is therefore a competent witness. 4 Cal. 1089.

Guardians, &c. Proceder, trusts have, in some cases, been admitted as witnesses in suit.

It is said it is on the ground of necessity, but it is not in the cases where they were admitted they were mere naked trustees, had no interest. A Guardian may be liable to a little of costs, but for this he is to be indemnified out of the ward's estate, if the suit is properly conducted. But if he so conducts the suit that he is liable, will not allow him any indemnification for the costs, i.e., if he is liable to Indemnify, he cannot be a witness, but if he is a mere naked trustee, he may be indemnified to testify. So a procuring agent may be a witness, if he is indemnified for costs. 2 Cal. 1084.
Evidence.

It has been said, I instance against every one that when a State is made to a penalty for the breach of its laws, and giving this penalty to him who shall prosecute the offence to conviction that the prosecutor must be admitted to testify; but the Law cannot be enforced. It is not so. This principle of necessity which forms an exception to the general rule cannot be supposed to extend to these cases. The Statute says a person may be admitted (the exception) from the necessity of the case, relates to these cases which I have mentioned, as common robbery; and as to a common public information. If the prosecutor in this case fails to recover the penalty let him fail, but the Law will not be defeated. Suppose A knows that B has broken a penal Law. Now if he is so patriotic that he cannot bear to see the breach of the Law go unpunished let him get his persecutors to prosecute, other he (A) will be a good witness. But in such case 13. must have the whole penalty. For if there is any interest on the part of the persons, it will be discovered in his voice, and the whole not be allowed to be testified. On this ground of necessity it is that persons have been allowed to be witnesses. The allowance is by Statute, but it is a Statute made on the principles of the Law. There is a Statute in Co., enacting that a man whose property has been stolen, may recover his damages. But can he be a witness to prove the theft? No, no one of he saw him steal it, but he is permitted to swear to what he knows otherwise be proved, viz., that the property stolen was his.
Under this kind of necessity is the case of an Escaper
who is tried for a voluntary
Escape, the Escaper in these cases is at
least as strong as he can be,
for the judgment goes up to the judge,
the Escaper is discharged
for any liability to the Reporter he has received
from the Judge & he cannot be entitled to another
meeting for the Escape. Nor can the Judge
receive of the Escaper
after the Subject is to the Reporter, he is partially
excused to the Escaper.
All of this evidence is before him, so a distance. But if
judgment should not go up to the Judge the Escaper
is
liable come to the Reporter, so that it is his interest
to swear out the Judge. But still no he is in the only
case who can prove the fact he is sometimes a witness
from the necessity of the case. So also in a negligent
Escape, the party escaping may testify, but the reas
one gives in case of a voluntary Escape he is not liable.
In this case the Escaper is liable at all events the
Reporter may sue him & if he does not suit the
Judge the Judge may sue the Escaper to recover. And it is
demand that it can make, whereas the interest in the suit
is equally balanced between two remaining parties he
is omitted. The Judge has no interest in fact. But in case of
a voluntary escape the Judge can never take the
Escaper, this Escaper is the only one who can prove
that the Judge voluntarily permitted him to go at large.
The question is that same as cases of theft & it stands
on the same ground. The accused are tried by the Judge.
How is he to prove it by any by the party interested but by
himself.
Evidence

has an interest for if he can fix it a party, rescuers he will be cleared from all liability a payment to the rescuers claims him for this rule is that in no case is it to recover damage for the doing of the act which is in violation of the law. See also Eakins v. State, 56 Ind. 92, 62 Am. 211, 2 Met. 663.

The precise language is a bit tough on the group of rescuers, i.e., he is a witness in a certain way. He is not permitted to come into court and swear, but his return on the back of the ticket is evidence of the ticket to which the witness is attached. It is just as if the witness were in court. A return of an officer or laborer for his own favor is always the usual, it is not conclusive evidence but only prima facie evidence for how it stands as proof. The same to be otherwise. Unless the rule may be comprehended in the case of a reward person by those to interpret Tolman the man applying to the police for the reward is, in case it is disputed here, of a witness as to part of a transaction. See 105 Va. 353.

Another case arises in its operation, which takes in a vast number of persons is that of Joint Tortfeasors, they are interested clearly, but may be witnesses. Suppose 3 persons commit a larceny, one of them or one only just as well as the others. For in this it is a rule that the persons may sue at theire will of him at his election. Suppose he sues A and B, and then introduces C as a witness. It is said he is interested. Now, why is it with a judgment as to
Evidence.

Often, the scene can occur without the need for a judge or a jury. This is known as a "no-case" verdict. In many instances, it is not necessary to prove anything other than the facts of the case. It was established as a rule on the grounds of necessity, that it is not now a matter of necessity in every case, yet it is admitted in any case. And on some ground it is, that the Public take accomplices as witnesses, the crime could not, in many cases, be otherwise proved.

A wise clause originally founded in necessity is that of agents. They may in civil actions be admitted as witnesses either for or on behalf of his principal. For e.g., if E delivers money to his agent F to be paid to S, E contends that he never received it. A question is, whether to the delivery of it, then F, the E is entitled. For, progressively to the event, if it turns out that F has received the money of E, and has not paid it over according to the instructions of E to S, then F is liable for the amount; it is for his own interest, then to prove himself cleared. This too may explain the rule, that the best evidence which shows the nature of the facts, is the only evidence that can be called, and this might have been prevented if the law had required that a "no-case" should always be taken.
Evidence...

It does not neither does your not Custome require it. Ahip Receipt has been given it would be impo-
sible to produce it, in as much as a letter of receipt of
summery than the 36th of June takes no mention.
There is a strong case of this kind. A Father was esti-
ble A. in 1800 and had made several payments of
or it, and at one time he sent $100 to his Son, and
the bond was taken up, it was joined that at that time
the father sent this money then only $50 when.
The father lost his credit to it, to receive lead this
$100 paid by mistaken. Of the obliger says that he
had only received it to be that of the father had sent
$100 the Son must have returned the $50. Now
the Son was at full age, and as able to pay, and
the sum of he has evidence it, as eye of the person, but
he was admitted as a witness, the he was interested
for the same reason as above, viz. that he acted as agent,
with 289.

The case of a Tarlot who acts as agent and
agrees with the bond. He was the purchaser of Goods. The
Principal to the Factor. B. how the goods were paid.
Denies that he purchased for such a price - who was
to prove it? The Factor. the objection was that the
Factor received a endorsement, that it was his intent
to make the price as long as he could; because the
more the goods were sold for the more he recover;
but he being an agent, perhaps parties to the goods it was
true, he was admitted as a witness in the cause, admitted E.
Steinberg. Same principle at 27th of 690.
Evidence.

Members of Corporations are certainly the

concern of the Corporation. In some cases they are
duly responsible or otherwise not. This business does
not appear to have been reviewed to a certificate the
everywhere. The authorities are contradictory:

tings the members were admitted as witnesses and disputes
about the concerns of the Corporation. Sometimes they
were excluded. Sometimes they were admitted, that if the
sum in dispute was small, at other times they are
in such members to testify as sure and to
high standing. Mention this that you may not be
often be misled. But these distinctions are not
22 and the law now pretty take settle. The sum ap-
pears to be that in all Corporations where the member
are such as are not individually liable to pay in case
of any loss, but the loss must fall, if at all, upon
they are admitted as witnesses. This is the case with
all Charitable Corporations. If they are suit on a
claim the joint only is liable—there is no individu-
al interest; and of losses incurred they are to be paid out
of the corporate funds. The members are at 25, ch. 4
50 in all similar cases. Rich. El. 589.

But it is otherwise if the members are indi-
vidually liable. In such case, if they are
admitted as witnesses. As is a question, whether the mem-
bers of a Corporation are liable to pay the loss, then they
may not be held up the point is involved. Though it
is decided that they are liable to pay they must bind
themselves to pay individually. In such cases the members are

...
Evidence.

... calculation and reason to consider, to testify as this
generated Corporate right. It is proper a Corporation to pay the present of the
rule of contributory to a member of the Corporation, to
testify for the purpose of establishing the
will? Nor for it is constitutionally legitimate. In if he
substantiates the will, he may be relieved from
the payment of his tax to support the Poor. Suppose
accusing the activities of incorporation, these
parties is liable not only to the amount of its
share, but if they fail that each member is liable
in his own personal capacity, an as a member cannot
be a witness. So when a Corporation is accused like a
Bridge, the complaint is as to the person building it, they have the power to build it, and
not the Corporation to be taken a fine penalty, but the
members cannot be witnesses. So in all other cases,
where the principal is easy to be got at, if they
are constitutionally liable to pay there is not witnesses
as at C. S. pues of not constitutionally liable it suppose.

231. 235. 42. (19th 174. 235. 231. 231. 231.)

At least we admit member of a Corporation
to testify without requiring into their interest.
This difference it found in usage.

There is a case of this kind, being a
Eng. Stat. suffering from the C. S. E. 194, according to
this law, in case of Bribery, either the Briber or
Bribed are liable to a penalty. But I conceive you
cannot recover the penalty out of both. The case of
Evidence.

Of both of these you may see how fast the
sooner or later he may be in evidence as the
persons he may shite the liability upon others in
his neighbors. There is no help for it, but he is admitted, it is on the ground of necessity
-

This rule is double in practice. If the
in East 180 there is no subsequent case, but


"Persons sometimes become interested after
the event has taken place to whose testimony you have a right.

If that is done to a duty to deprive you of the benefit
of the testimony you may make them swear as if
a witness lays a wager that one of the parties has
the event in this case, not care of it, nor the way
warrant becomes interested he will be compelled to
justify himself becomes liable to not being compelled to
warrant becomes liable to not being compelled to
just if he becomes liable, by the oath of a person
warranting him as a witness, as if a man witness testifies
in the event upon he becomes liable, if a sure is lost.

As the above person now care this warrant to admit
be lost if it is not for his interest. If not with his
Testimony, he can arrange his debt, then he makes
liability, for no his interest as one. But suppose in
this case if twenty the testimony of the party liable, is
it admission? Not, but if the person that became
interested by the act of God, or any honest way.
Evidence.

It is required from being a witness, and it was seen
when the witness testified; but all parties agree that
we realize this will include him; he has been known
interests in the act of May 13, 1840, the 26th. Cons. 1858.

I mentioned to you that when a person added
another as a co-defendant, the co-defendants to include him
from testifying, the rule was for the C. of evidence
of the act of the witness. If evidence be given or testifying,
one of the acts of the witness, the act is exhibited
by him, but if the act is not sufficient to
convict him, they are his words, not to be tried
in this. In 223, you may also see 161, 72, 184. If you
mention to you that, this rule is founded by 8, 8,
Kings. c 3, 7 e 1836, 1826. The acts of each testimony
of the witness is exhibited by him, the C. cannot direct him to be tried
just, but that all must be tried together. If cer-
tainly is mistaken.

If a person interest to be completely but
limited that he cannot be a norris loser, by the
court of the suit he is a witness, E.g., ACo. C. no
may nor have interest, money for it. It offers, as a rule, to
prove that he did (2) as an agent to B. and States that
C. will swear that he (3) received the money for B.
What is the objection? How is C. interested? Why if he
had the money, he is as much interested, one way as
the other, for if it appears that B. never received the
money, and he recovers in this action, 25 26, this
may maintain an action by 32 to receive back
the money, and of C. the Def. recovers in this action.
Evidence.

If the C.P. may sue C. for the same sum as that he will be liable either way. And if he (C.) never receives the money he cannot be sued habet, either. So that true it which way you suite he has no interest, is a complete witness.

The Inhabitants of a County are admitted as witnesses, when insists for not building a bridge, they are not a Corporation, but the principle is the same. The reasoning of the C.P. however is singular, they say they consider the inhabitants as indifferent, that they won't be as liable to swear as it for the purpose of having a good bridge, as to swear otherwise; in a way, by which they would clear themselves from paying the money. Pet. 2. Co. 129.

Another Case: when at C.P. independent of any statute provision, persons interested in one party are admitted to testify, if it is in an action of the Court, there are long accounts between the parties, very complicated perhaps, and it is often impossible for any others but the parties to explain them if the rule were not, as it is, that wants to a failure of justice. It is admitted to swear to his account.

There are other Cases where the principles of the C.P. have been enforced by Stat. This will depend upon the Statutes in the several States. By a Statute a Court, a Party in an action of Book Debt is admitted to testify, but this does not differ much from C.P. That instead the Book is admitted as evidence, proof of the entry by the C.P. is sufficient.
Evidence.

By another Statute, as early as 1682, the use of torture in the office of justice had been abolished. The Court had been accused of torturing a number of persons, and being at that time, for that it existed, not by a special act, but by a custom or practice. The case of this kind a man had determined to kill another, and carried them to the bushes near a bridge where he expected to meet the man he was to assassinate. He waited on the bridge, gave him a horse beating, the person, then went, before a Justice, to score in a secret against the murder, and the person himself confessed to the Court, which was against the torture.

Evidence is the same rules with the competency of witnesses, which Courts of Law do with this exception that they shall appeal to the consciences of the parties. If the party not answer, they can compel him to, they have take the oath as conspirators. If the parties were from his case in any other way, he had no right to appeal to the Legislature. But when he may to does sufficient to the Conscience, he determine the evidence of his antagonist or not conclude sure upon him, in any evidence from the facts by other testimony, it shall be the respondents evidence. In Court recognizes to the rule, you cannot inflict his
Evidence.

his testimony, the conscience him as a witness, but his conscience, if he refuses to answer, he doth not believe for a testament, as he believeth if he was conscious of the truth. In such cases, when the privilege of testifying, the party appears to the conscience of the respondent, and that of the respondent, and where he may appear to the conscience of the party, to have a duty to the court, it has not spoken, the truth—this was to that party.

There are some cases where a man makes a man a witness, and as such cases he is a witness only for or in behalf of the other party may call on him to be a witness, he owes not call upon him, he may cause to himself a witness. In such cases, when the party may call upon him to testify, but whether he owes or not the party may cause to himself, his privilege of testifying.

The law of God is such as no one is more entitled to be a witness, to his interest, as such. The law of the law, the law of God, has enacted that he may be a witness, to be in cases where a party may call on him to testify, he cannot be forced to testify if his interest. In the case of the witness, the party in the case of the witness, he may cause to himself a witness, he cannot be forced to testify if his interest. In the case of the witness, he may cause to himself a witness, he cannot be forced to testify if his interest.
Evidence.

On the night, to call him up before a court is a great difficulty in the case. It is quite a task. This case has two main difficulties, but I cannot see why it is taken seriously. The words of the Statute are that the person must prove innocence, but, from construction, it is not so easy to do. It would be difficult for a man, having been an ignominy before on the night, to prove himself innocent. It is to show us to one of the people present there, he was so that particular night, and when he slept. So that the Statute requires that the action to be commenced immediately, that the party may prove an alibi. The Laws of a similar kind are to be found in most of your Statutes.

Generally speaking, where projects have been this a number of cases, more or less of them can be sent to at a witness, except when their interest can be raised to releasing an honest. It is to explain it here.

Suppose A sells a horse to B and B sells him to C, and C to D, and D to E. Now if E claims the horse of C, E may by releasing D, introduce him as a witness. That I would the horse. So you may bring as a witness at C. as a witness, even to his wife if you release him. The only objection is interest and who this is removed, he is a competent witness. To be sure, it is very likely that releases of this kind are frequently given immediately before a trial, to obviate as soon as it is over, but the C. cannot know this. You then see the principle. And for the same reason a person who has taken the benefit of the Bankrupt Law.
Evidence.

may be, &c. It has now no interest in the matter of his property to assist for the benefit of his creditors.

In case of a suit brought on it has long been the practice to introduce a former holder as a litigant. This practice is objectionable. It should not be allowed. There is no warranty with the present claim. If it occurs that the party selling has no right, no title to property the greater may come back on her for the money. To suppose J. S. wishes to purchase. Which seems if T. S. says you may have it for $2000. I will give you a suit claim. But, we will not warrant the title. J. S. agrees to the bargain at that price. And T. S. gives J. S. and it appears that T. S. had no title to the same, J. S. may come upon him for the $2000; the consideration has entirely failed. J. S. then is interested. I cannot be a witness. But if it was a bargain of a bargain it would be otherwise. E.g., Suppose T. S. is a profession and he gives J. S. the land is really with the lot, but if you will agree to run your chancery suit, you claim my title to you for $2000 and that you is accepted at the bargain. Now if J. S. is with his cannot become back the money, so that T. S. is not interested and may be a witness. The Sam. This subject has been the subject of much contention among lawyers, but when the bargain is not one of bargain it cannot be a witness. This case resembling the right in another date Dec. 17th, 1812, and reports in several N. A. R.
Evidence.

Lat. 3 and Sept. 26, 1819

On the subject of a Trustee, who has the legal title, only, and is that, his representative is a trust in that the suit must be brought in his name; but the beneficial interest is in another; I would observe that the principle is, that, in all cases, the beneficial interest is in another; and he is liable, in any way, step by step, to its liability, as may be the case. Even if the trustee be liable to costs, there is no objection that in all cases where he is not a party in the Record, and he is called in to testify respecting the property to which his interest is preserved, it is no objection that he is a Trustee. This holds true in all six cases—being a party to the Record, it is impossible that he shall be liable for costs, as if he had the legal title to property, but not to claim the beneficial interest. C may be a witness. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19.

You recollect that, I stated to you that a person who revokes himself is entitled to point of honor, not to a witness. A case—a witness was objected to, on account of having made a partial lease of a farm for 25 years in case one of the parties got his case. The court held himself bound to honor the same as legal obligation to close, as account of the State of Maryland. The latter added, as the principle is, that if the wrong is expected to reverse, except in some instance that is not by the determination of the suit, it is reversed 199. 20.

Since then by an example the strength of the principles of extent, operating to reduce a witness—.
Evidence.

Suppose A is tenant in title and B is entitled to the
possession of it if it ever comes. It is doubtful, first
by to most of you, that the tenant in title can at any
time cut off the possession. Now what is B's interest
worth? Not 10 cents, for it is a right to demand
entitlement at any time. To turn the estate into a fee
simple. It is possible, however, that B will not do
this, and thus it will descend to his issue. Then if they
are extinct, then it goes to C. Now B cannot be called
-a because his interest is a rent one, and one which
he can at any time dispose of. But on the other hand
suppose A to B, who perhaps is to inherit. It is called to testify, he will be admitted. Relationship
does not exclude the donee may be cut off. His inter-
est is only in expectancy and not certain. Nor can
be disposed of this expectancy, as a mere<br>issue of his interest. Notwithstanding his feelings and
expectations he is admitted to testify. But where there is
a real interest, at the time, he must be excluded, no
matter bond in all the amount, is.

I pointed out the principles on which husband
wife cannot be witnesses to one to each other. It
was not on the ground of interest, but a possession
domestic tranquility. There is a case in 4 Pet. 377, another
2 B. 262, both of which polarize the principles.
The husband was called upon as a witness. It is an action
concerning property which belonged to him he had not the
least interest in the case. And this shows the only objection
he would have been a competent witness. But the etc.
Evidence.

expected him on the ground that it was bad policy to ad
mit husband or wife as witnesses for or as such others
as it w. tend to disturb the peace of families.

A question has been made whether a wife
for de facto the husband having another, could be admitted
as a witness in a dispute respecting his property. What
motive is there to exclude her influence? The law is
not very anxious to preserve domestic tranquility
in a family when the head of it had been guilty of bigo
dy. It was said she was interested. But she clearly
has no more interest than any other person. She is
admitted her as a witness.

So a woman who has been forcibly married
is admitted as a witness in an indictment as the hus
band for the forcible marriage. This point has been
much litigated, but I do not know why it should
have been. It was determined that she was a witness
to prove that he had been guilty of an offense com-
promising his wife, not to prove that she was not
married. The courts not have been a witness but she
actually have been his wife, but was admitted on the
ground that she was not married the marriage Con-
tact was void as obtained by duress. In any case
of this kind where a man carries a girl before acting
is to forcibly & he (for the sake of his fame) marries over
the ceremony it declares that "man wife," so when the
marriage has been procured by other means, false ad-
motions, schemes to the contract ought to be void as
much as it is in case of fraud in other Contracts. And
Evidence.

be treated as utterly void; but yet it seems to be thought by many that the contract is binding, but I suppose that if a contract, for a consideration, is not obtained this way from the party considered as void, so ought this to be. I have no authority on this at present, you may see 1 Slebe. 69. for principles.

There has been a question of this kind: may a divorced wife be a witness respecting anything that happened during coverture? The principle of tranquility does not apply here, nor is there any interest. It has been determined that she cannot be allowed to testify, or correctly, I think. Take it, it was on the grounds of its being originally a confidential communication. It is strictly analogous to the case of a party communicating a secret to his friend, and yet it has been said that the friend may be compelled to disclose it. The as I was asked before, thinks the it morally wrong to compel a disclosure. The wife is in this case excluded on the ground of its being a communication made to her by the husband, at a time when she knew she could not be compelled to disclose it. I do not know that this case is any more applicable, you may see it however in 1 Slebe. 40. 69. of Evid. As to Confidential. Comm. see 4 T. C. 49.

There seems to have been a revolution in opinion, with respect to a person's being obliged to testify as to what would subject him to civil or criminal action. The rule is still that no one can be compelled to subject or criminate himself, but the language of Elementary
Evidence.

...is able to mislead... They say a person cannot be compelled to disclose that which relates to their own templetions. If I, this, we can to understand that a man cannot be compelled to disclose that which we convict him of a crime, it is correct, but if this is not the meaning it is incorrect. That a person may not be compelled to relate that which relates to his own templetions, that the fact is otherwise will shewn to incorrect. Suppose e.g., a woman is not, but to testify to the father of a bastard child. She may be unwilling to testify to the father of it, but the overseers of the poor have a right to her oath, in order to charge him with the maintenance. The objection is that she is not obliged to testify to her own templetions. But if this case she testifies to, to templetions of which she is not informed will known to be guilty, unless it were the more infamous that one, she, than the father of it, than another. But this the law does not suppose. I think I believe on a knowledge, that the overseers of the poor, Selectmen of the Town, have to ascertain. That is, that in the event of its becoming a pauper he may be obliged to support it. I am not much in favor of such rules, for in many instances where the Father & Mother have settled it, I think it is a pity to compel him to testify, of this by publishing the facts. This kind, perhaps, destroy the tranquility of families. I suppose the judge means in this case that the Father or mother of it, were tried in the court of endock & another...
Evidence.

The next class of persons who are excluded from testifying are those who are Infamous.

I have sufficiently explained what is meant by the word "Infamous" in the discussions of the Books of Commentary. The idea in the Books of Commentary is that it was not the infamy of the crime but the infamy of the punishment which would exclude, is now exploded. The rule now is, that if it depends upon the infamy of the crime, a conviction of that crime is to extinguish all character for integrity. For if the Legislature should pass a Law that the crime should be convicted of drunkenness &c. instead of a conviction of this offense does not induce them from testifying, it would not destroy all his character for integrity. So that it is now the infamy of the crime which decides. I have already mentioned that other crimes go to the credibility of the witness. But the respect to the Person being the only evidence I shall say something more after 3 Lev. 226. 2 Oct. 18.

In some cases the Court have (by an 3 decisions) dispensed with the rule that a person convicted of the crime false cannot testify for it. I should pay "Stare decisis" but the rule has been suspended with. The principle on which the rule is established is this that a person having of the crime false has lost all his character for integrity, and cannot therefore be believed as a witness. Now this first case when the rule was dispensed with, was a case of this kind—a young man who was in every way respectable and prudent after
when about 10 years ago, to make some tools for
the purport of stamping Counterfeit money. He was
tried with the others and convicted, and as the time
this was, the Justice stating that it was not so very
he had his ear cut off. This afterwards became a
very industrious, honest, and respectable man and
committed himself in all respects with a great degree
of propriety, this act was forgiven, and he considered
a good member of society. He was often introduced
as a counter part. Courts are no exception, exists that
this account about 30 years after he was not
forward to testify, and was objects to, and the result
of his conviction proved. The lot said that as the
reason of the Rule was founded on the presumption that a
person convicted of the coroner falsifies Courts and speaks
the truth, but that in this case his after life of 30
years, during all which time, he had conducted him
self properly, rebutted the presumption that imposed
the statute away. The meaning of the decision of this
lot is, that the presumption of the rule may be rebutted.
In another similar case they decided that way. In a third case the lot refused to come here
because there had always been some suspicions as
to his conduct—his stock in trade was his not good
the last case they admit the reason of the rule in its full
estent—on the two former they disposed with it. That
it is bending an old establishment may be, because the
phrase derived is one of the most important maxims
in the English law. It of equal importance in the 10th
Dennison,

There is a rule of the law that when a man is convicted, it restrains him to confess, that he has been convicted of the crime falsely and consequently that he may be arrested to testify. This rule is not a

to the best of my knowledge, it is not the U.S. I think this is not a good

rule. The principle is, said to be, that by the

the convicts is renovatio and made a new man to

his character for example, restore - now if the pardon

was always granted on the ground of innocence it

would be a good rule. But if the person does not

teen cannot do that ground, it is considered an act

of mercy - it acknowledges the guilt, but for some

particular motives his punishment is spared, but

his character is not renovatio. This is no presump-

tion that he may be more likely to speak the truth

after conviction than before the punishment

had been inflicted. It is a more positive rule and

is so, because it is so. But it is not in all cases

that a pardon renovatio either in Eng. or in the U.S.

States. Where a Law provides that in case anyone

be found guilty of a certain crime, which is, or was

the crime falsely, in addition to the punishment

he shall be incapacitated from testifying, but whether

or is of the crime false, or something else, a person

will not renovatio. But when it is a consequence

resulting from the judgment - or part of the judg-

ment than the rule applies. (Salk. 38, 123) 152, 133.

T. Myr 380. 2 Thawke 2 452, 433.

With respect to the other kind of or simply, this has
Evidence.

been noticed before. It remains to notice the witnesses' general character for integrity and truth. This does not go to his competency but to his credibility. It matters not as much more to confound a witness implies into his character than an English and much more than we ought to be. B. S. P. 276.

You may see in B. Burr 1244, a case where a man confessed to his death and that he had subscribed his name as a witness to a will which he knew to be a forgery. That because was what he said or acted like no one, the Law as to that subject has been explained. A man is not permitted to explain his own will, but he is not bound by his testimony to any prove by others that the facts were different. Any confession is liable to mistake. B. B. P. 277.

A third class of persons, who are excluded from testifying are those whose disabilities arise on account of their religion, as Atheists. The C. C. P. 435 is to the subject of entirely altered. They exclude Infidels, Pagans, Mahometans, and in short all who do not believe in the Englishman's God. They admit Jews or Persians, Calvin's Case or Both. Contains the Law as it then was. The gives no other reason for the decision than that Christ has no communion with Belial. But it was soon found that there was no sense in this thing. He who believes in the existence of a Pagan God may be sworn according to the Ceremony which binds him in his own Country, and a Pagan is much bound by that oath.
Evidence.

As an Englishman, when he votes up his hand, as in the case of the Queen living, Good. The rule is not perfectly easy at first, but it is.

This matter is now well settled; all that is necessary is that they be sworn according to their own mode. For many persons think that unless they be sworn in a certain way, they may lie, as one fellow I know, who asked why he was not bound by his oath, said, "I put the Book pretty near my mouth, but faith I am right in it." 2 Sam. 1164.

Who then are excluded on account of their religious Principles? In Eng., persons excommunicated, etc., nothing to do with that in U. S. In law, there is no such thing. But in civil cases, if at all admitted to testify, they are ruled out on the ground that they are not conscientiously taking an oath. It became very important that they might be admitted to testify, and in 1883 a Law was passed that in all civil cases they might be admitted by affirming. Still in Eng., they are excluded in criminal cases. In this country, they are admitted in all cases, as there in U. S. does this illegether prevail. You may see a case on 3 Burr. 732, perhaps, upon the head of Decker, when it was urged that his affirmation or recital of the line was changed, as being guilty of a perjury, he was not he מאז.

The Law here clearly that a Decker's affirmation could not be given in support of a criminal charge. But they thought that an affirmation might be written.
Evidence.

defence of a criminal charge, if the person charged was himself a Deist, is soon to connect him with. But in case of a Deistic Collateral Evidence, or assistance of the manipulation of another person, who the Deist himself was not charge at all, they thought his assistance ought not to be used. [These are the words as understood in France, but if I understood Judge Reeves to say, that in case of a penal action, Deists should be admitted, and yet he did not, by saying it was in the face of an civil action, Tint. 1859, 322, Conr. 336.

Atheists must be excluded from testifying if you adopt the principles, because there must be an oath. The most honest man on Earth is not permitted to testify without an oath. What goes then will it to permit a man to swear by the Everliving God, when he does not believe in the existence of such a being? It is a necessary consequence of the rule that all shall have the solemnity of an oath imposed upon them before they are admitted to testify, and therefore atheists cannot possibly, such as... White.

The principle has been explained further, by persons who deny a future state of Retrospect, and punishments are excluded, then they believe in a deity. I do not know what decisions have been had upon this subject in U.S. But it seems, a witness was excluded, because he believed death to be an universal sleep. How is Atheism proved? It is proved by the persons after favored professions, not by his conduct in life.
Evidence.

Lect. 6th. Feb. 23rd. 1813

The Fourth Class of Persons are those

Willing discretion.

Under this head are persons so young as to be considered. To those who may be younger only as to particular subjects, as they may understand the nature of and well, yet they are not capable of entering into oath. With respect to minors as I have before observed, we have not laid down, except that at the age of discretion which by some is said to be the age I believe the better opinion is, where the 12 years of age, they are admitted without any inquiry as to their discretion. Below this, it is an age of uncertainty, and the st. are to exercise it, and discretion, if they find they understand the solemnity of an oath they will be admitted. Some have said that under 9 years they were incapable, but that concern is not the courts take, but that the criterion is, whether they understand the nature of an oath, if so they will be admitted however young they may be. L. 470. B. 12 P. 293. Ross. 217 P. 455.

It has been a practice in the English courts, sometimes in courts, that when persons are so young that the st. did not think it advisable to put them under oath, to take their simple narrative. This is the only case except that of a man in some cases, where a story is received as testimony without the sanction of an oath. The narrative of the st. is usually corroborate by proving that
Evidence.

he has told the same story at the time that Jackson
curried it over. Since this has been so. This has been
practiced in some of the neighboring States.

And notwithstanding he has introduced a new opinion
of Exclusion. I say he has introduced it. For there is
no case where the question was decided in previous
tures. O'Case by him. (The Case of Walter H. Phillips)
1866-29. It has often been called up since. But is
now in force. The rule was, that to make the his
interest legal, (Reese) he had once given currency
to a paper, and it attached to the West. Short after
says he admitted to impeach it. His rule holds
date in some of the States afterward in 376. 34.

But says that the rule holds in case of neglectable or
unwary only (Page. Rivington) in 77. 601, denies that he
made use of the expression imputed to him in 376. 347.
But the opinion given in the Case of Johnson and
Southwick in 77. 601. (A great may be) it also in Page
376. 325. seems to destroy the whole doctrine.

This first to a. cause shall three include.

With respect to the rule that the true evidence
must be introduced, which the nature of the case will
admit of, it does not follow that you cannot intro-
duce a lower species of Evidence than once existed
for this may be done, whenever the higher Evidence
is not to be had, as if it be burned, lost, or destroyed.
A recovery may be had upon a note or bill with
out producing it, but you must prove satisfacti-
bly to the Col. that it is lost. (2 Stagg. proof of this 38d.
Evidence.

will not suffice. The fact of its being true, will not only prove the loss, but also the amount of it.

Indeed that there are cases where hearsay testimony was admitted the higher evidence there are, where you cannot be certain, which is the best evidence. As in case of B. being called B. as witness, now B. must be admitted, but it is just to refer that D. B. knows most about it all time kept back - this case have considerable weight on the minds of the jury.

In case the Pfl. does not introduce the best evidence, the nature of the case will admit of, he will be conducted.

I will here observe again that a part contract may be proved by parole. But if a contract which is good by parole, is reduced to writing it must be proved by the writing. In case of a dispute about land, the deed or record of it, must be proven.

Hearsay testimony.

This species of testimony is not regularly admissible. The meaning of it is that a witness shall not be permitted to relate what he heard another day, because it was not spoken under oath. So this rule there are exceptions.

One exception is this: The witness having testified the opposite party may introduce testimony.
Evidence.

to prove what he had said out of Court. But you are
obliged this to be done to prove the fact or point
in controversy, but to impeach his character for truth.
If there be inconsistency. To hearsay evidence may
be introduced for the purpose of contradicting the
witness's testimony. This however is anew done till
it is impeached, e.g. you may prove, as a contradic-
tion of his present testimony, that he told the same
story out of Court, at a time when he could have no
foundation to deviate from truth. So if the testi-
mony is rendered improbable by the other crises,
hearsay evidence may be introduced.

III. Cases of Confessions. What a man has said out of Court may be proved, you cannot
prove what he has said out of Court a man's
own favor. But what either of them has said, while
true against himself is admissible, it is con-
sidered the best kind of Testimony for it is not the
supposed that a man will say anything which
will make not his interest, unless it is true. But
if the confession made in favor of him, if part for
him, you cannot thereby introduce that part which
will make not to him. the other part must be also in
true. or in other words, all he has said must be
true. For the beginning of a story, is often explained by the con-
clusion. It is not really wrap that it should all be true, nor
are the times bound to believe the whole of it. This is
the doctrine of hearsay testimony from the party.
Evidence.

The further suppose a man confesses himself guilty of a particular crime, evidence of that confession, admitting with the circumstances, which at least the commission is not asporible. E.g., suppose he confesses himself to have been guilty of forgery, now forgery has a technical meaning, let it and how does he know that what he has done is forgery? The fact of a forgery must be shown, and in his confession of being guilty, that is conclusive to him, tarring evidence may be admitted to prove it, ibidem.

Again, it is a common thing for a man to confess before a magistrate, and for the magistrate to take down the confession in writing. In such case the writing being the last, so it is thus evidence can be admitted to prove the confession. But the magistrate is not obliged to take it down in writing, and if he does not, he, as well as other persons present at the time, may be admitted to prove the confession, ibidem.

Further, the confession of one can avow what another the you may have even so strong reason to believe the confession true. E.g., suppose A B C are charged with burning a house, and it confessed that they all three were guilty, now this confession will be definite at all as any one but B. In such case of there is no other evidence, it may be proper to use as a States evidence, ibidem.

There is a difference between what a man confesses in his answer as a C. of Chis., and what he admits.
Evidence.

on his plea in a lot of cases, eg. on a demand in a lot of cases, the party admit the other has at least to be true, or in a plea in bar he admits of course what he does not deny, now this Journal is no evidence to him in any subsequent case, it was an admission pro bar varia, let him confess he will bis this plea in a lot of cases, it cannot be made use of in his hars after. But a confession in an answer in Chy is evidence to him forever. The reason is, a plea in a lot of cases is not made with, it most usually is made by the party itself, not by the party himself. But in Chy he is under oath, if his answer be untrue, he must incur the punishment of perjury... I mean.

But still an answer that a party makes in Chy is not binding upon the court. When he comes of age, he may broke it as if no such answer was made. So the answer of the accused trustee in Chy was not operative to the Destiny in trust 2. Vind. 70. 3. Mot. 239. Sup. 792.

Confessions obtained of a person accused of crime by flattery, or threats are not to be proved in a lot of cases, yet a confession obtained by flattery that he has stolen the goods or done some such a bars, was admitted as far as to show that the goods were found there, but not to show the person guilty of the theft. supra. ref. 239. 253. 254. 3. Mot. 239. Sim. C. 2. 324. 455.

III. A third case, which is the most important, as to the admission of hearsay evidence, is this... what...
Evidence.

When it is known that persons have said with respect to the boundaries of lands, or where the stock stood when the heap of stones lay, where the line tree was, or this species of evidence is more important. It is clear, for these the boundaries of lands have become permanent. It is not long known, but what has been moved in clearing up the country. These the persons living near others are introduced to prove what they have said when alive. If they are still living, this hearsay evidence may not be admitted, but must themselves come forward. This is a rule introduced this necessity, that it is supposed that no one knows respecting the statements of land made many years ago.

A fourth exception is this, hearing evidence is always admitted to show the probability of certain death, who has gone abroad. In the circumstances, as that he was in his health, or was in great danger at sea, are admitted. This is hearsay. But it is the best evidence the nature of the case and would be admitted. It is hard to expect that you will find a person, who will swear he saw him die. But it is sufficient to express the granting of administration of his estate, to release the wages from the land of St. Mary, that many years is no offence.

It is said that the pedigrees of a man, when it becomes important, may be proved by hearsay. This is not admitted in a country where books of pedigrees are kept, but where no books are kept, in
Evidence.

There can be no objection to its admission. E.g. Suppose a claim to be the nearest relative of a person whose death you know how was done. You have no way to prove it; there is no other way but to prove what the person did. If you or any of your family always have said they were doing this, they are admitted by you.

Again. Hearsay is the only evidence in case of impeaching a man's character for truth. The Hans can not allow you to prove a particular fact or testimony in the absence of a character, but to the general character, for truth may be admitted. The witness's opinion of the man is not required of the reputation he holds in the neighborhood. It is a thing which witnesses frequently cannot understand, they suppose that they are called upon to say what they think or believe about him. But this is incorrect. Thus far of hearsay evidence as regards witnesses.

Sect. 7th. March 1st, 1873.

I have noticed by you the ground on which the character of notorious can be enquired into. I have no attempt to show. When the character of the parties may be enquired into. The fact is, that of the character of the party be put in evidence, by the declaration of the party. No inquiry may be made into it, but this evidence is never introduced to show that it is more or less probable that the fact has taken place. E.g. If a person is in the habit of selling him a servant, horse, etc.
Evidence.

A cause introduces testimony to prove that B's character is bad, not to introduce proof to show that his character is good. Proof of his character is not introduced to show that it is probable he cheated. But you can introduce proof of the plaintiff's character, when the damage was thereby enhanced or diminished, e.g., suppose B is found for calling his child a thief. Now on the theory B fails to prove actual theft, but he can prove that his general character in the neighborhood is that of a pilfering thief. Thus B is admitted to prove this. For this being the case, it is not entitled to as much damage as an honest man. The character is just as grave. On the other hand, suppose it is shown that B is assaultive or Battery, will it be permitted to prove that it is a quarrelsome bullying fellow? No. For the commission of the Battery is now in issue, and if B is found guilty of this fact, he will be compelled to pay the extent of the injury. The character's being such as it is shows to prove cannot affect the damages. It will neither enhance nor diminish them. This distinction will always furnish a guide for you, don't you to recite cases, which it otherwise appear Contradictory.

B 5 296 4 8 5 80

Suppose a man goes another for Ches. Com. with his ticket. Can A. Def! introduce proof to show the character of the thief or the character of the C.?
it would diminish the damages, or if he can prove the party's character such, that he consented to supply or was willing it should take place, it would have the same effect. Such evidence may be introduced.

But with the party to prove that it is the habit of such. Now, for this will offer no proof that such custom proves help. It is to have the effect in the damages. 

I may mention a very good case to illustrate this principle, that the land has undergone a change as to the case. The contracts for an unlawful purpose, being executory, were always void. But the case I allude to is where a man gave a bond for past expenses to a woman whom he kept. Now the rule was, that if such a bond was given as premium particulars, it was good to the extent that of the woman was a prostitute. But, if the woman was aCGI aggressive, bond was made for her before his connection with her, it was void. Now in case he refused to pay the bond was taken. It was the character was put in issue. So that, according to the distinction, the defendant was permitted to prove the badness of her character. For this he would avoid the bond. So the party was permitted to prove the good 

An act of the bond was given as premium particulars, for this it would be enforced to him. The case however as to such bonds is altered. And another is given to a vicious woman or to a book. It will be bound by it. But as it formerly was, the above is a very opposite. Case to explain the doctrine...
Evidence.

With respect to criminal cases there is not much difference. The accused man then his character as much as in any case, and whether his character is put in Issue or not. But the public cannot show that his character was bad unless the accused was declared to show that it was good, in such cases the public may rebut what he has proved. 2 Kent 332.

I shall now make some Remarks on the Number of Witnesses required. The general Rule is that one is sufficient. It is said to be one credible witness. To be sure the Jury must believe him, they are not bound to believe 10 witnesses if they are incredible. There are Exceptions to the general C.D. rule that one is sufficient. The civil law which obtains in all Europe requires two or more to prove a fact, and by this law of two more introduced to testify to one was disbelieved, the evidence of the other was not sufficient to substantiate the fact. The Court have departed from this rule; the reason assigned was that the trials were originally by a Jury selected from the neighborhood where the facts took place, they were presumed to be in a measure acquainted with them, it was therefore thought that the evidence of one together with the private knowledge of the facts was sufficient proof. I give this merely as a speculative reason of my own; I think the practice preferable. Earth 144. Provo 158. C.R. 220.

It is said the proceedings in a Civil Case proceed on Exposition to this rule; they do, in a certain sense.
Evidence.

When there is a question of a fact, the witness must establish the facts as they exist, with each fact established by corroborating evidence. It is not sufficient to establish the facts by the testimony of the witness alone. But if the witness' testimony is corroborated by strong circumstances, it is sufficient to establish the facts. See 2 Wh 554, 2 Elan 428.

There are cases where there must be more than one witness. One case is that of C.S. v. Smith, decided by an ancient statute. The case of C.S. v. Perryman. The same reasoning applies to cases where the witness is only one, and unless supported by corroborating circumstances, the testimony of one is not sufficient. Another of Perryman, but it was of the case of strong circumstances to corroborate his testimony. The case is that of Perryman. The statute has required two witnesses to convict a man of this crime. But you will observe that in two cases of treason, one witness may serve to convict him. (This was not the meaning of the statute, I think, but so have always been the decisions. See 4 B. & C. 357 for some qualifications to the rule.) The case of treason have been so few in the U.S. that it would be known what rule has been adopted. I should suppose the law as might adopt which more (is) either the C.S. or Statute pleaded. 10 El. 170, 171, 172. 357.
Evidence.

By a Plat. in Court, our Law is somewhat altered. In all capital cases there must be two or more witnesses on what is equivalent evidence; beyond a reasonable doubt. One witness them above this does cannot convict a person, but if there are sufficient circumstances which are equal to each other, it may be considered. The difference in one does make a difference in the other. This is the rule generally.

It is a rule of Evidence that what an agent of a person has done may be proved in a cause, in which his principal is concerned. (Then refer to said observations of the party made by his himself was done the last evidence.) Now you will take this rule with this qualification, that the agent must have been agent for a particular thing. As the principal, you are to prove fact, and the agent to prove. You may then prove what the agent said. But if it is a general agency the rule does not hold, e.g. a person employed to go into Chico to purchase land, you is a particular agent. And this in cases when what a man or his has said about him, is admitted to be proved, but this is very allowed in cases when he acts as agent, as he to the husband, that he contract for the possession of a Child, when the said was admitted to be proved. So in any case action when he is extended as a agent proof of what he said to be in to the extent of his agency, but no further. (16th 52d. 18th 142. 22nd 1679.)

What the wife has said, has been admitted in
Evidence.

In an action brought by Husband to enforce a right of dower. As suppos. she was sole, took a promissory note, the 1st. Suc. after it. Now, when she had dined about it, either before or after marriage, may have found? Then she is not agent. This is a distinction and the reason of it is, that what is proven a declaration as much, for it is her note, and is to become the property of the Husband only, on his making it to possession. He is joined in the suit in order to secure the debt his costs, in case her suit should succeed. 6 Term. 880. 3 Term. 454. 7 Term. 605.

Notwithstanding this Rule, that what an agent says may be proved as his principal, yet there are cases where it is not so. Cannot be proved. There are cases where it cannot be proved; or whether not to be admitted, if the principal was himself held, it is when a man offers to compromise, as where A sues B for 1000, and B (or his agent) offers to pay 1200, to settle the suit. Now there can be no evidence that 1200 of this offer. It is often said as an argument that at law if B. 1000 owed this much he would not have offered. D it. But this is not always true. For many will give this to buy a peace with his antagonist. So be sure if he admits in his offer to compromise that he owes the sum, it must be good evidence in his favor. But seems if it is not so admitted. 13 P. 450. 236.

Again, there are cases where a man is not permitted to give the truth as evidence in his defense. This is always the same where a man has been convicted.
Evidence.

According to the words which he does not profess, if a man without license hangs out a sign as an innkeeper, he is liable to all the losses which an innkeeper, or authorized by law, would be liable, or if he professes himself upon the word as his wife, he cannot sit for necessities, he even not be proved to prove that she is not his wife. 3 T. R. 327, 2 Esp. Cas. 403, 51 R. 4.

Presumptive Evidence.

Presumptive Evidence is of two kinds. The first is a presumption of law. No proof can be admitted to contradict this presumption, as in the two cases above, the law presumes that he is an innkeeper, and that she is his wife. The other kind of presumptive evidence is a presumption of fact. You may introduce proof to rebut this presumption. E.g. Suppose A being a poor man, hires a boat at 13 sh. per week, and 12 years since now from the circumstances of the parties it is fair to presume the boat has been paid for; but this is a mere presumption of fact, and may be rebutted by proving a negligent demand for the money, a refusal to pay it, that no suit had been brought upon it before, but had been with reason or a promise to pay. The presumption stands good until this removed. But a presumption of law cannot in any way be rebutted. There have occurred some melancholy cases under the kind of presumptive evidence in crime cases, which warn us to beware of its introduction, unless the fact intended to be proved by it is beyond dispute. 12 C. L. 107 R. 399.
Evidence.

Assume places evidence is always admitted to be good in a case of this kind, the it may be rebutted 1802. A rent paid to at for 80. 3. per annum. Will pay on the 1st April 1802 when the first year rent became due. 1803 pays it. Takes a receipt. 1st April 1801 he takes a receipt. No receipt is to be found for the rent of 1802. But in 1803 he has a receipt. On the presumption that the rent for 1802 was paid. In if not, all of the payment of 1803 applied to the payment of the rent due for 1802. This having a receipt pays. Rent due the year following is pretty good evidence for the rent for that year was paid. But this presumption may be rebutted, as by proving that B. who B. 1802. pay the rent for 1802. 1803 that B. had never paid it. In the general rules on the subject of presumption see 31. 371. 115. 2. 552. 6. 8. 828. 2. 2. 1370.

[Date] March 3rd 1803.

There is an absolute subject of which I will say true. It is with respect to the father or another being admitted to prove the illegitimacy of the children. It is difficult to give at the principles which govern that it is to endeavor to give it to you the authorities upon it. It is of consequence to know whether the father is illegitimate or not. As when a parent dies intestate, it another claims the property. Now the De is can proof of the illegitimacy be had from the parents. It must be shown the rule that the parents may the introduit to prove that the child was born before marriage. If it is born before marriage, it is subject of a...
Evidence.

to see the desirability of an objection to the law, the parents may afterwards marry. By Prov. 12:3 in some of the States the case of a child that is born in lawful wedlock is dispensed with, so that of the these cases afterwards is done away the offspring born to that and legitima to. The rule is laid down not to say that the parents are entitled to prove that the child was born before marriage. But still they are not permitted to prove any thing which would cast aside the issue born after marriage; e.g. the infant's father or mother may know the child is not his, as if the real father has been absent, but then he cannot come to prove it. This is to the part. (See 594, 57. manuscript.) Again, 59, 156, 454.

Another case has arisen where the mother cannot be admitted to prove it. A husband may not be permitted to prove that the husband had some right to her. No, but the law says that she has connection with another man, but this proves nothing conclusively, it only raises it probable that if the father is not the real father, you cannot compel her to answer to this suit, but the law of the tracing. The rule answers my little purpose. This is also a case, whether persons who have lived as man and wife can be admitted to swear that they were not married. We have already seen that the law is that they cannot be permitted to prove this for his own benefit, the law presumes the wife is his, and the presumption cannot be rebutted. But there are cases where
Evidence.

When it may be necessary to ascertain whether the issue of such persons are legitimate or not, unless the parties be admitted to prove it? The law gives rise of cases relating to persons legitimate, children have this settlement whenever the settlement of the father was, tho they were not born there. E.g. If a man lives in the township of A, and his children born there are illegitimate, his children are legitimate. Now if he afterwards gains a settlement in the town of B, the children also acquire a settlement in B, as they were not born there. But the settlement of an illegitimate child is such, if it is born, is considered to be void, and is sometimes called "nullity." This is not the case in B. In the law it is settled, if you come up, I say it would be very nice to introduce this testimony, as the rights of the townships contending about the settlement are pretty nearly balanced. There are but two cases on this point, if they are contradictory. In Bower 938, it is said they may be admitted to prove it. In Bower 25, it is said they cannot be permitted to prove it. Pugh in his cases page 32, recognizes these cases and gives his opinion, but this does not decide it. However D. Ranger, at 937, 938, seems to favor the idea of permitting them to prove it. In that case D. Ranger admits the writer to prove that the bonds of marriage were not put

...
published according to the Stat. 18 Geo. 2. in consequence of which the marriage was void, from analogy there would be little reason to doubt that he would have admitted him as the present case. But if a marriage is not void because it is not legally solemnized, the person marrying is subject to the penalties of the law, but the marriage is good. As if a constable shall perform the ceremony, the constable is liable to the penalty, yet I believe the marriage to be good.

Of Witnesses Testifying.

When it is necessary that mental views be made and are not to draw conclusions or express an opinion, an inference a witness may make on his own mind is not as a general rule to be regarded as the most stable and fixed as they exist, I leave the constable to draw the inference. But there are exceptions to this rule. There are cases where opinions are evidence. There are cases where the witness is called upon to give his opinions as to a fact in the value of a house or other property. The opinions of men in such cases are evidence. But there are other cases, as where the opinions of Physicians is enquired of as to the cause of a raging fever which is attributed to a misfortune. The Physicians have better means to enable them to draw correct inferences than the Constable. So if it is contended that a constable did exercise his power, and is not capable of making a vote, previous persons who attended him at the time may be introduced to give their opinions as to his real situation. In cases like these the general rule is dispensed with. 1 East 89. 118 C. I. 1110.
Evidence.

The mode of compelling the attendance of Witnesses.

When you wish to bring up a person to testify, you must apply to the proper authority for a summons. The Clerk of the Court usually grants this summons, but it is called a Subpoena. It is a process by which he is commanded to appear, unless the person named in the summons gives him by law. If the witness does not come within a certain time having been regularly served, it will be a contempt of Court. Suppose he does come, the cause does not come to trial on the day assigned, and is the witness obliged to remain there any longer, unless the party desiring his pay? Some say he is, others say it is not. I cannot say, it is decided by the Court. But it is not so; he is not obliged to give credit to the tenant, and compel the pay to bail him to keep him for attendance, he is not entitled to stay. You will observe, in this case, a different is sufficient, the the witness does not accept it. After this thing is the service of the Subpoena upon him, he keeps the bill, and that was an officer who served it, he merely endorses upon it, that he served it to, and then returns it unto the officer, it is evidence of the service. If it was an indentured person who served it, for such a person may do it, he endorses it in the same way, he returns it unto the officer, upon his returning it, he must make affidavit of the service. The reason why an officer does not make this affidavit, it is, that he is sworn to serve all process.
Evidence.

due return makes will suppose the witness escape attempt to get there make an inquiry about him for it may be he has good reason as in he is sick or aged. They can hear nothing of any sufficient cause for his absence since the issue a capias to have his body was brought into court now when brought into court if he can show no good reason for not attending he is in default, I may in some case as committed 7th车, i.e. the trial comes on. Suppose he refuses to testify what is to be done? Why the court commit him to prison to help him thus till he can swear. It is a contempt of cause is continued he will be kept in prison like the next term, or until he will swear unless he refuses so long that the cause cannot be continued any longer, but must be tried. It is then a high misdemeanor. Suppose the witness eludes the summonses and capias, what is to be done? The cause will be continued if he is found he will be fined or imprisoned here an important 52. arises is to the damages. Suppose the party loses his case on account of the witness refused to testify now will he recover the costs and damage out of the witness? The proviso is he can prove that he would have gained his cause, if the witness had come forward to testify. But the difficulty is to prove what it would have been the testimony of the witness, for their evidence under oath is of very different light from his story told out of court. When not under oath the person will have given about it. The testimony is not credible if he had a sufficient excuse about it. 1 St. 510. 2 St. 118.
Evidence.

I have been speaking of Civil Cases. I shall make a few observations on the Law as to Criminal Cases. It is the duty of Enquiry (e.g. the Justice of the Peace) having there is reasonable grounds for holding a person to his Aid, they have power to order the Writs for and compel them to give bonds that they will appear and testify. And if they do not give bonds they must imprison them. This operates very hard in some Cases. As if a Traveller happens to be a witness to the commission of murder, if being a Stranger is unable to procure a bond within the consequences it be must be committed to prison. He is as the Law is a particular case may operate, yet it is necessary that such a power be lodged some where. Depositions are now permitted in a Criminal Case. If the action is committed the Ct. orders his body to be brought up to testify. Now a man has been made a witness (if he escapes to Staff is liable. Nothing is plainer in any statute that if the escape was without the Staff's fault, the Ct. having ordered him up) that he is not to liable, yet in Eng. the 12 judges who were assembled to give their opinion upon the case, declared that there was no Law upon the subject - in order to have it settled the legislature passed an act, declaring that when the Ct. orders him up, if he escapes without any fault on the Staff he shall not be liable for the escape. This is called "That Corp. will be liable."

Suppose you wish for certain papers in the witness possession (as if he is a Clerk of a Corporation).
Evidence.

you must then take out a Subpoena to be sworn. They are known to the receiver with his returning to a large book in which the Record exists, it may, provided he has a copy, which he can swear is a true one. The parties generally agree to this, but if they will not, the court will allow it. Esp 405.

The mode of proceedings after you get the witness into court is for the party examining him to examine him first. During this examination the opposite party must not interrupt him. After he has finished, the opposite party may cross examine him, so far this is not to be interrupted. It was the ancient custom to keep the other witnesses out of court, till the one on the stand had testified, then introduce them one by one. But no such usage has obtained for the last two centuries, they are all present if they choose. The witness is permitted to refresh his memory by any writing he has in his possession. If there has been a former deposition taken he may refresh his memory by looking over it. 37 & 38. 354.

Privilege of Witnesses from Arrest.

You will recollect that it is a right which every man possesses to make his house his castle, as in all civil cases may shelter himself, as it is to prevent an arrest. Now he is sworn out as a witness, this right of the Party to his testimony must be preserved. In lieu of this privilege the witness has a common with all others, to prevent an arrest by
Evidence.

Shutting himself up in his own house, he must be permitted to go to the Capitol without being liable to arrest. If he was to be arrested going to or from the Capitol or returning home, but he was not about his business, as he going a certain route, this is a deviation from the most direct course and would be disregarded, or by staying there after the time is over, and in fact, when the cause was not about an hour before sunset, the witness living a considerable distance away that the next morning, it was the arrest. This hit him, this was not carrying him to prison, for the witness was not bound to start for home the moment the cause was over. Neither is it possible to delay his journey while returning home. This privilege is a right, he has without any written provision. Now suppose J.S., a Thief, meets T.R., a witness going to the Capitol, where he has a watchman, how can he be to know that T.R. is a witness? His witness, for he will not be justified in taking his word for it. Will it also imprisonment be of the Right? No: What can T.R. do to claim his privilege from arrest? Why must he go with the Watch to the Capitol Office? He will dismiss him in a summary way, give him a protection in suspensions. How is the Right, so that Notes is waived in all cases? No, for it is a person from arrest and not from a suit. The suit which the Clerk grants him is called a suspensions, or sometimes a protection. In U.S. the Ct grants this
Evidence.

Supervision before the witness starts from home and then of the officer arrests the witness after being sworn. Supervision, it is called imprisonment. This is the better mode. Briscoe 13, 5 Pet. 108, 118 111; 17 Pet. 693; idem 12 Com. 127. 4 Pet. 171; 113, 119; 12 idem 544.

The Senate was always laid down & held to much by the Judges, and what will its very call to repeat before Justices is that affirmative, always overtakes negative testimony. In a certain sense, it is so, but in many cases the negative testimony may come to consider the best. As if a negative affirmative, that in the case itself, a word came into the meeting house, that of the congregation present since the House was not anything of it the affirmative testimony in such case, it is to be received in preference to negative testimony.

Sect. 7th, March 3rd, 1813.

Of Depositions.

Affidavits are a Species of Deposition, made by the party himself to set for some particular purpose. And if he witness the continuance of his own, no account of the absence of a witness, he must make affidavit that he is a material witness.

At S.C. Depositions are as known in the State. In C.S. of S.C. sworn to testimony is as known at C.S. when witnesses are best forward, their testimony.
Evidence.

Depositions are now allowed by force of a statute, to be used as evidence. They are taken in cases where the witness is going abroad, or is otherwise likely to be unable to be used in the case if it should come on after their death, or during their absence. These depositions were held to perpetuate memory. The High Court is generally a jury trial. A person cannot, always be permitted to take depositions as the witness may attain. When the deposition is taken by commissioners appointed for the purpose, it is filed in the records of the case there to be preserved like other papers.

These depositions are now, as a general rule, allowed where the cause is non-party, but in cases only where it is necessary the testimony shall be perpetuated. But there are exceptions to this rule, as if the witness is sick, he cannot attend. So when the witness is beyond place he cannot be produced. The deposition of the witness will be sufficient to be read in such cases, unless the opposite party has a sufficient reason to object to it.

Depositions are always taken by commissioners appointed by a Ct. of Cty. the frequently improve in a Ct. of D. If a Deo. If a Deo. if it arises in a Cty. of Cty. the other allows the same to a Ct. of D. that it be tried by a jury, he does not try as a matter of just himself. The parties are the deposition with it.

With respect to the proceedings in Cty with us.
Evidence.

As in Court in other States where Depositions are
used by force of Statutes, which is also the case in
the National Ct. by force of a Stat. of U.S. certain
restrictions peculiar to each State are to be observed
in taking Depositions. In both, the deposition
of a witness is not permitted if he resides within
20 miles of the Ct. In some States it is 30 miles. In
taking the deposition, if the opposite party lives 20
miles, he must have notice and if he live
more than 20 miles off but has an agent or
attorney 20 miles the agent to be notified as to
whether it be within the State or not. If neither
the party nor his agent lives within 20 miles, no
notice need not be given. If the witness is sick, his
deposition may be taken the living within 20 miles.
but in such case the Justice taking the deposition
must certify the fact of sickness. This certificate
may be contradicted by proof made that he is not sick.
The depositions must always be in the handwriting
of the witness, or of the Justice, or of some un
related person in the presence of the justice. If
the party, his agent, or any person employed by his
witness it, it will be rejected. In some of the States
the U.S. rule still prevails, viz, voice testimony
only is allowed.

In Criminal Cases Depositions are never
allowed. If a material witness on the part of
the public is absent, the Ct. will not usually con-
tinue the case: it is a lucky circumstance for the
Evidence.

Evidence. One of a material witness on the part of the accused is generally allowed when he postpones the trial. And in criminal cases it is usual for the public to summon all whose services pay them, or account of the society of the accused. But when the reason causes, so does the practice.

There has been a practice in Court which is now fairly well established, but which lately was the cause of some difficulty. Depositors are taken in different States by Justices. Some States give them this power by Stat. Others have no such Stat. But the Justices do it from unwritten usage. In Virginia they have no Stat giving their Justices this power. But depositions taken there by the Justices before one Just are not valid. And the judges hesitated whether they should admit them. But it was finally done on the ground that it had been the commonest usage in Virginia to take them in that way. In some of the States they have made provision to have depositions taken of a person from another State, with them. The Justices have power to summon the deponents or order a letter to be written to be taken by deposition, in some of the States. In others, no such power, of the Court, is necessary to come the Justice cannot compel. 

Once it is evident a want of justice will take place, if Law or Allow be not made clashing them with this power.

The Justice must direct it to the Justice. If the party brings it into Court, it would not receive it. The Justice
Evidence

However may delinew it personally to the C. and how it need not be settled. Depositions are parcel Evidence, they are not to be admitted where parcel evidence cannot be. They are governed by the same rules as parcel evidence. Depositions once taken are other evidence in a future controversy between the same parties, of the same difficulty as to bringing in the witnesses, still remains. Some of the witnesses may be here as if he is sworn within 28 miles. But depositions taken in a controversy between A B cannot be used at all in an action between A C. 4 Mod 146. 1 P. 279.

It has been made a rule, whether a copy of a deposition which can be proved to be a true copy, it also proved that the original is lost, can be admitted. It is not certain. I think it should not be allowed. It is a dangerous principle.

It has been made a rule, to deny whether a deposition before taken can be admitted. It has been doubted that if the witness has gone to South unknown it can be proved that he one knows that he lives it will be allowed. 1 46. 95.

Q. Suppose the Deposition of a man is taken who at the time was not interested, but before it is used becomes interested, now can it be admitted? This is a new and disputed case and the opinions are contradictory. But from analogous cases I think the principle may easily be discovered, for the witness had no bias in the witness at the time it was taken.
Evidence

In cases after a deposition is taken the witness is convicted of the crime for which you cannot or prove him as a witness, but his deposition has always been admissible. But it is said that it is an

otherwise that an interested man cannot be the

help that this case is not analogous to a person becoming infamous (also supra). This reasoning does not appear to me satisfactory, and from analogy

the deposition should be admissible. But a careful

of authorities say it is not admissible. I cannot now

find my.AUTH. upon the point, there are not many eitherway.

See supra, p. 56. (Per 101) 18tech. 286

Of Records.

Records properly so called, are of two kinds


No evidence can ever be required to contradict the

record is proved by nothing but an ex parte

the record itself, the nature of it will not form

of proof of evidence. If your attempt to show the is

test of a judgment, the you cannot do it by proof.

must do it by the record itself, or rather by evi-

dence of it, which is by a true Copy certified by the

proper officer. 1St. Ed. 7 to 10.

Public

Legislative Acts in your several States are

proved by the Stat. Books printed by authority from

the State. But private acts must be proved by cop-

ies from the proper Office. (Sec. 1st. Ed. 27.)

When Copies are to be used in other States

they are to be certified differently. (Sec. 1st. Ed.)

Evidence.

States. Different modes are adopted. The proper officer must exemplify the copy, but how do we know to is the proper officer? If a clerk of the court signs it, we must have a certificate that he is clerk. This certificate is to some of the States granted by the judge of the court, or others by the Secretary of State. We must then have a further certificate that they are judges, or that he is Secretary of State. This is granted by the Governor, and we must take it for granted that the person subscribing is the Governor. The copies of these records are to be authenticated by the proper officer. There is no necessity for his oath, for he acts under oath. Suppose the proper officer cannot be here, as if he be sick or absent, then any one may copy the records for you. But he must make affidavit that it is a true copy. You can have an extract from a record. You must have a copy of the whole record, no matter how long it may be. Sec. 5, Ch. 1, p. 23.

A fact decided by a judgment cannot be litigated again between the same parties while the judgment stands. The record is a bar to the suit. It is conclusive. It contains absolute truth, unless removed by writ of error. So if you attempt to try the dispute again which has once been decided by a different judge in action as of trespass, was first brought to judgment upon it, the law brings it here for the same cause; there can be no recovery for the former judgment found upon the same injury. The same evidence is a bar.
Evidence.

But here you will observe, that there is a distinction to be made between judgment and demurrer. If the objection is that there is no cause of action, judgment is rendered on demurrer, it is a bar. But it is conclusive, but if the objection raised by the demurrer is that the declaration was false, a judgment upon it is no bar. As if the plaintiff in the first suit failed to state that the words were spoken maliciously, 2 S. & S. 273, demurrer to it, judgment is rendered in the first suit. Now this is no bar to another action, he may sue again to take care to have his declaration in form. T. E. & E. 29. 1 S. & T. 232.

Suppose in a real action between A and B; there are 10 acres of land in the suit, is this for 5? both defects upon the same title. Now there is a special verdict finding certain facts. In another suit about 100 acres depending on the same title, the former judgment is conclusive as to the parties whom it was found. Again suppose A sues B for trespass on his lands. B pleads (specially) a right of way; the verdict finds the facts which settle the case that he has no right of way. This is conclusive evidence even after retrial of some parties. The right must have been clearly in A; sue between the parties to make the judgment conclusive. I will put a case to explain that.

I would suppose B had purchased 20 acres just in the middle of a very large farm. Now the sale implies a right (in B) to go to it. But if B had
Evidence.

acquired his title to this 20 acres in the middle of
his land by lying in execution upon it, then he
would not have implied this right. It was both
foolish and unwise to have liened in this manner.
Now suppose it were 13, for the true party going over
his land, 13 places especially his right to proper
possession. The party finds a piece of evidence, that 13,
Conced by Execution on these 20 acres in the middle
of his land, now the Ct. says there is no implication
of way, it is conclusive evidence as 13. But 13,
had possession the several years, it gives these
facts as evidence lead in it, the judgment did not
have been conclusive evidence, at law it was
conclusive but not conclusive, it is what
is called persuasive evidence. In such case, it is
not put upon Record specially, 3d R. 346. 6697.

Whatever verdict is found in favor of a
man on trial, is no evidence of a stranger to
the third persons. It is "real evidence" only to
the party, and also
as privileges. B. R. 320. 321. 322. 323. 324.
Summersby 33 or 34.

There is one single case where if a fact is
found for a man, it is conclusive as to all men. It is a
Due "as to a public" not a private
right. As if the man was either such a township, were
obliged to build such a bridge, but is found they are now
in this case the fact once found for it is conclusive
even after 17. The Judge in acting 1st by 3d R. 346 to lay
the same question. Focus on case of a private
right.
Evidence.

If verdict in a criminal case has been allowed to be introduced as conclusive evidence in civil cases. But it cannot be done—the parties are different. Raising 511, 7 Ves. 246.

When property is decided to belong to Public, no else can be made by that person about it. As if such property is decided to be property by Public and the public officer seizes the goods, how that person does how he can't maintain his action—the decision in favor of Public is conclusive. 2 M. & K. 431.

Suppose you want to prove what y'ersaw of another State are. How can you do it? Why by the State's Book. But how do you prove a private act? Then must be a certificate that the Party was authorized by the Legislature to print the Saw. How do you prove the C. Saw? For Books of Party are Elementary writings. It is always, so that the Judges know the Saw of their own State, the C.S. Particulars Customs must be proved.

LORD 10th March 14th 1810.

You will find cases in C.L. when third persons have availed themselves of the answer of a party, but this is not a departure from the rule that a judgment is conclusive only between the parties to it. The answer is under oath & for that reason is admissible. The rule therefore that it is useless across jurisdiction does not apply. In any case that a man confesses under oath is evidence as before, and this holds even in a C. S. Saw. For if a person makes an
Evidence.

If a person is about to avail himself of another's answer or of another's answer in Chy, as the answer is that on Chy, he must produce the whole answer — one part of it may be necessary to explain another. If you have no testimony in this, you must not prove all that was sworn to. Ex. 22. 10.

When a man is a witness in Chy, if he cannot after be found, the deposition as between the parties is testimony in a Ct. of Law. But if the witness is living or can be found he should himself come forward. But you may use the deposition to show that what he has now testified is inconsistent with his former testimony, but this proves no fact as correct swearing for he may be mistaken. You do not introduce it as a deposition but as a writing showing what he has before said. All that it shows is your own inferences from what he seems to us to be his inconsistency. Sa. 22. 2. 10. 1. 28. 228.

The judgment that is binding between the parties contains absolute truth in it. This is a judgment when the Ct. has jurisdiction of the property of the person de. It does not relate to a judgment in a Foreign Country. So it will be necessary for me to make some remarks upon.
Evidence.

Upon Foreign judgments. A foreign judgment is not a record according to C. S., it is not evidence; it is only prima facie evidence which stands as the presumption is removed. But the original cause, affecting the validity of the judgment may be gone into, though

With respect to foreign judgments I observe, that a second suit has unhappily arisen in the different States in U. S. The Constitution of the U. States, "due process" requires that it be given in each State to the public cause. Records of suits not proceedings of the public suits. Records of proceedings of every other State." Now the suit has been brought on the validity of a judgment rendered in the State can be brought of in this court or in other words can there be an inquiry into the original cause of action?

Some have supposed that the Constitution intended or means only that, that the records of other States shall be received as just evidence, that such proceedings have been had are prima facie evidence of their validity, but not conclusive proof of it. Thus putting them on the footing of foreign judgments. But on this construction the Constitution has left nothing more than suits to be effected at C. S. I am of opinion that the word of the judgment is another State's conclusive evidence. I cannot think from the language in which the Constitution is worded that presuming of it can intend that the judgments of the different States be of less validity than their own judgments. It has been decided in the N. C. rep. W. York that these may be an inquiry into the original cause.
Evidence.

of actions. Contrary to Penn's 4th Coroll., when a State departs from this (p. 365.) there is a failure of justice. The treat this judgments as domestic. They regard them as foreign. And the State respecting it, either have a tenacity to still consider others to adopt it upon a spirit of retaliation. It is to be hoped that they will the long consider them as domestic judgments. But such conclusive evidence, otherwise, it tends to weaken the Court of union. 18 U.S. 219, 231, 158, 210, 302.

Kirby 126. 565.

Judgments in U.S. of Admiralty are not treated as foreign judgments. The Court holds good, i.e., the Rea Mercurian, and what it is, is, any particular country. So is the Rea Mercurian, or Commercial Navigation. If an American, this being judged is good there in London. This judgment is confirmed in this country. 2 F. 230.

If a Spanish vessel is wrecked or captured, it is to be sold as a prize, and is taken to carry into a billeting port, it is condemned as not neutral. The owners will not be permitted to prove the circumstances to charge the owners. For however violent the judge might have been, yet it is conclusive. In title of Insurance for the full exposition of this subject, the distinctions are to those cases where the judge of condemnation is found in a foreign vessel, of the same 2 F. 230.

Some other things are not so. Marriages & Births are required by
Evidence.

The laws of some of the States are to be receiv'd. As the law of a State, requiring it to be receiv'd, but it has fallen into disuse, the legislature, as in case of injury where you wish to ascertain the age it is important, what is not other proof than the record be introduced. It has been observed before, that it may. When you must have a judgment to create a right, as a power in men, before you can have an execution, you can prove it only by the record. And in the same if it can be proved that the marriage was had, but records you must produce the record, it is the best evidence. But if this cannot be proved, you may introduce a lower species of testimony. But you cannot prove a judgment by record, nor can you prove a title to land by record, you must produce the deed. For by this the title is created. But when you cannot prove the record of a marriage, as the record does not create the marriage you may prove it by record. The record of the birth of children in a Bible has been considered good evidence of this age. Inscriptions on tombs or stones have been considered as testimony also. In records have been admitted. This is now. See about these they are introduced for the particular purpose. These, too, are proofs in some measure, they are not proofs of any specific private right. Let you judge, by history or the time a certain order or sect is want created. Corporation Books are evidence of transactions which looks places when the record is not.
Evidence.

require them to be recorded to prove what they have done. When certificates are voluminous the copying of them on is sometimes dispensed with, in the copy
admit of. See 93. 307, 318. 31.

Instruments containing sealed writings.

These are instruments containing such contracts
as the law requires should be written.

A copy of a Specialty cannot be given in
evidence, if the original may be had, but if it is
impossible to produce it, you may prove the con-
tents by the best possible evidence. 1669. 275 376 137.

109. 526, 527, 147. 546.

In some unfortunately it has been obliged to
admit a copy of the will of a deceased person
that the latter be sworn, not handed down as a
true copy when the law requires the original, and it
itself. Thus if a conveyance to B. it must produce the
will, but if D. conveys to C. and proves the con-
veyance to C. by a copy of the will, for the will from
A. to B. is not handed over to C. when he proves the
will. In some Countries as in N. Y. they have adopted
the rule, the law gives room for fraud as a paper
may be made out, destroyed after, it is needed
and record cannot destroy it.

Private writings are not like the Decree conclusive without proof of their execution. Those
the delivery admit proper proof. If there are no
witnesses to a contract which requires none they may
Evidence.

be produced on a Law, as to the execution of the instrument, but if this can be done you may prove the execution by any one who saw him sign it, and the hand writing of the witnesses need not be proved for by the supposition that one does not require subscribings witnesses. But suppose it is an instrument to which the Law requires that should be two witnesses as to a will e.g., will they are absent. The hand writing must be proved. But how can you prove that they signed in the presence of the testator, which is required by Law? Only by inference, and the signing of the Testator himself is also proved by inference, as being the best proof.

You may not prove the meaning of a deed by parole or any condition which is not expressly in the deed itself. But you may prove by parole that the deed or any other private written contract was given to a 3rd person as an escrow, i.e., to become his act of deed when certain acts are performed or events happen, 3rd, edition, 22nd.

1011. 11th, March 27th, 1810

It is said an instrument in writing cannot be delivered by one of the parties as an escrow. This has been conceived to be questionable, but that there was a contradiction in the Books upon it. But I conceive there is no contradiction in these assertions on the word delivery. It is true a deed cannot be given delivery to a person to become his own or to perform one of a future act. But it
Evidence.

It may be the performance of a contingent act. As if in an act to give 10 acres, a 10th acre is to be performed. A 10th acre is not performed but left unperformed. It is not as if 10th acre given as 10th acre. The cases will warrant this distinction, and there is no contradiction. In Co 8, 273, the condition added was to deliver; but it was a condition to be performed hereafter. In 8, 335, it was held that the condition was not void, the deed was construed as an express one, there was no concurrent act to be performed. In Co 8, 336 they did it the same way as they did in page 326. For the circumstances were the same. Now the same rule is used in each case, if they were not left so contradicted to themselves. The ground of distinction is clearly stated in page 335.

There is often a doubt as to what will amount to a delivery. It is certain that there must not be a manual delivery. If A demands the deed and lays it on the table, to his the money is paid. He takes up the deed, there is a delivery. and in short if any circumstances show it was the intention of the parties that the deed should pass, a delivery will be presumed, and it may be rebutted. Possession of the deed furnishes strong evidence of delivery, and the person holding it may have come by it unintentionally.

If a deed is lost, the opposite party has a right to insist on producing it prima facie proof.
Evidence.

proof of the contents is admitted. This is not proving a conveyance of land by parole, but proving that you had a written one.

It is clear that between the parties there can be no enquiry into the consideration of a specially, to refer the instrument or destroy the right of recovery. The very fact imports one at C.D. But you may show that the consideration was fraudulent.

The parties may also in some cases enquire into the quantum of the consideration, as where there is a specialty to perform a certain act, or the non-performance incurs damages. In such cases there must be a recovery, but the damages may be triable of the consideration was so. E.g. it wishes to assist his friend B. voluntarily conveys his farm to him with covenant of warranty. Crowns the C.D to E. who turns upon it. Now the quantum of the consideration may be enquired of, to show he is entitled to but nominal damages. But when an action is not on the specialty does not sound in damages the parties may not enquire into the quantum of the consideration, as if it were supported an action, but debt, now it is the you recover (at C.D.) the whole or nothing there is no degree of damages.

Third persons may always enquire into the consideration of specialties, for it affects their interest, as to show that it was fraudulent or that there was none at all. So if e.g. I convey to B. without any consideration, I owne...
Evidence.

A creditor of A. may levy upon the land the same as if it had never been conveyed by A. if any
demand is made to his right, he may show that it
conveys it to B. without consideration.

In case of Deeds conveying land, a conside-
ration is often expressed. This is prima facie evi-
dence of such consideration. It is sometimes pretty
strong evidence that it is the real consideration,
as when they are particular as $391.7.6. for
since it may be rebutted.

Simple Contracts

These are Contracts unsealed. Then are cases
when the law requires the contract should be in
writing, and then are cases when the law does
not require it to be. If writing, yet it may be. Now
the contract concerning debt, is to pay the debt of an
other is good for nothing by Parol. it must be
in writing. But a contract about personal Prop-
erty is good by Parol. (Know you provision in writing
to pay 100 for a horse to he may provision to pur-
chase both sides by equally holders. When Parol
requires a Contract to be written no parol proof
is admissible. You must not state in your Decla-
ration that it is an oral agreement, but may prove it to
be so on trial. But if you do state it to be oral, the
witness affords your action upon it, it is a rule of law
that generally that you must plead written
proof. the opposite party may have own.

It is also a rule here that no oath. Proof
Evidence.

Is admitted to alter, contradict, explain, or construe a written contract, even if there is an ambiguity in the expression, our own a parole, additional to written contracts be proved. (Rick 1204. P. 153. 16. So. 82.)

But the above rule needs explanation. If there is a patent ambiguity, it cannot be explained by parole of the Ct. cannot understand it, it must go unexplained. But if there is a latent ambiguity it may be explained by parole. E.g. I., in his will, says, I give a devise to the Charity School in A. Now here is a latent ambiguity for there are two Charity schools in A. Parol evidence may be introduced to prove which of the schools was meant; so that he had previously said he meant to leave the north school, if B. and B. had ever spoken of the south school, "Came or vice versa lastly?"

There may be equivocal, words which have two significations, cause a latent ambiguity which yet admit a parole explanation. E.g., in 2 Clutter, where a testator gave a DeputySerjeant's purse how you will suppose this meant, the eldest son, but in the Q. T. (Technical) Law Latin it means, eldest son, whether male or female. Now parole was introduced to prove he meant his eldest son, so that he had said he did not give James any more but leave such a Deputy to my eldest son. If the ambiguity goes to the whole sentence or warrant, you are not to explain it by parole, the instrument must fail.
Evidence.

Annullation of a lease is required in connection with something else, part is void if it is to remain in the same state as before. Certain terms may mean different things in different states of the same family. E.g., if devised as an estate to A. and his children, and you may show by facts if he has children of another devisee he takes the land as joint tenants if not all. tells only one estate taken.

So also you may let in parol testimony to ascertain a fact, when from the nature of a proposition or the state of the family there is a doubt as to its meaning. E.g., A woman married B, and has 2 children by him. He dies and the children marry C. D. and E. have 4 children by him. B devises Blackacre to the four children of C. D. (the mother). Now parol testimony may be introduced to show the testator meant the 4 children the mother had by D. as that he had said "I give to my son C. D., 2 children by D. the other 2, as you give this land to the 4 children" the 2 by D. as that. But parol proof cannot be admitted of it does not stand wrote with the writing as if he had devised Blackacre to the children of C. D. now if not to prove by parol that he meant the 4 children, as above, all the children are entitled to equal portions. These rules apply to other instruments as well as to wills.

The following rule applies to Wills distinctly. You may refer to the state of property to ascertain what an heir meant by its will.
Evidence.

e.g. I leave his house and divide his farm to the
without using any words of inheritance nor with-
out any thing further: this does not pay particular
but he adds if he pays my debts? How now may he
give into the estate of property. I had debts to
amount of $3000. The farm was worth 5000. How
words could only create an estate for life and then,
for it would be a hard bargain in T. K. to accept
of a life estate when he may determine tomorrow
be obliged to pay debts. At the real value of the
Land. Therefore we may well infer he intended
to give an estate in fee simple.

Again I devise thus: Against my own
house called the Bell Farm to T. K. Now these
words create only an estate for life, but there is
this difficulty, T. K. was himself only a trustee.
T. K. already had a life estate in the house. It is
plain then T. K. intended to give him the fee simple.
If then the technical in part of the words gives nothing,
the meaning may be extended.

Sec. 12, March 6, 1813

If Rebuilt an Equity.

Pare proof may be admitted to rebut an equi-
ity. To explain an instrument has frequently a
different Construction in a Ct. of Equity from what
it has in a Ct. of Law, or rather the rights depending
on the contract are extended further on equity than
in Law. Thus in Equity the mortgagee may recover
after the debt becomes absolute but at Law he
cannot.
Evidence.

cannot. In all such cases the equity of the
Chancery from the written instrument may be rebut-
ted by parol proof. 2F. 117, 118, 119, 120, 121, 122, 123, 124, 125, 126.

It is a rule of law that if another makes a will, the residuary after payment of debts
bequests, goes to the testator. But if testator has an
the testator in the will by giving him a legacy, equity
presumes that the testator intends that the estate darts
be more of the residuary to be distributed. This I
do not say is the equitable construction, but this equitable
construction may be rebutted by parol proof, as
by showing that the testator said it was his inten-
tion the testator should have the residuary. As of a
mortgage. A mortgagor has farm worth 1000 to
B. for 1000. B. then sells to C. C. is true. I took the
mortgage for 400. B. has since lent A. 500;
then have no other security. Now B. will be permitted
to prove this latter paper true, and by parol, and it
will not be sufficient to reduce without paying off
those 500. The equitable construction is this re-
butted by the parol proof. To some it is not
intended into a bond with his intended wife that his
testator shall pay in a sum of money on his death,
the bond at C. D. was discharged on the mortgage.
But Equity considers the bond a covenant and would
always enforce the payment as the presumption
that it was given in consideration of marriage, but
this presumption cannot be rebutted by any parol proof
as that he had proven the money to a trustee for her use.
Evidence

When an equitable claim of this nature is proved to the court, you must always be prepared to get it enforced, you must always be prepared to meet all such parol or bullough. If they have no basis, or if they have not used the principle of equity, they must admit parol to what it.

This equity may be raised by parol, as well as at law. 1. deliver money to B as an agent to purchase land. 2. Takes the deed to the owner. Here is Clift. A has the equitable, B has the legal title. If he refuses to convey to A, he (B) may prove these facts by parol. He will can put it this is raising an equity. But B may resist A's equity, as by proving (by parol) that he agreed that in A's name a certain amount for 3000. You can introduce parol proof in Clift to rebut an equity which is not known at law.

But in equity, parol proof cannot be admitted to contradict a writing. Suppose A writes to B, for $200 to have D repair the fence. D passes it a bad bargain. B, admit it tells him he may stay for 1300. Now B cannot in equity set up this parol in opposition to the written contract. So if he refuses to receive $200. 1. shows that comes into Equity for the specific performance of his contract. B. will refuse A, their ass. unless he takes the lot in Equity to B. by according by his parol contract.

You will find much difficulty as to parol proof unless you thoroughly understand the rule.
Evidence.

This is such a thing as establishing by parol proof that the holder of a deed, which by the
face of it absolute, is only a trustee. As you may
prove the existence of a certain set of facts, which
an inference may fairly be drawn that the deed
is a mortgage. (but to prove it a mortgage, you
cannot prove by parol that the contract is dif-
cult from it, is as if an absolute deed is given, and
then witnesses heard the greater promise to give
back the deed on the payment of a certain sum of
money. this parol contract cannot be proved to
stay the deed.) e.g. A owes B. 100$ by note, and on
consideration of this note, gave a deed. Now it says
this is a mortgage else A shall have taken up my
note whereas I lift it in your hands. I you have
called for the interest besides you left me in po-
have never demanded rent. (this omit of mort-
gage.) But in addition last year your hired hands
of this very deed to pay me rent. From these facts
it is evident that the deed was intended as a mort-
gage, that D. is merely a trustee. Now this seems
satisfactory while we come to the Stat. of frauds
or injuries. But the difficulty is removed by the con-
struction given to the Stat. in other points of view.
as if an agreement required by the Stat. to be in
writing be construed by parol, it will be invalid.

It is a rule of Cty. that if they can get at this true
Evidence

meaning of an agreement they will declare prejudice
ences, though it be not in writing. As it will do
one who a man admit there was such an agree
ment, so in this case where we get at the facts from
the circumstances, they say the notion of the di

ly a Trustee — this is perfectly correct

Comparison of handwriting

Thus appears much confusion in the Books.
on this subject. I sincerely think you can reconcile
the authorities. Indeed they are not reconcilable.

The old opinion is much changed. The old doctrine
of a distinction between the comparison of handwriting
of civil and criminal cases is implanted. 1 Star. 642.
App. C. Ting 114 Matt. 4 Esp. 117

In cases of debts 10 years or more
in possession, the proof of execution is necessary. 10th, 105, 3120, 325.

The old rule that if you prove a debt to be un.
executed, which restitutory and this debt, the execution of the new
debt is also proved, is now on appeal. 10th, 110, 4 Esp. 233,
4th, 180, 2122. 2 Cole 108, 4th, 105, 3120, 325.

If the executor or original instrument cannot be
proven, you may prove their handwriting, still the other requisite
respecting their signing will be presumed. If a deed is not signed
by the deeding party must be proved. If a deed is lost, the person sworn
hears of requisite no. of witnesses their handwriting to be presumed.

So if one saw the party sign, when no witnesses were required. 3 Esp.
35, 1 Esp. 39, 2 Post 205, 3 Syst. 371 2 Davis 735, 285, 2 4th, 833, 105, 670, 289, 18th, 39, 7 T.R. 266, 18 Post 362.
Evidence.

Formerly it seems to have been supposed that comparison of hands was good evidence in a civil, but not in a criminal case; but at present, with respect to both, the law is placed on the same footing. Certainly it is reasonable that this should be the case, for it is carried as a species of evidence too dangerous to rely on for proof of any fact it ought to be as readily rejected as in a criminal case. There are two kinds of comparison of handwriting. One is when a letter is called to the bar of a court to testify whether it bore the handwriting of a certain person. In this case, the Par. is "do you know the handwriting of such a person?" If his answer is that he does, then engrossing is, "how do you know that the handwriting which you saw was his handwriting?" If he answers he saw him write, or he acknowledged to me that it was his writing, this is satisfactory as to the person that he saw acquainted with his handwriting. The Par. then is asked "do you think that the handwriting now presented for your inspection is his?" To which an answer might be made in the affirmative or negative — this is a comparison of handwriting made by the witness comparing the handwriting which he knows to be his handwriting with the handwriting claimed to be his. This comparison may be made by the witness by examining both papers with which
Evidence

to compare it, he must compare it with the express
ion that the writing made in his mind when he did
see it. This opinion of the witness goes to the jury
& not considered proper evidence both in civil &
Criminal Cases.

The other kind of comparison of hands is, where
it has been established by the testimony of a witness
that a certain paper writing, note or if hand
writing of a certain person is introduced this paper
to the jury to compare with the hand writing of the
papers claimed to be his from which they are left to
infer whether it is the hand writing of such a per
son. This species of comparison of hands, although the
opinions in the books do not perfectly agree
approach is considered as improper evidence both
in Criminal & civil cases. You will find this Dis
agitated in some of the most modern treatises. The
ground taken for the rejection is that Jurymen are
incompetent often to make the comparison or that
sometimes they cannot write or read themselves
so that in all such cases the Jurymen who cannot
write, must depend on the opinion of those of Jury
who can write. This will be wholly improper, for
every Jury man ought to exercise his own judg
or every point which he tries.

In the State of New York this point has been much
agitated - It has been contended strenuously that
however proper it might be to write such a pa
cipate in any other country where Jurymen might
Evidence

be found who could not read or write, that this was
or did not apply to Some. Where no such instance
was ever heard of that a journeyman or not both was
not write. Notwithstanding this, it had been deter-
mined by the Ship's Lt. that such an instance
for all the it is true that no instance can be found
of a journeyman not being able to read or write, yet
most of them are now not conversant with such
writing, the Lt. therefore were of opinion that altho
they could read with proficiency it will only a legible
hand in many instances a good hand, yet it will be dan-
grous to rely on their opinions as to the hand writ-
- it is probable that their opinion would stand
in very diff. from one found upon a nic e
examination by a person conversant with wri-
ting.
Powers of Chancery.

By Judge Payne.

The general powers of a Court of Chancery are incapable of a definition. They must be learned from considering the cases to which they are conversant. By the Civil powers of Chancery certain observations have been made, which have had a tendency to mislead the student. I shall take occasion to notice these, and point out the inaccuracies.

In some of the States they have no Courts of Chancery. But then the principles of Equity must be introduced into their legal system. And without this the noble principles of Law which have been said to have its foundation in the bosom of God, must be very imperfect. It was a long time since that Courts of Law were found to stop short of justice, or to proceed any farther than established principles and precedents would warrant. For this reason and others, they were introduced to remind those principles in other cases, where justice required it.

I will now notice some observations which have been made, but which are wholly incorrect.

Lord Bacon states that the province of a C.C. of Chancery was to abate the rigours of the C.S. By this observation are meant rigid that C.C. of Chancery do rigours that C.S. If they were introduced to abate this rigour, it was to do this on a distinct principle.
Powers of Chancery.

The incorporation of this remark will be noticed. We are also told that "a Court of Chancery according to the spirit, is a Court of Law according to the letter of the Law." This is also untrue.

So again it is said that "Cts. of Ch. are peculiarly cognizant of all matters of fraud, accident, and trusts." This is incorrect.

So also it is said that "Cts. of Ch. are bound by no precedents." These positions are all false.

That Court of Ch. decide according to the spirit of a Law is sometimes true. They seek for the intention of the Legislators, and will apply this to the furtherance of general justice. But Cts. of Ch. have never claimed that their Cts. of Law was introduced to abide the rigors of the Cts. of Law. Therefore a Court of Equity have no control on Cognizances of Law which is not within the principles of the Cts. of Law.

I will now take notice of some of the principles. Notice Cts. of Ch. Courts differ.

Cts. of Law decide as much according to the spirit of a Law, as Cts. of Equity. But there are certain matters of Law which Cts. of Law have at times been certain that a Cts. of Equity will extend their powers so as to embrace certain cases, which Cts. of Law would consider within those matters, but which are not comprehended by the rules of Courts of Law. E.g. it is a matter of the Cts. of Ch. that a Contract obtained by force or duress is void. Hence every Contract obtained by duress is void both in Law & Equity. The De. than
is what it always is in such cases. It is necessary that the duty to be done, that is, pay money or perform a service, etc., the contract is not void at law. If that be the case or if bodily harm or by imprisonment were a man is compelled to enter into the contract, it will be void. At law, he will refuse to enforce it. What is the principle in this? Why then they will not carry such contract into execution? It is because the man did not enter into the contract willingly. Now this principle is extended to other cases, which could not be done, e.g., to all cases where the contract is obtained by imposed hardship. If a creditor has got his debtor into his power, he forces him into a disadvantageous contract, e.g., to enter into it. The will relieve it such contract, as e.g.,

Thus was this reason a Lady had a daughter of great fortune, the mother was the guardian. She received the rents of profits of her daughter's estate, which amounted to much more than was required by the Lady for the daughter's education. A young gentleman paid his addresses to the daughter. The Lady appeared pleased with the match. The affection of the young people, how engaged, and the gentleman regarded her constant to the Union. The Lady told him she never to give his consent until he would come into a covenant, binding himself never to call upon her for the rents of profits of her daughter's estate. For fear of losing the wife, he came into the contract, it readily to the daughter of this
Public Wrongs.

aspplies to a case of this kind, where a party, for the reason that it is imposed hardship, or that the principle of this kind of contract, or the ground of imposed hardship, is against the principle that contracts obtained by duress are void, in this case, the party was tried no duress per se, nor any imprisonment. The party would have refused to set aside this contract. Now the principle is, that where one takes undue advantage of another's situation, as it is called, yet it is not the mere contract, yet it is not therefore by an extension of the principle. In all similar cases to the above, which may be said to amount to this.

Again, there is a legal maxim, that no contract is sound policy is void. Here are many cases of this kind of contracts. E.g. if a man should enter into a contract not to pursue his vocation at all; it is void; for it is withholding his services from the public which he has the right to do. (The he may enter into a contract not to pursue his business in a particular place). The contract is illegal— not on account of any internal taint or tincture but because it is not sound policy. Now there are other kinds of contracts which are admitted to be not sound policy, but which parties do not consider as void but will enforce them. Now these kinds of cases will be two. The cases of these cases. E.g. the Contracts of young men to sell their services were long since found to be not sound policy. It operates as a fraud on the ancestor. Their property which they supposed was to go into their...
Powers of Chancery.

Hands of the objects of these actions are distribu-
ted among trustees, sharers, and others, for a
small part of its real value, and also affords
a means to dissipation as it punishes them who
lose it. As such cases arise, the imposition of it
tends to lead them into the path of vice, but this
however apparent the imposition of such contracts
to get cls. it is refused to say they are void. But
a Court of Chancery may do this—this is an extension of
the maxim that contracts of good policy are void.

So marriage being, bonds are void with or
w. sound policy, yet cls. if done refused to say they are
void, but Chancery will say they are on the ground of also,
it is a fraudulent method of countering the object.

But a Cl. of Chancery cannot destroy all.
But if there is some legal means which they extend to
such cases, e.g., q. q. Contracts obtained by fraud are void.
Such as the fraud is in the execution as if a blind
man or one unable to read agrees to give a note for
5$ and it is written for 50$ if he signs it it is void
at Law. But suppose the fraud is on成交量
as if it represented the land he is about to settle in
the State of Ohio, to be well bottomed, well washed land
and it turns out to be a bed of rocks. Now this con-
tract is not void at Law—10 has his compensation
in damages. If he has intended to buy or obliga-
tions to pay for this 50$ is may be recovered to him
at Law. But suppose Chancery will set aside the whole con-
tract on the grounds that it is different from your
law.
Contract I suppose he was making. The name of the parties have never met; therefore, say they there is no reason why this contract. Is it not any more than if the name was in the execution?

But Courts of Ch. When they rescind a contract place the parties in status quo. As in the case of the Fawcett buying the young mans expectancy, that the C. have no great offence for the old have and was it consistent to principles might perhaps be willing to inflict a penalty upon him, yet they will rescind the contract on no other condition than that the money he has paid he paid back.

Now this is it, that C. will offer assistance in Case of a mortgage? E.g. A mortgage is from C. to B. for 1000. The contract is that if the money be not paid by such a time. That the title to the land shall be absolute to B. Now if the money be not paid by the time the farm at Law is gone forever. But it is not so in C. Neither is there any words in the mortgage that there shall be no equity of redemption. And will C. refuse assistance? They will give the mortgagee in either Case an enlargement in which he may pay the money. Now it is said C. are making Contracts for the parties so what principle is it that they give relief? It is merely extorting the principle that Contracts not sound policy or sound for nothing can be more as sound policy than to allow men to get 1/3 of their property in this way. The farm may be worth ten times the an rent of the mortgage.
Treas of Chancery.

I do not mean that mortgages are at sound policy, but that it is sound policy to allow real property to be excepted from here for part of its value. On this ground the words of the 26th of December, Courts of Law do the same, in many cases about 100 years ago and the contract is, that the interest shall be paid annually, if the interest is not paid annually the interest shall be considered interest. Such a contract is not unusual. And this any case of Equity to it for the obligee, unless he more than the interest of the year 1 pays him the interest according to the contract. But also if he pays upon the contract, he will recover no more than the simple interest for Courts of Law consider it to sound policy that more be allowed and so say a Court of Chancery.

Now a Court of Chancery will carry into effect those principles of justice & equity which are adopted in the Law, but which are not intended to those cases that are a trusting degree very from the letter of precedent, the un spirit they are the same. OBC.429. 8. 3rd. 1651. 2. 168. 227. 334. 430. 55. 3. 239. 7. 394. 2. 2. 64. 18. 2. 2. 2. 2.

I have now noticed the first to second observance which I conceive was incorrect. I shall now proceed to the examination of the third, which you will recollect was that "Cases of frauds account to trusts were formerly cognizable by Chancery."
Powers of Chancery.

This observation appears to convey the idea that fraud was always cognizable in Chancery, and further, that perhaps it was cognizable nowhere else. But this is not true. Fraud in a variety of cases is cognizable in a Ct. of Law, in some cases exclusively so. Fraud in all personal Contracts is cognizable in a Ct. of Law, not in avoiding, or in all cases, but in giving damages. In these cases a Ct. of Law will not interfere. But where there is fraud in a Real Contract, as of Sale, Lease,外表 of Etc., it is that Ct. of Law affords specific relief. The proposition is untrue, Cases of fraud are cognizable in both Courts.

So accidents are cognizable in both Cts. As E.g. suppose a man should lose a note or other obligation by mere being his action at the Stanton that fraud is of no use he will recover. So if by accident a mistake is made in footing up an account, then obligation given for the amount, either party, that is to say, whoever made the mistake is made pay when the amount is S. of Law will render judgment for as much as it is has been provided so accident of this kind had be taken D. So that in many cases when by accident the performance of a condition becomes impossible, in such case a Ct. of Law will not enforce the Contract, as if it were given by the appearance of B. at the first session of the Ct. it before that time assume, B. dies then. No is discharged at Law upon bis bond.
Powers of Chancellor.

It is true that much of the business of a Chancery is relative to "trusts" - the reason is, they often require an act or a performance of the trust. E.g. A borrows a barn of C for $120 to be held in trust for $200. Now C has the legal title to this barn, but in trusteeship for $120 the C will compel him to perform the trust specifically. But it is not true that in the Chancery, nor in cognizance of trusts, as e.g. in all cases of bailment which is a trust, they have cognizance, of all trusts as a horse, or as a trust for the trust. As it is in law. So in cases of many trusts entered, the deft is a trustee of the money; he borrows for another, & the remedy to get out of his hands is by an action at law. So there is no trust in the property. The only difficulty is, that Cts of Law intend, to the estate, which in the opinion of the Cts of the principles will warrant.

Powers of Chancery.

After having made these observations, it brings me to what is advanced to be an essential difference between the two branches. It is this—this is the mode of trial, the mode of procedure, the mode of relief. I do not mean that when the proof goes to show that they differ in the application of the principles. The same principles, while the fact is ascertainable, govern both Courts. The mode of proving the fact differs the ultimately the effect if it is the same.

So also, as to the mode of trial, they differ. if A. and B. make a contract to convey his land to A. by the first of January, and B. does not, has he may either go to a Ct. of Law or they may apply to a Ct. if they will compel a specific performance. Suppose the contract was one which could not be enforced in Law. Can if it was a contract to convey real property by parcel, the judge of that of the Court's power is required to be in writing. Suppose it is not. If the judge finds that the contract is not a contract which is required to be in writing. It is a general principle that if the contract is of such a nature that you cannot have any remedy at Law, the Court will reform a specific performance. And suppose the judge finds that the mode of relief is not One. If they have no authority to give such relief. if the Court does they compel, a performance of their terms. It is by imposing such a penalty upon the person as will induce him to perform the decree. But suppose...
Powers of Chancery.

The man of a Bankrupt, it seems, nothing about the
previously, what will become? The Court, has no such
case, it granted the powers of creating the title of a
person to whom it belonged. They certainly ought to
now, this power, else, their sources might extra-

many instances become individual. But this has
been questioned and on this account, Statutes have
been made in some of the States vesting them with
this power.

Sec. 2. Noyes. 1813.

Is also observed to you as I proceed to the
cases where Chs. of Chy apply the principles of the
Law, where Chs. of Chy have refused and there are
many principles to be learned which will require
a careful attention. The great difference between
the Chs of Law & Equity consists (as you yesterday)
in the mode of proof, of trial, of relief.

A Rule. Courts of Chy very often refuse to
execute a Contract into execution, which they do not
execute if application had been made; e.g. the Con-
tract may in particular have been one of the par-
ties, yet if there is no fraud in it, the Law of Chy, if
the party is to receive a specific performance, will not
grant the Contract. If there is a want of mutu-
ality in the Contract, Chs. of Chy will not inter-
vene at all—then will leave the parties to their un-
happy laws. Again—

The reasoning that a Ch. of Chy, will not enter

the circumstances, there is an adequate remedy at Law, to
be of some by certain Cases in which they do not pass...
Powers of Chancery.

E.g. Suppose A has access to enter into an
contract, he has at Sass as a quid pro quo. But
a lot of the time is spent in a pact of calls upon
A will or assess the Contract, but they will interfere
only on the ground that possibly it will now have
an opportunity to take advantage of the default.
The contract is obtained by dements, it is the basis
of 18. The obligor in refuses to sue it. upon it be
cause he knows if he does sue it it will be proved
the contract was obtained by dements. Now there
is great danger that A's interest will be out of
the way before 18. will sue him, as by death it
and thus being unable to prove the nature of the
contract, be will be compelled to pay it. This is a
case on application. & why they were used it
they do so more than a 19. of cases. is of long
not an opportunity. So too in case of a mortgage.
The conditions of the mortgage is, that if it will
pay 18. to the first of Jan'y, then the other is
owed: otherwise the title is as B. - Never on the
day he goes P pays the money or the presence
of C. D. E. & D. 2D. this insane to give it. The mort-
gage on B. or recovering the 2D. Now what does, its
right Rep & upon? It depends altogether upon the
factual testimony of A. D. E. that he put the money
at the time. He is one if B. is in fact. B. is not
at any time an action of punishment to him. imme-
diately he proves his title to the payment of the mort-
gage, but if he himself is in possession, the legal
title
Provisos of Chancery

The equity of the court of chancery may be established by proof of the rights and interests of the parties as shown by the evidence produced in court. If the court determines that the evidence is sufficient to establish the equity of the plaintiff, it will grant an injunction against the defendant. If the defendant fails to comply with the injunction, the court may order a sale of the property and distribute the proceeds to the plaintiff.

Now for the mode of relief. I mentioned yesterday that equity did not usually interfere in carrying into execution personal contracts, for at such times there is an adequate remedy at law. Likewise, I mentioned that the mode of carrying the decrees of Equity was by a penalty. Now this penalty cannot be charged down on the decree unless it is not obtained by a recovery of the whole penalty to be had at Law. In Equity, this power of decreeing specific execution of a contract exists so that the only remedy was in an action at Law. This power is not exercised by Equity merely because the relief can be had at Law for a remedy may be had at Law, but it may be inadequate.

It is a general rule that a contract which is entitled to be enjoined on Equity must have all the requisites which would entitle the party to a recovery at Law. This is not however an universal rule.

No statute has ever been made giving a bill of this power of granting specific relief.
Powers of Chancery.

Chancery was undoubtedly established to abate the rigor of common law. Courts of law were bound by strict rules, but the minds of the judges were confined to certain established rules of precedents. They did not feel themselves authorized to extend these rules to any case unless it fell within the letter of some precedent, lest it might infringe the spirit of them. On this account there was oftentimes a failure of justice. The King as prince patriarch had a power to decide causes according to his own ideas of right and justice as it appeared between the parties, without any regard to general justice. It was impossible for him to sit personally in all such causes as were submitted to him; he therefore delegated his authority to another who was the keeper of the King's conscience, the Chancellor as he was sometimes called. This was the foundation of that of Chancery. Out of it has grown a most admirable system of jurisprudence. The power so demonstrated to the power assumed by the King to grant specific relief but the discretion is now all gone away. And their authority to do so unquestioned, governed only by certain rules which do not contradict the established rules of Law. R. 72, 1. 1on. 4. 516, 1. Role 354, 368. 1. Ford 27. 2. Penn. C. 14.

The common law. The law of contracts entered into respecting real property are governed by the rule that if it be a good contract in law, or which damages may be recovered, it is a good contract. If it be to be entered into specific execution. But if such law
Powers of Chancery.

...damage may be recovered at law. If blessed, they may go to sea before, but let them apply to a Court of Law.

But there are some Contracts which Courts of Law will carry into execution. When contracts are entered into, e.g., marriage agreements, contracts to allow provisions will be enforced to that extent. Why is this law? Is it because the marriage agreement is not a valid one? No, for the contract is good at the time it is made, the parties to it were capable of contracting. But the reason is that the Wife cannot maintain an action as his Husband at Law. It seems then that the contract is not negotiable, and more or less for purposes on that the wife cannot sue the husband at Law. This might be enforced. The contract is not itself void. Suppose the husband has made an execution, a bond to the intended wife to leave her $1,000 at his death. Now, it is said this contract is terminated by the marriage, because all the wife's choses in action come into the power of the husband on the marriage. This is true, if he renews them to possession, but if he does not renew them, they will survive to her. Suppose A.B. before the commencement of the marriage, he executes to her a note for $1000, paid in consideration of marriage, and before the payment of the note, they intermarried, now A.B. is in discharged from this note. But in cases of Contracts in consideration of marriage, it is said to suppose they are discharged thereby, happening of that which furnishes the consideration, viz., their
Powers of Chancery.

In many cases, the decisions have been that when the death of either of the parties to a contract occurs, the contract is void. However, this is not always the case. The question arises as to whether the executor of a deceased individual should be held liable to the surviving party. The contract, in this scenario, is not entirely void; it is conditional. The executor is required to pay the debt at the death of the debtor. This may place the executor in a difficult position, as they may lose the property or face other consequences.

What will happen if the executor fails to pay? The question arises as to whether the executor will be held liable in the same manner as the deceased. Will the executor be required to perform the contract, or will they be excused from fulfilling its terms?

This is a question that arises frequently in legal practice. The courts have generally held that the executor is not bound to perform the contract after the death of the debtor. However, there are exceptions to this rule. For example, if the contract requires the performance of specific acts, the executor may be held liable for breach of contract.

Thus, it is important to understand the specific terms of the contract and the actions required of the executor. The courts have established that the executor is not bound to perform the contract after the death of the debtor, but they may be held liable for breach of contract in certain circumstances. It is advisable to consult with a legal professional to ensure that the rights of all parties are protected.
Powers of Chancery.

One of the law allows of such contracts, and they will not suffer the husband to sue the wife during coverture. The very object intended by the law, is brought about, i.e., the marriage, and these are the cardinal motives of the parties to defect by the act of marriage? Now, you can go to Eq., and they will compel him to perform his contract specificallly. But it is said this device was so bad, as the 4th cannot impose a penalty upon him this reason, but they will rest the title on the husband, and other means fail to enforce obedience to their desires, is the device used by the 4th. If it had been the husband that was to convey to the wife, they would have imposed a penalty upon him.

2 Cor. 47, 2 Ben. 107, 2 P. 134.

I will now mention a case where I am unable to discover the reason why a Eq. of 4th refuses their aid. Eq. F. S. and E. are joint obligors on a bond, F. each one to pay one half, then the bond becomes due. F. goes and voluntarily pays the whole. Now it strikes the mind at once, that if F. may pay the debt, why not recover one half of the amount of the bond at law? But the constant practice is to go to Eq. The origin of this practice I am unable to discover. I see no reason why a suit would not be at law. In Eq. has done no more than his duty of paying up the bond on its becoming due. About 200 years ago, we tried the experiment, i.e., a suit to recover one half, an Eq. for the recovery of the one half. We have
Powers of Chancery.

It is an agreed principle in all cases that if the obligor exceeds the money out of one by a suit he may compel the other by a suit to pay his proportion: but that if it goes voluntarily it pays the amount of the bond, he has a remedy by an application to Chancery. And there is no remedy at law in Chancery of A and B, joint tenants, jointly to compel C to pay all the damages, as e.g., suppose A and B are jointly guilty of a battery on C. Now C suits both of them, but finds it more convenient to take the whole damages out of B. Now we would think that A ought to bear his proportion of the damages as he was equally guilty. But there is no remedy at law. It will have to be set the thing according to their own notions of honor. We will say a Ct. of Chancery affords no relief. It has been Contended they cannot do that many of the Ct. of Chancery can decide contrary to all principles of Law. But they are obliged to refuse because the principles of San- 

ding their aid.

Rule. If the person contracting, or the subject matter of the contract is within the jurisdiction of the Ct. of Chancery, the Ct. has cognizance of the Contract, as if it living in Law. Contracts to convey
Powers of Chancery.

To the rule that where a & B. is at an agreement to convey S. to, and the title is at the name of S. to, & B. is set up, & B. is to do a specific performance, there is one important exception. This rule will not decree a specific performance to do as to effect the contract of a base for real estate without notice. To explain that I would A. enter into articles of agreement to convey S. to, & B. to, & B. to, B. by which A. has the equitable title, & B. the legal title. A. agrees to convey S. to B., to have nothing of the previous agreement between A. & B. Now B. can go to a Ct. of Law. & S. will give him damages, but can he get a decree for a specific performance?—Yes. The objection to this is, that such decree will do no good, for it has become impossible for A. to perform the contract with B. in having conveyed the land to B. Now this is just the thing. O. will put a penalty upon it, which will be sufficient to cover all the damages, & B. has sustained, and at the same time the rights of B. will not be impaired, as the title is good to him. But say your does not this contradict the rule that O. shall not compel a performance of a contract which has become impossible to be performed? No.
Powers of Chancery.

for that rule goes to the ground that the impossibility of performance has not arisen from any fault of the obligor. E.g. Suppose A. Covenants to Convey black acre to B. and before the time of performance arises it turns out that B. has a good title to 10 acres of that land. Now will a Ct. of Chancery be Convey black acre including this 10 acres to which he has no title? No, they will leave B. to his remedy at law. A has been guilty of no fault. He had no idea that at the time he contracted to Convey this land he was the owner of the whole. If A had known that he had a title to the 10 acres a specific performance would have been decreed. So in the other case, if A had known that B. did not enter into agreement respecting the land, a decree might have been had for both A & C.

A Rule. A Contract is entered into, but what is known so that the intention of the parties may easily be collected, but on account of some formal defect or the draft of the instrument an action can not be maintained upon it at law. A court of Chancery will carry this into execution. But there was a rule that a Ct. of Chancery would give no relief in a case where a Ct. of Law would not give damages. But this depends on another principle which is that the Ct. of Chancery has a power to correct such errors as are in the execution of the instrument to place the Contract in proper footing in which it stood when it was by parole or by form of writing. And when it is applied for
Powers of Chancery.

is made to show to correct the error the having the con-
tact so that proceedings will immediately proceed to
beat its execution. E.g. Suppose the debtor's sight
the deed to as to contain mere 30 acres of land when ac-
ting to the court, & its given to 200. It has contained 300
now application may be made to stay to correct this er-
eror. When this is done they will pay themselves the troul-
bles of altering the deed so as to tally with the parole,
contract & serve the performance immediately. This
is here an illustration of the principles this is but that of
letting in parole testimony to control a deed which will be considered by if by DB LL 13, 15 Ex-

I have not noticed to your the rule that a C.C.
they will not occur specific pertinent of a contract
then an adequate remedy can be had at Law and
for this reason it is that the party do not usually
interfere in personal contracts. it is not because the
cannot give remedy. If A. contract with B. to deliver
100 Bushels of Wheat if B. neglects to perform there
is a sufficient remedy at Law. Etc. If C. contract to
exercize their authority, who in Law a sufficient
remedy is afforded. But furnish this with a case that
then is not an adequate remedy to obtain it at Law.
Etc. C. will receive. As if A. buys a horse of B. for a
particular service, as for a carriage. It gives a for
B. if for whom. B. recommends the horse as good for
it turns out that the horse is worth C. After C.
will not interfere in this contract if there is nothing
Powers of Chancery.

about it, but will leave it to recover his damage at Law. But suppose A. is a Bankrupt, do not the
great do that if B. sues him, he can recover nothing - is it or judgment of A's note. Now a
will allow him to file his bill, stating those facts
will then give him a judgment to recover his
note, whenever A shall sue upon it. The C.H. has
right to recover on this note at Law for the cause
is in the consideration. Can we not, in the judg-
for A's note in the C.H. Why, where he can escape
the note, he also pay a great loss or account by
bankruptcy of A. In such case C.H. will argue
for the remedy at Law is not adequate, and so they
will do in all other cases where it is necessary. See C. 215. C.H. C. 1126. 12 M. 447, 1 B. F. 549, 2 D. 306, 2 Cr. 333, 2 Taun. 447.

There is one thing for which I can take no

It is a rule that the rights of the parties to obtain
money in C.H. share to reciprocal, although one of
may have an adequate remedy at Law. E.g. A. Con-
tracts to sell his Land to B. for 5000$. B. refuses to pay
it. Now it may go into C.H. I get a decree of B. to
pay the 5000$. all the he would recover the same sum
by a suit at Law. But why allow him to go to C.H.? This
is no reason for it, except that B. has a right to
get there is more a decree to it in coming at right.
must be reciprocal. We deny this at 2 Cr. 210, 219.

Again when a party obtains a decree for
Specific Performance at his favor, he must either
have performed his part, before he applies, submi-
Powers of Chancery.

submit to be put under a penalty to perform, e.g., if agrees to convey blackacre at $10, to pay $500 if not. But in such cases, to perform the contract specifically, he must have paid the $500 or submit to have a penalty put upon him. This brings upon the grantor that he is to pay into a court to obtain equity must make himself do equity. 1 Pet. 383. 2 Pet. 261.

This subject is very important, perhaps the is no branch of the law so cut out in new cases but there are certain first principles, which some will understand will enable you to determine in your own mind, which but little reflection, whether each new case comes within the equity of a contract.

If you are not superficially acquainted with these principles you will doubtless be oftentimes perplexed, they will tend rather to confuse than to assist you in your practice. Sect. 39, May 5th, 1813.

I have observed that it was a general rule that the lot of this did not interfere in personal contracts when there was no adequate remedy at law. But there is no species of contract in which they will always occur in specific performance. This is a contract to transfer stock, here a lot of stock will Comp. a specific transfer. The reason is, that these contracts are always made for speculation. the purchaser buys because he thinks the stocks will rise in value to the seller sells, because he thinks they will fall. The purchaser is not therefore to be cut off. He has expectation of a future profit by the obligor himself.
Powers of Chancery.

were compelled to seek his remedy in a Court of Law to recover only the amount the Stock has worth at the time the Contract became due. Now this rule of Law, is not the real damage he has sustained, for the Stock may have risen in value after the time of performance had elapsed. For this reason it is that they will enforce a specific performance of the Contract. This may be considered an exception to the rule for in other cases a remedy can be had only in the Court.

Counts 2 Doz 2217 232, 17 per 394, 11 per 405, 17 per 408. E.g. Case 26. 22b.

Sometimes a man cannot perform a Contract he has entered into, because it has become unlawful between the time of the execution and the time of performance or it has perhaps become impossible by the act of God, in such case he is discharged. But in such case the Contract can in part be performed with other party is willing to take up with such part performance. E.g. There was a time in Eng in which it was customary to make long leases of land for certain purposes. It grew to this mischievous, the Stat. was made entitling that after 21 leases land in a longer time than 40 years. Previous to the Stat. A. had contracted with B. to lease him a farm of land for 70 years, but before the lease was made the above Stat. was made. And A. continued he was discharged from his contract because it had become unlawful by the new Statute. But B. was willing to take up with a lease for 40 years, if the A. still continued. B. and the A. agreed.
Powers of Chancery.

As above the recovery was commenced before the act of God, as if by a contract with the grantor or his heirs, are home long before the time of performance. If the House is burnt by lightning or by storm, the contract is one of sale of D. to build up with an D. on the land, etc., it will be a conclusion in Chancery. This principle runs through all cases. If you have paid money in the performance of the contract, has become extended or impossible by the act of God, you can recover it back as being paid without consideration. 2 Beav. 264. 10 T. & C. 259. 1 Cow. C. 698.

If the contract appears to be so pure that the obligor is to have his election either to perform the contract or pay money, why will not these? Specific performance. This rule applies to all ordinary cases except to penalties. Concerning which I shall hereafter lay down the doctrine at large.

There now comes to a subject which relates of Law of Equity different. E.g. Suppose a man gives an estate by deed to will to A. for life, remainder to his heirs what estate has he left? They are unaccounted with technical rules, but see that D. had an estate for life, perhaps the remainder over was an estate in fee simple to his heirs. But this is not the case. The word "heirs" is not descriptive of persons, it denotes the quantity of estate. D. has therefore as E's life to live. Now this dower was any person.
Powers of Chancery.

that an estate given to A for the lives of his brothers as trustees in fee simple, why then should the words of the will which are inserted in the conveyance alter the certainty of estate. In the case of Philby it is decided that the rule is wholly superfluous and the rule is not compelling that if an estate is given to a man for life or the lives of his body, it is an estate in fee simple. If the words "for life" were allowed to have any effect, it would make the estate an estate in fee tail. But the rule of law is as established in that by Case above. Now suppose a man is about to marry, to convey all his blackacre to himself for life and remainder over to the issue of that marriage or issue. Will a lot of facts settle this estate according to the rule of law? No. they will settle a conveyance of words which will actually settle the remainder on those heirs. They will cause the conveyance to be so made that the land will descends exactly as an estate tail does descend, first to the eldest son of his issue, then to the eldest son or daughter the eldest of male heirs, on failure of these to the eldest daughter. This is carrying the Court into effect precisely according to the intention of the parties. This is one of the cases where the rule has not allowed the force of technical to overcome the voluntary, if it is departing from the rule of law, it is to be considered as repugnant to the general rule. But I will show you that lots of Chancery have not contradicted the principles established in these cases.
Powers of Chancery.

...any other principles of Law, e.g. Suppose a man conveys a farm to A for life to remain in his hands as the Grantee first consents. I tell you the principle was established that A had an estate in fee. Now what says God to such a case? Who can say that A has an estate or fee unless it be made certain by the principle established in such case. But there is no rule of law which says that when a new covenant to convey property to A for life remains on his heirs that it was an estate in fee simple. This is an error. The covenant was settled according to the intention of the parties, not according to the terms of the covenant. Then, ...
Powers of Chancery.

[Text continues from the top of the page.

You see they consider J.S. who has contracted to convey this land (as supra) as having no beneficial interest at all. Nor had the legal title, but it was a

Trustee for it the Commissioner, namely. But this rule
Powers of Chancery.

However it is not to operate so as to hinder, frustrate any lease of the Grantor, holding the title, to convey the estate to a bona fide purchaser. Thus title vests in the purchaser. A bill will hold the land. E.g. A conveys to B. B conveys to C. C conveys to D. D conveys to E, and is paid the consideration of the sale. In some accidents, the title deeds are not delivered over to E. D conveys the estate to F for a consideration. Now F will hold the estate, and if the Grantor must look to the Convenor for the repayment of the money. And in all such cases, it is a rule, that when a person has the legal title to a portion of property, the fact that he may be merely a trustee for another, if he sells to a bona fide purchaser, he is ignorant of the trust, the purchaser will hold it. The reason is the last purchaser has the legal title, to equal equity with the Convenor, his claim therefore is superior. But in a case where A has the legal title, so not equal equity with B, B will hold it... or the ground stands the taking of mortgages. A mortgagee has E as a first to B, then to C, then to D. Now these persons have all equal Equity, but B will hold the land for he, besides having equal equity has the legal title. Now if B, goes to pay the Sum due to D, he will have the legal title, i.e. will hold of E and he has now unity of the superior rights of B, with his equal equity... the priority of title is now conferred on B. 2 Term: 64, 46. 3 Term: 39, 10. 11 Term: 79, 242, 429. 2 Commons 336.
Powers of Chancery.

It is a rule that if a contract is originally fair and equitable, the subsequently it has become unconscionable the court will enforce it. For it makes no difference whether the bargain was. If it was a bargain at hazard which was mutual at the time it was made, it will be enforced e.g. A lends B money, B conveys Blackacre to A to provide B with nothing for him an annuity of 100L in life, now this is a fair bargain of hazard, if A die in a week B would make a great bargain if it. So Chancery will make 20 years he will lose. Now say A vice Comitee specific execution of such contract, if A should die the next day, the suit will be in Court for any thing. But if there is a previous act to be performed by one party, if it is not performed, they will not compel a performance of the contract on the other side. As if A living in Edenhurst, Contracts with B living in Ohio that if he B will execute to him a deed of a farm of land in Ohio to lodge the same with the Town Clerk of the town where the land lies. Reckon he B will give him (B) a deed of his Ad farm in Edenhurst, and it turns out that before B executes the deed, the farm land is swallowed up in an earthquake, it will not be compelled to perform the contract. It is a rule of Equity 25th. Pop. Law Cases 415. Pre City 155. 2 Pown 6, 132 63, 112, 236, 240, 12, 484, 488 3, 27, 122, 13, 18, 47, 413, 418, 10, 436, 5 83.

Suppose the agreement drawn to have been taken into
Powers of Chancery.

what is done? Ch. has no

The practice of the Eng. Ch. Courts

most of them, in the U.S is to have that be in the

form of an answer to the Ch. of U.S. there to be tried by

a jury, and as they find it so the Chancellor will decide.

The Chancellor will not undertake the decision of a

question of fact. Out of Complainauce to the judg-

es of the C. A. Court, where the case is sent, the usual

practice is to request their opinion upon the question.

this is not necessary. 21 Nov 216.

In Com., we do not make the issue in C. A.

Ch. is decided in the Ch. of Ch. The Ch. however

appoint a Committee of 3 persons to assist in ascer-

taining the fact. This may be said to be in viola-

tion of the C. A. rule; but there is one advantage at

least of condensing our method over that of the Eng. practice.

As this, the Ch. appoint 3 such persons as a Committee

who are well acquainted with the nature of the con-

tro versatility if it respects mercantile concerns they

will appoint Merchants. If it is respecting any kind

of mechanics, those acquainted with that profes-

sion will be appointed. As Ch. causes are of-ten

times wholly ignorant of the nature of the business

out of which an intricate question may arise,

in such cases to decide. 21 Nov 216. [Supporting the force

of the judges reasoning in favor of the good of the

Union entirely. George opposed to the other States' re-

Union, for ignorance is not so conspicuous a trait in a

character of the same people as in Europe.]
Powers of Chancery.

Lect. 14, May 6th 1813.

I have already observed that the law denies the
cisic execution of a contract when they would not respect
it. There are cases where, there is something hard or un
reasonable in the contract, it is not sufficiently unfair
rep to authorize them to rescind it. They will leave the
suitors to their remedy at law. If of a 32d, contract
to convey the 2d to 12 for half its value, and 12 32
apply to bring for a specific performance or in any
other case where there is a great emergency on the
consideration, they will refuse to decree a per- 
formance or to rescind the contract either. This is a mat-
ter about which they exercise their discretion and
it is not uncommon for them to disapprove such ca-
ese on the presumption that there is some unfair
rep. 1. Co. 157, 9. 2d. 385, 3. 4th. 383, 9. 10 Eng. 228,
113s. 2d. 226, 3. Tom. 12. 72.

The contract must not only be a fair one,
but there must also appear to be a good degree
of mutuality, else they will not decree specific
performances. So also of the contract to voluntary
the under deed, yet the Ct. will not decree specific
performances for the damages at Law, it is unau-
ral. And it is a rule that the damages would be
recovered at Law, yet if this damages are shown
in Court of Chancery, will, to decree any perform-
ance at all. 3. Tom. 221, 1st. 440, 3d. 16, 3. Eng. 241,
256. 6 341. 5. Eng. 341.
Powers of Chancery.

It is a rule in this that when the parties to a contract are under the necessity of its performance, yet the case arises only as to the penalty of the debt. Interest is to be paid to the party engaged in the contract to be done, and to perform it. So is the case I have before mentioned, when young heirs sell their dower payable by interest. This arises on no other ground than that the money paid on demand may be paid back again. And the same may be otherwise if this acknowledgment is made to the contract to be done. And if policy, they would be where it stood, when the heir had received it, and it was allowed to return. But the rule in this case is above. I will now mention some.

Cases in which This will receive a contract.

This will sometimes arise in a contract, where there was no fraud or duress in any person or party. These are cases where the contract has originated from a mistake. It turns out to be different from the expectation of the parties. In rescinding these contracts there is no rule of law. Otherwise, so it is a rule of law that when the consideration of a contract fails, the money paid may be recovered back. Court to Court, yet as far as with the provisions of this text, this of the rule applies to cases of evident mistake. Now suppose it holds a bond of $10 or a large sum, with sundry circumstances. Is in casting off the balance?
Powers of Chancery.

due a mistake is made. I pay $10,000 too much.

Now this money may be received back at once.

But suppose I was to B. I died of a lot in Ohio.

d. fires and that I had never a lot owned

to him in that country, there was no Jones on the

part of A, but merely a mistake. Now a lot by

will rescind this contract. Suppose this mistake
is with respect to a thing which was the gave
non of the contract. e.g. without which the contract
would never have been signed at all. The will
rescind the contract. I. (I. e.g.) the owner of a tract
of land in the western part of the State of N. Y.,
and on this land it is supposed there is a salt spring.

Notes wishing to set up the salt works contracts
for the land mostly on account of the spring. It
is surveyed, the surveyors being the spring just
upon the land in States. Notes buys at bargain
that the surveyors made a mistake. The spring
is just under the land of Jones, and so that 150.00
now it is evident all men of the parties have nev
er met upon this contract; the survey was now has
failed to City, and rescind it.

But will a lot of money receive a contract in
all cases of mistake? No they will not of this.

case is of a trifling nature they will leave the

party to his own at this... for e.g. if A is sold to

Jones of Ohio, an account of a few thousand, due.

He asks 200 more than the others. In the note for

$2,000,000,000. But this case can not as a
Powers of Chancery.

Land and on B's lot on the west side of Chancery. Amount of this mistake exceeds the Contract. All the damages it has done to B. It is that he has paid 40s. more than the words if he had not suspected those lines. Now on the lands he was buying, it is that he will receive back at 5s. Ton to first part of the volume upon the heir of Crown & Contract in 39 years in. 1706.

Powel mentions this case. If wishing to buy a Servant they applied to B. at 180 & both him a person which he supposed was a way as he had resided there long but had always supposed to be a boy, he was dressed in boys clothes. It turned out that it was a girl. Now this was a clear mistake, and according to the Civil Law the Contract would be utterly void. But why should rescission of Contract? I think this a doubtful law. There is no reason which would prevent them except that it is a personal Contract. Why would not his title to rescind a real contract under such circumstances.

The rule then is that, in real Contracts, a Ct. of Chancery will rescind, if there is a mistake. But it is said that, if B. will not rescind if the mistake is a mistake in law. This is often laid down by Elementary writers, as the ground on which they attempt to support the position is that no man is presumed to know the law. It is true that one of the Civil Law was "ignorantia juris preventa," and in ordinary cases the maxim is applicable to
Powers of Chancery.

In our own System of Jurisprudence,ースorted by our Courts. So that if in an indictment for a trivial
man at whose conscience the Law it would not avail him. But if a man acts under a mistaken idea of his rights, he will always relieve
him. There is a law of this kind. There are three
brothers, and the middle one died, and a dispute arose between the other two, as to what of his share
inhabit the father's estate. The youngest urged the
principles of justice in his own favor, said they were sons of the same parent, therefore entitled to the
same share of the estate. So this the oldest brother said:
Consent. They finally agreed to leave the Rev. the
schoolmaster in the neighborhood, who they said knew everything. The learned arbitrator when he
Rev. was submitted to him wrote to the "Rangees Com-
petition" (a Book of keeps) as an authority to make up this decision. After mature reflection as the great importance of the case required, he gave it as his
opinion that the youngest brother was entitled to the
whole estate, because, he said, it was a principle in Law, that eldest son descends but none was it thought they ascended. On this the eldest brother settled with the younger & they divided the estate equally between them. Nor did he ever mistake as to the Law, so there is no principle better estab-
lished in England than that the eldest son inherits all
the real estate of the father. This statute, and wise
of Chancery, properly restricted the contract of the
young
Powers of Chancery.

ground that it was entered into under a mistake in one of those rights with which he is not bound to it. The case of it is, in point, 1 had never been considered.

So when A by B's consent paid to C a bond to pay him 1000 and after more 1 1/2 to take up this bond B gives him another, B having no idea but he did not the bond to pay entirely voluntarily into the 2d bond. Now this is a principle of law that if the 2d bond is entered into 1st under a bond but on consideration of having the first one which was obtained by dupe or duress, there may be a recovery on both of bonds at law. It is a good bond. It was entered into voluntarily. But what says the law of Chy? They will rescind this 2d bond. Why? Because it was entered into under a mistake in one of the party's rights. Had he supposed the first bond was void, he recovery could not have been had upon it, he never would have entered into this voluntary bond.

But when it joins A to his wife, D to him unless D would give him a bond for 3000 he would make the matter public which would prevent him from doing so. In Equity, it rescinds the bond, the 2d of Chy refused to set it aside. There were other cases, which Colby said, both, are inapplicable to these the Colby case is this. The proposition that a bond of Chy were not rescinded a contract entered into under a mistake in one of the laws is correct.

11 Nov. 32, 1752. 126, 126, 600. (2)
Powers of Chancery.

That we already state that lots of city inhabitants are set aside contracts in all cases of fraud. It seems strange why a contract, containing fraud should be left to exist a moment at this, whether the fraud is in the execution or in the consideration. But in it is, the party in the last case is left to such his remedy or damages. And it is said that because a lot of city write sets aside a contract, where there is fraud in the consideration, they are governed by a different principle than that which governs a court of law. The truth is, a lot of state knows nothing of fraud in the consideration, they have no other principle about it than that they will allow the party a recovery of damages, but say that the contract is void of the fraud in the execution. Now all a lot of city have done is to extend this principle of law to cases of fraud in consideration. They conceive the party is as much entitled to be relived from the contract as one, so in the other case. E.g., A wishing to purchase a horse for another purpose than to ride, offers him one, and recommends him to go on that there is a purchase at 20s. for him. Now it turns out that the horse has some latent defect which the party discovered by it at the time of purchase. How had they cognizance of this point at contract? They could only say that it is between the horse to pay back the money. What is the true it of such a case for the recovery of damages? They argue in the first place.
Powers of Chancery.

A man did not pay for 2 horses. But he paid 200£. the unique object of which it had been sold at the time of the purchase was not worth any thing, but as a horse to labor on a farm it was worth 40£. At the sale the vendor took 40£ from the 200£ and gave him 160£ damages. But this is not sound law. It has no use for a slave horse, to him the horse is entirely worthless. Now I say the 200£ Sam ought to declare the contract void. He else gives the party the 200£ which he received damages and I believe the law is approaching what this principle will be found to govern both courts of law & equity.

To another case this is an ignorant fact. A man agreed to pay 40 bags of barley for the first, 20 bags for the second, 10 bags in the course of the year. And for the horse the man was to sell it to be used in the contract. The court enquired into the value of the horse to make him pay that. Now here was a deviation from justice. The ought to have declared the contract void because he had taken an undue advantage of the ignorance of the man. He had no idea but he could get the horse by paying half a piece of barley and finds not have sold him for the amount. Given by the lot, as his value. They decided contrary to the intention of the parties, to have the 20£ of City Cognizance over such personal contract they 20. hour to it. 

Powers of Chancery.

There is one kind of power to which, if not allowed, justice would not render. This is what is called Wrongful Fraud. This is a case of this kind. I was living in the family of B. who (B) was lust failing in health, was in want of large property and I bejewed for my health, induced me to believe that his widow (B) and her children were wishing he die and were so unhealthy had so got the management of the property. But his death made his will to create all property both real and personal to A and by his family without a Cent. Sometime afterwards C. and D. the two of the means I had made use of to get into the affections of B. procure a will in his own favor, wrote to B. to him that I had reported about the Country, that poor (B) was aanker lying on snow, and he wished him (B) to stay as he was then to inherit all the estate. Now this story of C. & D. was wholly false, so much so that I was always spoken in the highest terms of B. However it had this effect, B executed another will to devise all his property to his wife & children, I afterwards died. It endeavoured to set aside this last will & establish the will in his favor, on the ground that this last was produced by false & malicious story of C. & D. but the Court of Chancery refused him any assistance on the ground of its being a perjury found. By the order of C. & D. he was deprived of that which by fraud he was led to depose to deprive the wife & children of the injustice & injury. Oct. 1814, with them Oct. 26. 1828.
Powers of chancery.

The law before mentioned, that it was not usual for Chancery to enquire in personal Contracts, as to the great
that inadequate remedy is afforded at Law. But when this
reason ceases, the remedy becomes inadequate, the court
inquires as the case I mentioned where I had showed
this the case of a debtor, if it was Bankrupt, it held the
obligation on his goods, but why would give him a
judgment to enforce that note. But in order to do
this, it is necessary the Contract be liquidated, i.e.
reduced to a bond not in other instrument. If the
Contract exists by verbal, then there is no other eviden
case of it, the court not enquires.

It is said that inadequacy of price will not
be sufficient to induce a Court to set aside a
Contract. But Lord Thurlow says the inadequacy
of price, as such, will not be sufficient to set aside a
Contract, yet, it will furnish evidence of some
other reason, which will be sufficient to authorize
them to do it. E.g. if A. Conveys his farm to B. at
what is worth 10,000 to 7000. In 1070 it furnishes
evidence that B. was either drunk, crazy, so
that the 7000 was procured by duress, and they will
set aside the Contract. I know it is so, that they set
it aside on the ground of hardship, but from what
does the hardship arise? from the inadequacy of the
price—so that in reality, this is the reason, the not the
one if predicted. 2. Pow 176. 1 Pow 29. 1 Knt 17. 1731 62. 3 Knt 1300. 1385. 2 Pow 179. if not here look for inadequacy of the
price & you will find it...
Powers of Chancery.

County of.___ know of no such principle as that of selling aside of a contract, they sometimes declare contracts void but the principle of Equity is justiciable. It says ___ of ___ in selling aside a contract is not supported in ___. I say, for on a fair contract they will not order the money paid to be paid back again. You suppose A gets a bank and makes an unfair contract with B, so much so that it is greatly against him. So, at the time he contracted, under the person with whom he contracted, get him drunk for the purpose of cheating him. But still I can see no reason why the contract should not be considered void or sick aside, even if it was himself the means of his being drunk. For it is an established principle that you shall not take any undue advantage of another situation to get an unfair contrast out of him. The very thing is capable of contracting, as if he were a perfect genius. And I believe if the case were to come up before a court of Chancery they would set aside the contract.

There is one species of fraud of which I have not yet treated, and that is fraud upon ___ persons.

Now it was never apprehended but that a contract can be made into a contract of ___ which operated in fraud but a man was more wild the practice was to go to a ___ by ___ or ___ which uniform it is then inside. But when ___
Deavors of Chancery.

not the contract be considered as void at law? The
practice has of late obtained in Eng. for Ist, of Dns
be refused to carry such contracts into execution.
E.g. D. and Susan. Notes are about to be married.
AND the Father of Susan agrees to settle 10,000 per
year on the provision the Father of D. will settle as
much on the Dow. To this the Father of D. agrees but
there is a secret Covenant entered into between the
father of the Dow, that he (the Dow) will receive only.
The father of the daughter makes the settlement on the
marriage terms to his place. Now this Covenant is held
by D, because it is a fraud upon St. Notes, D
St. the Dow will be compelled to make a settlement
of 10,000 per according to his agreement. On this principle
also, is this case. A was failing in his circumstances, at his Creditor agreed if he would transfer
all his property over to them, they would take it
in full satisfaction of their debt, A gave his note
and it bore him up again. None of the Creditors
required 100 A told, till he would execute a note
of hand for 600; he would not sign. A was
known to the other Creditors entered into the Contract.
A afterwards sued him on the note, A & B. pled
the fraud of the note. A sued declaratory it void, on the
grounds of its being a fraud on the other Creditors.
2 Pors Co. 1 C. 475. 2 Pors 764.

Contracts entered into this year. Part to
victims, will be rescinded in Eng. They go on the prin-
ciple that a contract obtained by fear is subservi-
ently
substantially the same as those obtained by duress. As the case takes a young girl as the fear of losing a rich wife extends to the other children of all the property she had received of her mother's estate. It was set aside as to her in the case of 1 P. 207, 215. 26, 639. 1 Brow 369. 2 E. 204. 36. 157. 264.
3 P. 204, 298.

In examining these cases you will find that is a certain kind of fear which will not be avoided, e.g. A. having been in trade for sometime had acquired a property of considerable value. This Father suggested to him the propriety of his consenting that his (the Father's) property should be settled on the other children. As it out of which entails fear to the father entered into a contract which cut him off from receiving any of the Father's estate, and the father died intestate. He did not fear for this contract which if it had entered into, he as eldest son would have inherited the estate, and he applied to B. for relief from that contract on the ground of its being entered into this fear. But the be refused relief on the ground that this was not such fear as could be considered to be allied to a legal remedy, though it must be.

It is a maxim of Law which applies to all cases that Contracts to sound policy will be treated as void. As when two Englishmen met upon the road of a battle between England and France, it was not to be as sound policy to void such right lawsuits on either
information to the Enemy. To whom a wager was laid as to the day of the Cruise of the Conqueror the Enemy it was considered as void, as it based policy, it also blunting were improperly with the feelings of a third person. But you would not that lots of such stop short in two cases the cases; we were young hands all their expectations, it also in case of marriage, bondage, titles, these are clearly not sound policy but lots of law reform to consider them so; but they will not then as do and in doing so they violate no principles of law. 37 Lib. 131. 2 Term. 346. 2 Atk. 34. 136 Sc. 352.

Lett. 3d. May 3d. 1818.

Courts of law have also assumed the power of receiving, to usurious Contracts. The ground on which they refuse to these Contracts is distinctly from that in all other cases. Now an usurious Contract is void at law of the usury can be proved now if the provided upon the same principles as in Debts, as they do in Common Law, so they would receive this Contract. But they only strike out the usurious part of the Contract it remains a bond to 10. in which is contained 10$ usury. Now a lot of Law would declare this bond void in toto. D no recovery of any part of it to be allowed. But if application is made to the Court for relief to this bond they will only strike out the 10$ usury to order the rest to be paid in the debt double interest. How it is said they do not proceed upon the same principles as a Deb of Debt. True, but as far as they do go, they proceed upon
Powers of Chancery.

the same principles. I further think that this is no
obstruction to their own rule which is that they will
do perfect justice between the parties. It cannot
be said that justice requires the instrument to
be void in toto. Why decide upon the ground that
d it is unconscionable that a man should receive
more than legal interest, but it is not unconsci-
ten that he should receive his just debt in
legal interest? Why will they not accept the Con-
tract so far as it can be said to be capable of
live up to their established principles of doing per-
fect justice between the parties.

But if this is all why is it to do, why is applica-
tion even made to them? why does not the party
take advantage of the usury at Law, when the
whole bond will be set aside he discharged from
the payment of any part of it? I have never seen
the two reasons for applying to Chancery. The first is
(didn't mean all the cases are like) that
the party cannot prove the usury at Law and then
for the bond will not be avoided. But then par-

terior advantage has he in proving the usury, that
application is made to a Court of Chancery. He has this
advantage, that if a Court of Chancery application may
be made to the party's own conscience. In respect

testimony, it cannot be denied but that this Court of

2 Equity material. if the Court will put a party
upon his oath, I compel him to testify. This is prin-
ciple of which this Court are whole ignorant. The

Proviso of Chancery.

In these cases, some restrictions upon this rule of

ought by the parties was testimony by may be

subjected to a penalty, you are not at liberty to

apply to his conscience, e.g. If the case is that

that has been too much interest received you

cannot put the last upon his oath, party by his

confession of the fact, he subject himself to a

penalty. It is true however, that of the penalty

is going to the party, it is not to the public, nor to

the person he may be comprised, the lastly.

Suppose after being put upon his oath, he refuses

to testify, or suppose he refuses to be put under

with at all, or neither, then the bill will be

taken as confessed.

The other reason which has caused me

to apply to a lot of City, rather than to a lot of

get relieved from answering this, the person would

not lay hands of under so great a temptation to do

injustice as he would do under the bond was

decreed entirely void. The case proves the usability

by the supposed. E.g. A executed a bond to 12. for

1000 pounds, it was contrived by agreeing at this he could

prove; but he feared that the bond were void, as it would be if he look advantage.

If it at hand that he would be laid under a temptation not to pay is what was really his just

due. He wishes to get rid of the useless part of the bond, and he chooses rather to make

application to a lot of City who are willing to

Powers of Chancery.

From the above I at the same time thought him to be under no obligation to pay any thing in goods unless he ought to pray. Instances of such injunctions are not very rare, but such cases are to be found in all cases where the order is given in a bill of application to a court. This is common now. 8 Ves. 85, 2 Ves. 393.

There was once a case in Co. Linn. whether an order could apply to a bill of damage in cases of usury or not? The proceeding on which this bill arose was this: certain a Stat. in Court, pulling it in the power of a court or all cases where the defendant was not to come upon the conscience of the defendant and the bill of Saun process exactly as a bill of this. This Stat. also provides that judgment shall be entered for the defendant after inquiring both legal and personal interest. A case of this kind arose. A suit upon a note which contained nothing but interest a part of which was universities. How according to the Stat. the lot were ordered to render judgment for the plaintiff for the amount of the obligation after striking out all the interest, but in this case if they struck out all the interest, they could not render judgment for the plaintiff. As after paying this there would be nothing left but interest to render judgment. This judgment gave his nominal damages. His Cost: the bill was out in strictness entitledrown to include damages but it was necessary to give him the sum that he might recover his costs. Since this it has been well settled that application may be made.
Powers of Chancery.

I will now proceed to notice to you the points in which the construction of these unlawful contracts. This point properly settled, and if application is made to the Court, they will see them as one. But the reason why they proceed to do this has given rise to some consideration. As a rule, before the Court was to decide this to be unlawful by a species of evidence, of a nature as that of the contract itself. But as a rule, proof of its unlawfulness was to be given; and it was held to be sufficient evidence to authorize them to see it arise. It was contended that, by admitting this proof of evidence, it would be in direct violation of the one established by the Court. The manner of it was, that by proof of evidence you could not prove to the Court, the existence of a contract, which was written or unwritten, had established a principle of evidence, which was in direct violation of the one established by the Courts. The manner of it was, that by proof of evidence you could not prove to the Court, the existence of a contract, which was written or unwritten, and on this manner was built the law of principle for which it is known, the Court. But the Court did not construct the manner in which it did not in the cases stand in the way of their proceeding as they did. They considered that by it was only meant that you could not introduce parol testimony to prove this was no consideration in a written or sealed contract, but said you might prove the illegality of
of such contract by parol evidence. Now what is
the ground on which parol testimony is excluded for
proving there was no consideration in a written
legal contract? It is not on the ground of the dan-
ger of its introduction; but it is on the ground
that the law will not suffer him to contradict
that by parol, which upon the solemnity of his
hand writing, on a scale, he has confessed. E.g. the
has entered into a note in these words "for value
received" &c; or he has put his hand to seal to an
obligation, thereby expressly in the one case, and
implicitly in the other, confessing that he has entered
into the contract with a consideration. Now can 
he permit to prove there was no consideration
he would at the same time prove himself a 
liar. On this ground it is that parol testimony
to prove there was no consideration is very pro-
perly excluded. But although the party confesses that there
was a consideration, he will not be allowed to prove
there was none; yet he by no means confesses
that there was no consideration was a legal one; he will therefore be allowed to prove its illegality
by parol. This is on grounds on which lots of this
proceed, and although it was for a long time a source
of contention between the two Courts, yet the Ct. of
W. at length acknowledged the correctness of the
rule of construction, which lots of Ct. gave to the legal
maxim as respects parol testimony and adopted
the same in their own Courts, so that now the law
y all.
Proces of Chancery.

If a contract may be proved to have been made in the course of equity, you may then inquire what is the necessity of applying to a court of equity in any case? There is no necessity for it, except in case of this kind. It may have entered into a contract with B, and the consideration of it be illegal. B refuses to sue, but holds the contract, and will not deliver evidence of the illegality to B, or in any other case. Can it be enforced by the court? If it cannot, it is of no use. Now in such Case, it may apply to C. C must always receive him. 

[De suppose the obligor confesses a consideration in the contract. The court will judge whether it is legal or not.]

The rule then is now established both in law and equity, that where a contract is intended to do an unlawful act, or where there is no lawful consideration, parole testimony may be given to prove it. The only way to prove there was no consideration in such contract. Now it is said that there is no reconciling all the cases, that there have been cases where it was not enforced in some. In such consideration is not unlawful. But a case has not to be found on the books where the contract was enforced, if the consideration of it is illegal, when they have enforced it. There may be cases where the unlawful act has been performed, on concluding
Powers of Chancery.

Conservation. A contract may be enforced into which a contract has been entered, by a contract, such as a contract to pay by a consideration, that he could do an unlawful act, the bond is utterly void both in law and equity. But if there be none that unlawful act it engages to pay 1000, the bond has been in such case enforced in cases and on examining the cases you will find this is the distinction, e.g., formerly all bonds given to keep milestones were void, if given after the separation of the parties they were good, a bond according to the character of the bond, of it was given as promissory, whether it was good at all it might be enforced if given to a contract with that, it was void, void. Some lots of chy, always maintained that there was no reason for saying the bond was void or either case, and in either case they would enforce performance, it was a contract to pay by consideration of past services. But if it has a bond given to consideration of future performance, it would not have enforced. Courts of land have now adopted the same principle, to Common Law, that it, it's a woman are based upon the same footing, and both are allowed a recovery of the bond, at law, i.e., if given for past services. The principle is adopted in all other like cases. 5 in this ground lots 7 chy have always decided. — 2 Cr 53. 3. 7. 53. 32.
Powers of Chancery.

I have observed that the law does not enforce agreements which are merely voluntary, unless they are under consideration. There is no exception to this rule in case of marriage settlements or arrangements. Settlements made before marriage are considered as voluntary in that sense; the meaning of the term marriage is as good as cash. But settlements made after marriage are voluntary. How are these settlements to be made? The husband cannot convey directly to the wife; he must first convey to A, T, or trust for the wife, and then convey to the wife herself. Suppose that A contracts with B, C, or B, and C, to convey to him black acre in trust for Susan, his wife. Now why will complete specific performance of the contract not however to the prejudice of creditors, for in such case the manner is, so must must be honest before he is beneficent. The grounds on which lots of why proceed is such case is that it is the duty of the Husband in the first place to make a disposition of his property so as to support the wife. Other considerations frequently come in aid of this, as that the husband received a large property by the wife, or the wife has had a fortune of personal property disbarred to him since marriage, or the husband has never made a settlement upon her. On these grounds it is proper justice that he should be compelled to perform his contract, that is, if by doing so, the rights of creditors will not be violated.
Powers of Chancery.

You will find some cases where lots of
they have refused their aid, as e.g. where the con-
tract has been of many years standing, without any
demand or payment. In the meantime, any agree-
ment between the Parties postponing the day of
performance, or such case they will refuse to inter-
vene on the presumption that it has been acted be-
havior the parties. There is no precise rule which can
be laid down upon this subject. They must use their
discretion, it will afford relief or deny it according,
to the nature & circumstances of the particular case.

There is a species of Contract, which they will
enforce, tho' it has been said, that they are specious
by the Stat. of Frauds 6. Perjuries and that they,
in decaying performance have gone precisely Contra-
to the principles established in, C. of Law. That Cts.
of Law were drawn in coming into the least possi-
bly they think is no doubt, but I do not believe
then it is now an idea of difference between the
two Courts in this particular. Those Contracts one
of the Stat. 6. a lot of Law, we do in this, and thus
in which they will decree a Specific performance,
in action may be maintained at Law. But if
they have nothing to do but with one branch of the
Stat. of Frauds 6. perjuries, which is, that Contracts for
the sale of a house, tenements or hereditaments, or any other
act of or concerning them must be in writing, by they
cannot be enforced. Now there are lots of my notes
and...
Powers of Chancery.

Many Contracts are valid or invalid which are not in writing, yet void, or doing this, they are not void unless one of the parties is aware that this provision will be a fraud upon him. A Boair will never be void, which is to be signed in a sealed writing, or in a seal. In case of breach of contract, what can be done? They can then, if the contract is void, then they have nothing more in the case. If of Contracts by parol to convey Black corp. to B. They will not enforce performance on them, and give damages for a breach of the contract. What can be done? They can then, if the contract with B. A has signed an advantage from the contract, then attempts to set it aside by pleading the Statute of Frauds. The statute of Frauds. Suppose A agrees to lease Black corp. to B. for 10 years. If the contract is that B is to build upon the land a house and 40 acres of land, water, and other improvements, the statute of Frauds is made out. This B goes upon the land, performs his part of the contract according to agreement. Then C requests a lease of A and B refuses, he applies to court for specific performance of the contract. At the same time, he applies to court for specific performance of the contract. But B may be compelling to give a lease. On the ground that A is not performing by his verbal contract, fraudulent intentions. To procure an advantage to himself, they say, you may make use of the statute to shield your fraud, but it will prevent your using it as an offensive weapon. But B will not having this contract into execution, because it is a good contract, but because...
Powers of Chancery

...they not compel performances, it would prejudice the result. The rule then is this: if a party by not performing a past agreement, could procure a greater damage upon the other party than the agreed sum of settlement of the agreement, such part, or action by such agreement and loss of profit. This is precisely the case in the example before given of the lease. Self on a past agreement for the purchase of 2 acres, the vendor pays the consideration money, or part of it, the vendor is culpable in a Cl. of Ch. if by a conveyance the land is transferred, that part is fund or ass. takes it out of the statute. Now in such case there is no violation of any principle established by lots of land, for they are in all such cases there under subject for an action to be taken to give damages for the breach of contract.

[Unreadable text]

[Mr. Fort] says that have been so far in one case as to declare a performance where there was no parties' proof of the terms of the verbal contract. Now as a general rule this want of certainty in precision in a contract, has been considered as an objection to a specific performance of it. Certainty is required, see p. 247, 2 P. & C. 319, 2 B. & C. 48, 206, 2 Rob'ts 137, 129, 138. Memberson 433, 435, 439, 435, 439, 475, 475, 475, 475, 475, 475, 475.

[Unreadable text]
Chancery also gives the power of relieving by Penalties.

The law on the subject of penalties was originally that if men entered into contracts to do or refrain from doing, say, in a penalty of the on the promise of the contract, there was no remedy at law, on the ground that these were not at the liberty to make or bring money to alter the nature of a contract. Penalties were not only allowed to contract for the payment of money but also to contracts to do a collateral act, as to keep a house clean, be of a contract. Any courts of equity took up the subject and provided that contracts were not void policy if they were otherwise the they did not operate upon them any further than it was to prevent justice between the parties. They would then consider what the penalty was to the real damage sustained by the breach of the contract. For this breach of payment. Therefore if A enters into a contract with B for a penalty of 1000 for B deliver 100 Bushels of wheat, B would enquire the value of wheat at the time the contract was to be performed. They would then reduce the contract to this amount and for it decree payment. Formerly at law the whole penalty would be recovered. The manner in which B or C, took upon themselves the liberty to interpose in cases of penalties was this. In the reign of Queen Elizabeth, Sir Thomas More, who was then the Chancellor, called all the judges of the C. E. Courts together and requested them to render judgment for the exact debt or interest when
Powers of Chancery.

By contract with a penalty was said before, that they had so long been in the habit of giving damages to the whole amount of the penalty, that they refused to comply with the request. The Chancellor then took an oath, the not in the habit of swearing that if they would not give a remedy he would and renounce application he would chance the penalty so as to do exact justice between the parties.

A Stat. was afterwards made giving 60s. of Law power to chance penalties of certain descriptions, so that in those cases was no necessity to refer to a C. of Ch. for relief, yet many kinds of penalties were left out of the Stat. when there was a case. of this latter kinds occurred application to Ch. would always ensure relief so far as justice required. This Stat. I believe has been copies in every State in the United States. Those cases included in the Statute which gave 60s. of Law power to Chancery were, first, when a bond was entered into for the payment of a certain sum of money, with a penalty annexed and second, when a man enters into a Covenant to do a certain act, it also gave a bond with a penalty to induce the performance of the Covenant. In either of these cases, 60s. of Law were authorized to chance the penalty down to the exact damage, the party had sustained by the non-performance of the contract. The principle has however been extended, in these cases of penalties have been decided to come within the strictness of the act, if in the letter of the Statute as e.g., 60s. of Law often shown
Powers of Chancery.

...
Powers of Chancery.

In order to pay 25s. process, this is not a penalty. It is the damage caused between the parties, that it was occasion to the party of that meadow is ploughed, and a contract would be enforced. But suppose the contract was, that if the lessor ploughed up those 5 acres he should pay the lessor 100l. per acre. This is a penalty of the lot will ensure it ascertain the actual damage sustained by the ploughing of the 5 acres of meadow, and cause the contract to be null. It plainly appears that this 100l. is not extended by the parties to be the damage, but is entirely into only to secure a performance of the contract. So if it fails a horse to be 5 and 23 agrees that if he does not return the horse by the first of January, he will pay it 5s. besides the hire; this is the damage of the omission of a horse; at any time, specified by the parties. They will not set it aside, but if it had been to pay 100l. on failure to return him (as above) it must have been considered a penalty, and should have been the actual damage sustained. Again, suppose a contract to be another gallow of Brandy, at 10l. 10s., with a penalty of 25, 000l. Now if it is perfectly plain that he is a penalty to secure that he will not sell it, but suppose he agrees to three horses for every gallon, this is evidently a forfeit of damages, and to be recovered. It may in some cases be difficult to ascertain whether it is a penalty, or for the damages, but by comparing the terms with the nature of the contract you can generally determine. 2 Port C 262, 2 Bov 316, 289, 3 Mcd 526, 9 Mod 112.
Powers of Chancery.

Now in cases of minor contracts to do a thing over which the law has cognizance of to that contract contains a penalty, the Courts allow the party to bring an action at Law for the penalty to forfeit his title or to recover back a specific performance. But if he applies to Equity, he must prove the penalty by e.g. A contract to convey Black race to B, on paying $20,000, now he may sue at Law for the penalty, this will be deemed down to the next damage sustained to by the breach of the contract, or he may waive the penalty and apply to Equity for a specific performance.

There is frequently a covenant entitling to pay money by installments, with a penalty annexed that if on the installments are not regularly paid, the penalty shall be forfeited. e.g. A contract to pay 100% by the first of June, also to pay 100% by the first of July, if 100% by the first of August, to this is attached a penalty of 100% to be paid on the failure of either of the payments according to the terms of the contract. Suppose he fails to pay the first installment, what is the course to be pursued? Why must the penalty which will be claimed down to 100% be paid not at once but in the Costs. Suppose then he fails to pay the second installment how it is to get a remedy, for in the first installment was detainer on the files of the Court? Why he must declare on the payment, if the penalty stands as security for the payment, I will again be chancellor
Powers of Chancery.

To the amount of the installment at that time due together with the legal costs, $50 or twice the rate.

Of Sec. 19, 214, 8 Mose. 51, 2 Rev. 52, 1276, 442, 1 Bere 344.

If a bond has been given for the performance of the covenants, the party going to Chancery to recover the penalty, the manner in which the court in two points is this: they send the suit in the form of an issue to the court. If the court is to be tried by a jury, as after the damage occasioned by the breach, to this the suit of Chancery will answer. E.g., in the case of a covenant not to sell, where, with a penalty of $500, the covenantor, if the covenantor goes to Chancery to recover the penalty, they can send the suit as to how much the covenantor has lost, i.e., the damage the covenantor has sustained thereby, if this the suit of Chancery will order to be paid to him. It amounts to no purpose for if the covenantor has lost but one dollar and the damage to the covenantee not 10 cents, yet he will recover his costs and so he may proceed as often as a breach happens. 2 Corn. 119.

I have already a number of times hinted at a subject which I write now consider at length, it is that of Mortgages.

The ground on which the line of this grant which is here as in other cases, viz., it is a sound policy. But is a mortgage a sound policy? Not, but the effect of it are, on mortgage his face, $5,000 for 10 years which would 10008, and if the money is not paid by the time specified in the deed, it is at Cred gone forever.
Powers of Chancery.

Courts of Chancery consider it as political policy, since they are bound to uphold the Constitution. The doctrine of the courts is that if the mortgagor, by his or her act, does not discharge the contract or otherwise does not pay the mortgagee, the court will interfere and compel the payment of the money, together with the legal interest and costs of suit. The ground is that the mortgagor decides the contract at an end so soon as the mortgagor is paid. Supposing the mortgagor has been paid, who has the legal title? Why the mortgagor? But if it is decided the mortgagee is a trustee for the mortgagee, the court will compel the mortgagee to perform the trust by reconveying to the mortgagor. It frequently happens that the condition cannot be performed by the mortgagor, but if the money is afterward paid together with the interest, which is all that the mortgagee is in justice entitled to, and it is a rule that if the person is a mere trustee, either as a mere person or in a contract, having no equitable or beneficial title, why will compel as conveyance. Sometimes a man applies to the court to redeem his land before he has paid the money. This is not allowed of, because he knows what he has got to pay; but many times he cannot know, for the mortgagee has been in possession, he has received all the rents and profits for many years, which is all to be deducted. Now it is important that the amount due will be, and application to the court.
Revers of Chancery.

because if they will settle it, it makes such decrees
thereon as justice to the rights of the parties may
require. A mortgage is therefore altogether and
entirely the mortgagor's. This however is not
known to a lot of law. It is a creation of Chy.

Thus the same principle it is that when a
man gives a bill for compound interest to assign
chance will relieve it in that is they will repay the
compound interest Item in judgment for the bill of
legal interest. There is no duty on a corporation
in the words but a principle of policy stops it and
indus the lot of Chy to relieve void.

You recall I mentioned to you that Chy
would decree specific performance of a contract
on the transfer of stock. This has always been the
case. But of late I have seen a few cases in
which case, thereby indicating that it was ques-
tionable. I am not sure whether it has been decided
so it is said that it has been decided in 1619,
that a lot of Chy will not execute such contracts
specifically. 0204, § 15.

Under this proposition that a Chy
has power to compel a trustee to do his duty, I
shall notice several things. E.g., suppose a man
should devise A to B as a trustee for the payment
of his debts, legacies &c., and he cancels this and
but does not perform it. Now a Chy will
compel him to sell the land, by laying him under
a penalty. By the Tag § 12 of a man dies intestate
Pecunia

This real property goes to his heir. This is presented to the administrator in the payment of his debts.

Now suppose it deceives black sheep and rushes to pay his debts, thereby meaning to clear his personal property, and doing this. It does not sell the 50. 000 in this case, after a penalty to 50. 000 and he makes sale of the land for more than this amount of debts, be more 30. 000 the security go? It will go to the heir, i.e. if it is a naked trust and in the above case, it goes to the same person or persons to whom it would have gone provided this 50. 000 has been paid.

Bro. Ch. 542. 119. 567. 216. 574. 350. 257. 159. 154.

What if the trustee refuses to accept of the Trust, if the devise void? No, but I am told of a point done other person to perform of his state.

I will now lay down to you a very important rule in this. The not so the part of the set. It is this. Where a person has raised by the administration of a lot of debt to pay debts, these debts may not to be paid pari passu. That is, there is to be no distinction, no preference between different kinds of contracts. We know that there is a gradation of debts, by the English laws. Bonds are the highest instruments and of a higher nature, to be paid before simple contract debts. But a lot of this knows nothing of any such rule. If you must go to this, as in case of a refusal on the part of a trustee, this they are always considered as equitable assets. E.g. An instance
Proced of Chancery.

The land is sold, now is it to make my prejudice in the debt? but this is not the case supposed. It is, while the trustee refuses to pay, why have to compel him, in such case it is universally equitable, by which I mean the debts are all paid pari passu. From this principle of duty, we arrive to our doctrine of disallowing a preference in the payment of debts.

Again, there is P. who has mortgaged his farm, worth £10,000 to L. for £1000, and it is not paid. What estate has he? He has no estate at all in Chancery he has an Equity of Redemption. But before he redeem the estate, he does however


...to obtain the proceeds to pay their debts. There is no possible way at law, for such an estate is not thus worth one cent's worth. If they ever got any thing, it must be obtained by going into Chancery and petitioning the Ct. that they compel Peter to redeem the land. If the petition is granted they have, being in a bill, for this purpose, and if Peter refuses to redeem, the land is then sold and an order from the Ct. of Chancery at public venue. Now this is the award to be divided among the creditors according to the rules while the several petitioners hold at land &c. &c. The Ct. of Chancery says you were obliged to come to us to obtain a relief, you have nothing to the doctrine of a preference of debts. Therefore, it shall be settled pari passu. The specialties are to justify no one, and this is to prefer one than the other by Contract &c. &c.
Powers of Chancery.

Market of this also assume the Power of altering the rights, e.g. A.B. dies and leaves real and personal property. Now according to the English Law, the specially contracts are to be paid first. With suppose the amount of personal property amounts to 50000$ dollars. If the specially debts exhaust this fund in satisfying themselves, so that there is no personal property remaining to satisfy the simple contracts. But by the Law the Real Estates is not liable for the payment of simple contracts. Now what is to done? Why if application is made to the court they will decree that the heir shall pay these debts out of the Real Estates. You say they, you were liable to pay the specially contracts, but these creditors chose to collect their debts out of the executor, then for you shall pay the debts of the simple contract creditors. For if the specially contracts had been paid out of the Real Estates as might have been done, then the personal property would have remained to satisfy the simple contracts.

[Signature]
[Date: May 10th, 1813]

I was in the close of my last Lecture observing to you something of the doctrine concerning a peculiar feature in City of Chancellors the after as the subject is important. I desire repeat that I have to for the whole will enable me to go more fully into that.

By the Laws of Eng. there are two funds for the payment of debts—one growing out of the real estate, the other out of the personal property. The personal property is liable to pay all debts whether due by specially
by Simple Contract. In this purpose the personal property must be in the first instance applied to, for the payment of Debts. But the Real property is not a fund out of which the payment of Simple Contracts can by law be taken. It is liable only for those debts which are evidenced by Specialty or deeds executed expressly for payment. More often happens that a man dies possessed of a large Real Estate, but little personal property; yet if the bond creditors would go upon the Real Estate to collect the payment of their Debts from that fund, this might be sufficient personal property to satisfy the Simple Contract Creditors. But the bond creditor chooses rather to collect his debts from the personal property. Aet. wise say therefore that what ever debt the Specialty Contract Creditors took out of the personal property you, the heir, shall pay to the same amount out of the Real estate, to satisfy the Simple Contract Creditors. You shall pay as much as you have; and you were bound to pay. and no more. The heir may still have a large property life, yet the Simple Contract Creditors lose part of their debt, but 20s. of Chy are sufficient from giving them full satisfaction, because it is a principle, which is that the Real estate shall not be liable for the payment of Simple Contracts; thus, the Real estate is in abatement, or the Real estate, is a 20s. of Chy. And the case is one in which great injustice is done to the Creditors of the deceased, 20s. of Real estate to the amount of 50,000$ and has no
personal property, nor specially contracted to be paid by simple contract 10,000$ nor in such a case without remedy either to law or equity. The heir would have all the estate & the like clear debts of the estate. But suppose his real estate is worth 50,000$, his personal property 10,000$, his debts due by specially contract to the amount of 15,000$, his simple contract debts to the amount of 25,000$, and the specially creditors took their due out of the personal property. Which would the heir do? The principle before explained will compel the heir to pay out of the real estate how much? Why just as much as the specially creditors have been paid out of the personal property. This is the above case, is 10,000$. Now if the simple creditors take their due out of the personal property, the heir would be left with an enormous fortune of 40,000$. This is very unjust. I am not the less of the above restrained by the positive rules of the C.S. I have no doubt that they would answer to the above.

Now the heir is under the English law always entitled to the real estate, provided there is personal property sufficient to pay all the debts. E.g. Suppose A. died leaving personal property sufficient to satisfy all his creditors, but B. having a bond of the executor for 5,000$ collected the same out of the heir. Now what is the heir to do? In my opinion he is not obliged to pay this bond, i.e. the personal property is first liable. The same goes to the tract of 15,000$. payment of as much as
the hypothesised person, and if the renewable estate is revoked, the will compels him. They construe the trust as a trustee to the heir for that amount, if they will compel him to perform the trust.

By Trusts, courts of Chancery will also execute all trusts, and their object is to execute the trust precisely according to the intention of the person creating it. Now an estate may be given that is in trust for B. A has the legal title, and B, all the beneficent interest. Now the Trust is what was the intention of A, who created this trust. Did he intend that the estate should be conveyed to B at some future period, or did he intend that A should always hold the legal title to B, receive the rents & profits of the land? E.g. Suppose A dies & creates a trust in T. for his son Peter. T. is then a child of 10 yrs. of age. T. is intended by the Father to be the Guardian of the Trust. Now what was the intention of the father why he was that when Peter came of age or if he was sick before he was 21. That T. should convey the legal title to the estate, give trust, & T. will compel him to do it. The intention is generally conceived to be, that the trustee is to convey the land.

But this is not always the case. E.g. Suppose Peter is a dissipated young man, & this is known to the father. But he wishing to provide for his property in trust for him to c. A. Now when he comes of age, will a lot of Chancery Trust. T. to convey the legal title to Peter? No. For this will evidently defeat the very object.
Suppose the estate of the father, which was to pass to the son in the hands of a faithful trustee, which would at the same time serve to supply the necessities of the son, might also to restrain him in his dissipated career.

Suppose, again, Peter marries Jane, has a child, and this child may go into trade and confide the business to the trustee to convey the legal title, for the reasons before stated in the last case entirely ceases. The dispute of father & child would be nothing more reasonable than to suppose it was the intention of the estate of Peter that the trust estate should be conveyed to the heirs of his son, whom he thought he left. You will find all these cases to stand on their own particular circumstances and for the determination of the intention of the parties to the trust, you will see the whole lies down in the fact that a conveyance cannot make a trust estate, or that a conveyance to the person creating it was that it should be conveyed.

Here is no such thing as defeating the conveyance of the title, except the trustee sells the land to a bona fide purchaser, and this will not always be done. You of the bona fide purchaser was really ignorant that the vendor held the estate as trustee for another, yet if he had the means of knowing the fact he will not hide it, e.g. Suppose the estate is situated in Dutch Guinea, the trustee & Cestyng the trust estate are the same, anyone, or a stranger comes from the point of purchase to sell the 1/3d of the trust estate for a bona fide consideration
Powers of Chancery.

will he find the deed? yes for here he was a stranger
that not the means of knowing the situation of the estate.
But suppose the bona fide purchaser also believed
that facts: it was a matter of public knowledge that
that the estate was assigned for another, but
it can be proved he was ignorant of it still he will
not hold the land, for the means of information
were sufficient to inform him of the fact. Suppose the
purchaser (who is a stranger) before he purchases, asks
for his title, and asks that he may satisfy himself
whether his title is good or not. If he declines to
refuse, and after this he buys, he will not hold the
land by the estate, for the conveyances, for the conveyances
might have as much as a suspicion on the purchaser
that all was not correct, or that if title was the not
the real owner, he ought not to purchase in such case.

Now in Conn. & in many other States in F. S. it is
questionable whether the existing title can
be inferred, for there is certain in this State,
& many others compelling the record of all deeds, that
is the case such that a man is guilty of negligence
who examines the record to ascertain whether the
title has the legal title or not. Hence that it is said
that this constructive evidence, in case of
mortgages, is not sufficient: but thron it is not expect
so make records except in poor Counties. I
think it is very different when it is made the duty
for persons to register the deeds by the laws of the State, which
is of considerable extent all over the former want - the
Powers of Chancery.

The law has received a construction by the Supreme Ct. in this State, that it is evidence of negligence that he will not hold to the custody and trust. Upon examining the records of this Court, he finds the land has been conveyed from A to B, and from B to C, from C to D, but appears the title is now in B, and he goes to D. Through a bond for consideration for it, but it turns out that B has conveyed the land to E, but that B had no rights to give his bond. In other words, it was the title, but it was by B's negligence that he had not the bond.

This case is called *Impaired Trusts*, arising out of the circumstances of the particular cases. If they were enforced, these cases from analogy to the case of constructive renunciation of wills they do not consist in implicit trusts as arising within the operation of the statutes of Frauds and Subterfuges. There has occasion to mention to you one case of implicit trusts where B is the assignee over D that was mortgaged. Again, suppose it furnishes B with $10,000 to go into the State of the goods that to purchase a farm for him (A). And B goes upon this capital to purchase the land, but instead of taking the deed to it, he takes it to himself. There is no point in his doing so, it is done perhaps because it is more convenient. Now he is a trustee for A. But the power is in A, as it is convenient to him to perform the trust, by convey
Powers of Chancery.

conveying the land over to him? Does the power of property, as such, mean that his business was to purchase the land for A. and that A. supplied him with money from the proceeds of the land to pay the costs of his business? Compel him to account for the trust. Again suppose A. has given B. goods. If B. refuses to make a sale of it, it gives him a power of selling it to a third party. Does this give B. a right to the money, but refuses to pay it over on account of the State of Florida, injured by the act, and B. cannot pay it, from the facts it appears that you (B.) have a trustee for A., you shall therefore inquire into the trust. A.B.B. at law, the action of Account would lie for the recovery of the money. Where this action is unusual. In equity, it has given one of fashion. It has been generally practised in the same in the place. 2 Bow 23, 12 east 356, 23 ones 17, 288. Forb. 66. 1 Ch. 5. 386. 2: 16: 158. Amb. 409.

Ch. however cannot compel an execution of a fraudulent trust, any more than the equity. E.g. A. conveys his estate over to B. on trust to A. and the agreement was that A. is to receive the same at some future time. As afterwards pays off all his debts, then a grant to B. to recover the same, but B. refuses to allow the power of compelling him? No. This is on the ground of policy to other men. From conveying their property beyond the reach of creditors. He is not allowed to make such a contract as the statute. E.g. if A. who are not liable to be ejected of the land.
Powers of Chancery.

Chancery likewise exercises a power of compel-
ing persons to discover testimony. There be-
fore mentioned to you a rule in Chancery which was en-
acted by Co. of Saul, which is that if applying to the con-
sciousness of the party to discover the truth of the Case. But it
may be that you do not wish to go to the trouble of
you may try a distinct bill to commit a person
to come into the. To discover such testimony as he is
acquainted with. Having proceeded the testimony
it may be used in a Ct. of Eq.

It often happens that after you have put in
your bill for the discovery of testimony the ab. of the
mandamus will grant a specific relief, but the originally they
had agreement of the Case. The principle which
they do this is, that having got into possession of the
cause by this bill being tried before them, they will
also proceed to be just to between the parties. But
this has been a subject of much profession to me
for I find in other cases when the bill for a discovery
of testimony has been filed that they would not grant
relief. And what is the line of distinction I now enter
as above, the I have made to the subject of much
usefulness. Unable to satisfy myself, I cannot satisfy
your. As I give you the naked fact, I have no doubt
but there is a line which is known to themselves, that is
I have a line I believe Co. 262 reads to the best. In
Westminster Hall, I would know the measuring.
Powers of Chancery.

This is a mode of preserving testimony over what lies. If they have refused to produce it to Courts of Law. It is they. They were able Commissioners to take Depositions to be used hereafter, and these are in perpetuity memorized. Courts of Law, known by a thing of this kind. Which justly gives rise to an observance by an eminent jurist, that the Code is not in all respects perfect. This practice is often of great use for those witnesses or whom a party may rely to obtain justice may be the dangerously sick. If they have always been the powers of issuing such commission. It was formerly said that the person petitioning for this commission must state in his petition that there is some extraordinary reason, such as extreme old age, dangerous sickness, for his applying for the issuing of such commission, else the Code was not authorized to grant it. But there is in reality no necessity for it. For the Code intends to not rich man, he may be there after, and the Code is particular cause of alms and all and mortal. It is properly proper to reduce this testimony by writing. So if the person is going to sea, or going a journey or his deposition may be taken. When the Commissioners are by the performance of their duty, they are to certify the adverse party to attend of possibility. This cannot always be done, for as in case of dangerous illness, the adverse party lives at a distance. Courts of Law also exercise another power of granting specific relief, all the subject before them.
Processes of Chancery.

not connected with any idea of real property. This is a power to compel a person to deliver up an instrument. E.g. A gives a bond to B. and if A pays the amount there and it is not delivered up, A is required to deliver up the bond. They consider the property of the bond now rests in the obligee.

So if it pays the amount of an Execution Writ, which is not endorsed on the Writ, but he takes a receipt for the same from the officer, it by some means the original Writ is procured the property of it, they will compel him to give it up. So if the money was endorsed on the Writ, they will do the same, for the endorsement is liable to misuse and is proper that often it has been satisfied it should be returned to the proper officer. So in case of a mortgage which has been paid. Now when the mortgagee gets back his deed, his title is as good as new, and it is to be recorded in some other States, where the deed is to be recorded. In such cases as the mortgage deed was recorded, it is necessary the mortgagee convey the title to the mortgagee, whenever the money is paid in the case. They will compel the mortgagee to return the deed to the other to convey the title. 

In the case of lost Instruments.

The time has been (that without a few years) when no one supposed you could recover on an instrument at law, which was lost, and the only remedy in such case was to plead to be at large. But if the facts of law have sustained a claim on instruments so
Pieces of Chancery.

they are lost. The reason why C. C. J. B. cannot rely justly to sustain an action on an instrument that was lost was that they thought the proof must either strictly to the points of the declaration - when it was stated (as in action on an ass with that the plaintiff the same other of the plaintiff as to the same with perfect aid if he could not produce it he was to justify. But the whole difficulty in this respect is done away for they have admitted a declaration of a different form stating that the deed is lost by mere accident instead of pledging it, with perfect aid. Suppose the plaintiff that he has made diligent search for it and unable to find it, but does not state it is lost, are those to maintain the action? I think not. they would presume the deed had some endorsement, express or implied, and there was some other reason inducing the plaintiff not to produce it. C.C.B. (1)

however might give relief, because they can apply to the Court (2) of the registry. J 3 Sm. 7. Prov. 39. 39. 13. 1 Pet. 3. 16. 3 8. 168. 3 8. 168.

Again, Courts of Equity decree partitions

between joint tenants. tenants in common or tenants in

undivided interests of this kind is usually done by

what is the principle on which lots of this character in

jurisdiction over Causes of this kind. Cannot you apply

to a lot of land a yet a partition? Yes. Well perhaps it is because they agree to any at all the fac-

ts of Land gain a specified reason. The ground in

whilst they it first place cannot interpose at all. I sup-

pose was that is to. In C. C. D. joint tenants in Common.
and the title deeds are in the possession of the defendant. The answer to
such a partition \\*\\* as you go to law to contest them. This is no record of the title deeds, if the defendant can't produce them. If you can get any process on the basis
of the content of the deeds you may, but it is a principle of the C.D. that when the opposite party has possession of the deeds it will not produce them, pure evidence of their content may be admitted. But by the supposition there is no pure evidence, but this Act does
wield defeat the proposition for they have a power to compel him to bring them up. Now this apply to C.D. and they will compel it, to produce y deeds under a forfeiture of a penalty of $500 for not. I suppose this was the manner in which C.D. will in the first place got possession of such cause, the help for con once obtained they have ever since kept it.

But in C.D. in other States when the deeds are recorded, C.D. of C.D. have no cognizance over
a case of this kind. Courts of Law afford distinctive
by, and application is easily made to the record in
the case, the C.D. refuses to produce the title deeds.

I have before observed that C.D. of C.D. would
seduce MISTAKES in deeds and other Instrument.
This is when the drawer draws the Instrument differ-
ently from the intention of the Parties, and evidence
may be admitted to prove the point, contract, and they
will alter the deed if so that it will accord with it.
There is one thing to be noticed however, if the same
procedure is used of such words as the Parties direct, do
Powers of Chancery.

Sec. 5th May 17th 1890.

There is a dispute over what the title refers to whether an essential property as essential to this or allowing a right of separate property for Husband. The law states nothing on this. By and by the marriage took place and husband as entire who carried the property of the property over his. He has an essential living property as his. And if the property be different things take place. Herein the same of this may worsen the situation. A protection of this separate property, the Husband has not the right. It can never become his even if he is the other's maiden right of Wife. Husband was not to. In fact the Wife has no protection or control over her separate property as the owner of property or husband and all of the Husband's interests in the right of the estate in this separate she has a right to him in her. It is true if she makes use of the property to support the support of the Family, she can use the revenue of it from the husband. But if she leads the Husband away with her separate to the property to possess as income as the creditors except that she is husband, etc. the creditors are pay-just - this separate property is sometimes given to it Wife entirely. Nor lands to Trustees for hire. The reason makes no difference for why were either their protection in the case. Rest. Ch. 275. 3. Penn. 939. 947. 164. 92.

82.
Powers of Chancery.

That principle did by prudent this separate property in the courts of the common estate.

A first came to offer many. I suppose curious

The husband could have the property left to

Law so the wife into by having the property very in all trusts contract. allow the husband to give the

Land but to perform. I only arriving to the court of

The ascertainment of the husband. afterwards when the

Property can a be given to the wife in the three

And go. I present the best. The necessary,

The husband as trustee in her name. Therefore when any

One invades the right of the wife must respect the

Separate property. The court to enter as entitled to

his in the name of his husband only the husband

involves his rights. They write allow her to bring a

bill in his own name. The property must begin

in her as separate property. the other precise was

in not necessary. anything other than the idea

of the three words all as possible.

Agreement. Contracts entered into between

Husband, wife before marriage, are in common

easy managed by the marriage, e.g. if I enter

into a contract with Jones. Whatever the marriage

for S. This is in reviewing cases exchanged from it. But of

the contract was entered into a continuation of mar

riage, this woman in court who made the contract,

e.g. if I. S. before marriage. The correspondence bring,

engaged into a bond to Joseph. While it released today

10,000 at his death. the time is ripe or a day in collection.
Powers of Chancery.

...
Powers of Chancery.

but the contract is binding to him.

Now a husband cannot convey the property
is a principle of the law, on what grounds of the principle
I established this? Why it is, the first place said that the
husband and wife are both one, therefore if he executes
in deed to her, it is the same as conveying it to himself.
But in reality, than it is a fallacy at any reasoning.
for if the principles be established that husband and wife
are one, the same person, why is not the husband
of the benefactor to be considered as a conveyance to
him? The conveyance then to the first person to the
trustee, or the trustee to him is nothing in an honest
a sense; but the contract principle is still settled and other.
This is however all done away by a Statute which
acts that if the conveyance is made to one person
of another the sale of the land by the person of the Statute
rests on the case made and therefore the sale rests not
a moment on the trustee. By this Statute, there is a single
will enter paid properly from the husband to the wife. This
is called the Statute of Uses, is 

There are certain contracts which the Statute
will receive as, which cannot be avoided by the parties
for there are others which can be avoided. As such the
will not interfere. The distinction is this. Upon
those resting without Contract, which is entirely void as if
it is to the land of the land, that contract can never
be enforced by the parties. If the obligation is to a
mode of binding upon parties, as if the contract is


Powers of Chancery.

such an one as would a great a fine as 3. Penalties it can never be a Errone. But in those Cases when a contract is entered by two, the obtaining being fully aware of the rights of parties, it requires the same to be bound by it. Viz. 7th 3rd 35. 75. 3d mo 2d.

The Lapse of Time. This is when a man has been disobeyed for performing his Contract for a long time afterwords willing to perform it. Suppose e.g. a man is to pay a sum of Money by a certain day, but his Debtor, which has been mortgaged, is a foreclosure and after it sold to your journey, or on the road to pay the money to accordingly breaks his trip, or consequences of which the time runs up to him. Now a suit of Chancery relates to this Lapse of Time.

And the same known to relieve when there was even some degree of negligence. As where a man had a large sum of money to pay as a Foreclosure of mortgage, and he did sit about Colleting it ten or twelve before the expiration of the time. And in all probability this time would have been sufficient provided no accident has happened. He was later decided as not going right of money at the time expired, and Chancery relieves to the Supreme.

So in another case when the mortgagee did not get the money, and the estate was worth nothing more than the amount for which it was mortgaged, they relieves for it - this was called joining the poor's cause, i.e. giving the mortgagee in this case a pay.
Peers of Chancery.

Say there is a case where a special application was made to the Court, and the opinion the prosecution again, but they have been under a rule of the that the Court and after again. The House to apply the statute things found it again. They were to be careful because in doing this to see that the mortgage be in the Pains. For the other to this in foreclosure

of Bills of Peace. They have also taken cog
regard of cases where the controversy was so intense
that it could not be settled at first without a multi-
plity of suits. In cases of this kind, they have taken
plital up in one bill, settled it all at once. This is
called a Bill of Peace. How do they do this—this is
the law, for a great number of cases. The ground on which
this proceeds is to save the parties cost. The whole Pains
here may be settled as much to the advantage of parties
it is not permitted, as at Rome where perhaps a single
case must be lost. In Ch. 26, 1702, 25, 326, 330, 139, 25, 217.

Of the assignment of Instruments. A C.D. Bonds
are all securities for money, except mercantile instru-
ments, have not a negotiable and yet this would preclude
the assignment of the law. If I have a bill to T. and
he assigns the same over to Z. Now the bond not being
negotiable, must be signed in the name of Bills. Suppose
the in the said certificate it is about to order a limit
and the Court to draw an injunction to him, and any bond
not to be. Suppose me to purchase the instrument, why
the other persons that, not the case of retrench. So of
Powers of Chancery.

It is alleged, having had notice of the assignment for the amount owed to the obligee, it is a complete defense from the obligee, or either of them, unless they will prove that the assignment is invalid, the property to A as A.

But these equitable principles are on the ground of my opinion is best, but not yet. The full length of the facts have been generated of the obligee, because at the time this was my opinion on the person writing the award.

[Signature]

Awards. Chancery will sometimes done on the defendant of an award. But this is only done when there has been a substantial agreement to abide by the award. The ground on which they take cognizance of the substantial agreement, if the award is respecting real property, it is easy to conceive why they should take cognizance of it. To it is either an agreement on which they claim a jurisdiction, and it is as to the case of Flaws. Injurious would prevent their taking up a fictitious form or essential of the substantial agreement to abide by a public agreement. But by the done in case of Casses. Property, e.g., in Awards was E, an that $12.50 pay 1000.00. This is was a conveyance, therefore for form of land. It was known to the parties that defendant was defendant I might do not agree but it trust to its total 40. 00 would abide the award. D is not found his present duty to pay the money if the part that is, it. I collected the money. This 4. 00, it is obvious of that its better C. If the law suits E to another. Generally as a great going agreement. 3RD 1779. 294th 29.
Pieces of Chancery.

Again. Where one of two partners dies, all actions at law must be lost to the surviving partners. If both die the actions are lost, and each creditor of the decedent is entitled to payment by the executor or administrator of his estate, and his creditors, and by the partnership contract, shares of the whole estate. If the wills do not provide otherwise, the executor of the latter's estate, in whole or in part, may be substituted at his death, at the expense of his creditors. If the creditors have no security, the executor is bound to pay the debts out of the partnership estate.

Let me suppose that the estate is sold by the executor to A. It is evident that the principles would be violated were not this the case, viz. that the partners are both liable to the payment of debts, shall the decedent die before the discharge, have the personal representatives living from his debts? No. How did C. get security of such a case? In no other way than by the signing of his name. Does it appear necessary, they will not sustain an action as the executor of the first decedent. The principles of justice calling for the death of such a principle as a C. of C. being, no other can be substituted, but there is no relief from a judgment, relief which was usually

[Signature]

Lect. 9th, May 17th, 1812.
Powers of Chancery.

leg the kind which he deems it immediately liable to the payment of his specially debt, or need, or sold for any other purpose. What are the consequences when the owner before he dies sells into articles agreeing to convey? How shall it be, if the lien of the debt creating discharged? If the debt is not paid, for the debtor this pledge, etc., the legal title, but not perfect in his hands. How is it to be paid? Apply the rule, that they consider that done which is agreed to be done, and you are then able to determine where the debt is discharged, at the date transferred.

The same manner of lots of City has the application to cases of this kind. Property leased as well as to a small amount may be dissolved by the act of god as by earthquake, lightning, fire, etc. Now suppose A and B contract to convey lots to C, the legal title is in A, but the beneficial title is in B. Before the lots are conveyed an earthquake swallows up the farm, whose is the loss? Why at Law it is A. But it is vain for C's to demand, for C's will decree the lot to be by the said as (B), according their opinions that what is agreed to be done is done in their view. Here are numerous contradictory opinions as to this but the weight of them I conceive to be as follows stil. But if in this case the legal title is retained by the B, performs a condition precedent, before he performs, the property is destroyed.
Powers of Chancery.

The loser, in such cases, where his essential rights have not been violated by the performance of the condition precedent, does not, in fact, suffer any loss, even though his rights are ultimately defeated. The case, in which he is in the same position as when there is an agreement to convey land for some reason the title is not registered at the time, 2Bom. 380. [P. 591.] 261. 1Bom. Ch. 136. 2P. W. 428. 2Bom. Ch. 267. 59. 76.

There is already referred to you that they did not in ordinary cases interfere in personal contracts, and that the principle which they profess was because an adequate remedy could be had at law, but if any particular case the principle does not exist, they will not refuse it. Therefore it is that they will decree a specific restoration of a Family Picture. In delinquent cases we will subject the party to damages, but this is not an adequate remedy. For it brings an object of desire, not vastly more valuable, to the owner than the amount for which it would sell, and in a similar persons, they will compel its restoration. In the case before mentioned where it has obtained your note by fraud, it is a Bankrupt, so that to sue him at law would give your note to satisfaction, the refusal to sue the note 262 in such cases they intermeddle, is unjust, it is not an adequate remedy at law, in such case, therefore it is that they will interfere.

In many of the States, the ease of offering to regale
Powers of Chancery.

Regulated by Statute. 2 Ch. 10 of the reign of Edward the Third. 12 Edw. 2. 3 Edw. 3. 27 Edw. 4. 4 Edw. 4. 12 Edw. 3. 6 Edw. 4. 12 Edw. 3.

I have observed that when a man comes into Chancery to ask Equity to do Jones, dist. the Equity, before he asks for it, you consider the case, it may be uncertain what is the amount of Equity to be done on this point, or what part of the duty he has done, as it may be decreed by the Court as sufficient. In the case of a mortgage, when the mortgagee has been in possession, and sold the lands with which the mortgage was made, some betterment upon the lands is shown of the parties cannot, themselves agree as to this, a bill of Chancery will settle it, in the sufficient part of the mortgage, when he comes to foreclose the mortgage, he do that which a bill of Equity will say is just. 25 Edw. 3. 12 Edw. 3. 27 Edw. 4. 4 Edw. 3. 6 Edw. 4.

There are cases sometimes when the Court of Chancery may exercise their jurisdiction, yet if there are certain circumstances attending the case, will refuse to interfere. E.g. Suppose A. and B. enter into articles of agreement for the conveyance of premises of B. Now if there is nothing more about it, Chancery will compel a specific performance of the Contract. But suppose B. (the vendor) after entering into the articles discovers that A. claims the title. 6 to the same lands. Now within the reason may be abated.

The Court of Chancery may, if it be for the interest of justice and equity, order a specific performance, if there is no provision in the contract. In such cases, the Court of Chancery will interfere and compel the performance of the contract.
POWERS OF CHOICE.

...and duly able to answer all the damages he... 13 should be costs by a pet., may refuse to complete the bargain, not wishing to bring a lawsuit; and
this of application to have either, one or no other
plead in the title of the ordinance, and if they
say there is, they will refuse to confirm the
receipt performs his contract specifically. 23023. 1799. 2d Art. 19.

Courts of Equity in Eng. and in most of the
States have exercised a jurisdiction with respect
to the Payment of Legacies. Nothing is more usual
at this to file a writ in the confirming theBaym.
y a Legacy, but no title was ever filed to compel
the payment of debts. The ground is this. The Exec.
is liable to be sued by the creditors of the deceased.
Law, to the amount of debt. It is considered stand-
ing in the Book of the Testament. Can someone a Legacy
maintain an action at law for a Legacy? No. The
law of law stipulates, refuses to make the executors
only to the payment of debts not to the payment of
Legacies. It was formerly the universal practice
to apply to the Spiritual Courts for relief. They
finally made application to the Exec. who grants relief on
the ground that the Exec. was a Trustee, and they
had cognizance over all Trusts, whether of Real
or Personal property. Also, there has been an instance
of being a mere naked Trustee a Law for the
performance of his trust, but cases of this kind have
occurred. E.g. when an estate is given to a person of
Powers of Chancery

The donor or grantor is the testator to pay to the heir of this estate given to him here. In case of debts to be paid by the estate, it is the universal practice to go to Chancery to compel him to pay, but he may answer a demand of the testator, on the ground that the property has been paid to satisfy the debts for the debts are to be paid before the testator. In cases where the estate is to be paid off, the testator is the owner. Can he compel the executor to pay the estate to the heir? Yes, if the executor is not bound by the will. If there is a trustee, the executor must pay the estate to the trustee, and the trustee has paid. An analogy to this may be that whatever is agreed to be done is done. If it were always considered that whatever is directed in a will is done as done, suppose the testator directs his executor to be paid to pay the debts of A. B., C. D. E. Now the executor can compel the testator to pay, but suppose he directs the executor to be paid to pay the estate to the heir, without assigning any reason for it. Now the executor cannot be compelled to make out if it is the property of being a trustee, yet Chancery will compel him to pay it. In Chancery it is an important principle for one to not set it aside, and it is not set aside, but it will go to the heir, and in case the executor appears the estate intended to be shared with others. Here, it is not so important for the property as in cases where it would be distributed. There is none in a qualification.
Powers of Chancery.

to this. The man devises land to be sold for a particular purpose. There is a surplus left, that surplus goes where the land would have gone, as to the heir at law, e.g., Suppose A. devises blackacre to be sold for $2000, if it be paid to B. and $2000 to C. and it sells for $3000, now the surplus (10%) goes to
the heir at law for the particular purpose of the devise.

In Eng. if the testor is directed to sell land, he accepts of his office, he also accepts of this trust. Part of the lands are directed to be sold, and no person named in the will to perform this trust, the testor by accepting of the office of executor does not accept of the trust. Suppose the testor will not sell the lands (in the case case supposed) and the heir also refuses, what is to be done? Why City will appoint a person to sell, and when this is the case payment is made to all the creditors prior to payment. No preference between creditors. Simple contract debts are to be paid as soon as debts due by specially. In court, one court of Probate have power to direct the testor to sell in such case, whether he be expressly named or not in the will. A Stat. gives this power, and if the testor does not follow the directions of the Stat. he forfeits his bond. But if any other person is named by the testator to sell his estate as above, and he refuses the trust, application must be made to a lot. of City. if lot. of Probate has not
Powers of Chancery...

authorities over such a case. Suppose the testator directs T. C. to apply to the next court to pay the debts, and he does so, but the creditors wish to pay it later. Then what is to be done? Had it been the Executor at first, if the debts were not paid to the Creditor, must he go to the Court to give security to the Worthless dividend of the Testator, and on the case the Creditor must give a bill in Chancery, and compel him to go to pay the debts.

Courts of Chancery have also assumed the power of compelling the Executor to give bonds. In England he is not in general compelled to do this, being a person appointed by the Testator himself, and to whom he had Confirmed, but still if a lot of debtors find him to be in failing circumstances they will compel him to give bonds on the ground that he is trustee for legatees. But I think it very probable that Chancery would compel him to give bonds in such a case, as the thing was not a Equity given in the will, but petitioned by the Creditor. This has ever been a great source of

I have stated before that lots of debtors have nothing of an Equity of Redemption. I may mortgage an estate worth 20,000 Pounds. For 2,000 Pounds now at 6%. This Equity of Redemption is not worth 6,000. But the debt is on the whole the sale of this Equity is the event of the payment. But 6% debts. The debtors would have collected their debts out of this debt. But of this business of an Equity of Redemption.
Powers of Chancery.

an event may occur to the Mortgagee. E.g. Supp.

B. the mortgagee has lent his money to A. the mort-

gagee. This being the mortgage security as a se-

curity in expectation that A. will repay him. Now.

Suppose the mortgagee does not, can he sue and

recover the money lent to him? Yes, but suppose A.

is not able to pay it. Can he sue a trustee possessing

of the land? Yes, but the effect of this is only to

give him the rents of property, it may be many

years before he can recover the whole amount paid.

Suppose then on Supp. B. to file his suit, Com-

pleting A. to foreclose, and if he does not the Equi-

ty of Redemption is gone forever both in Law and

Equity. But then does this foreclosure create

as a payment of the debt? Suppose the same

is mortgage for 2000$ into the mortgagee has paid

$1500. Now will not the mortgagee recover both

the money paid of this is a foreclosure? No.

If all the money but a ninetenths is paid the mort-

gagee may bring a foreclosure for this and the

payment of all the rest will not prevent him.

Neither can the mortgagee sue alone as far as

the money paid the foreclosure is true. But if this is

done to the whole amount received at

law (i.e. the amount remaining due) the benefit

of the foreclosure will be gone forever i.e. it

will destroy it...

In Court we treat the Equity of Re-

demption just like any other estate. It is, as
Deeds of Chancery.

to be attained to 3000 for the benefit of creditors, with the purchase put in the same situation, that the mortgage, e.g. A mortgaged his farm to B, for 2000, and the Equity of Redemption is worth 5000. Now the creditor may levy an execution upon it till it be in one, and 13 years this 2000 and then the purchase in stands in 13 shares, i.e. this is liable to the same.

Equity of Redemption which it would have been in the hands of B.

June 10th, May 18th, 1812

There are many cases where A has the legal title to property, B the beneficial interest in it. In such cases is a Trustee, for A the estate goes trust.

The right of the Trustee, to purchase in trust of the estate goes trust, has been the subject of much controversy. The Law concerning is not fully since settled. Whether the Law constitutes a Trustee as it does in all cases of Bankruptcy, where the property of the Bankrupt passes into the hands of Assignees; or where a man dies his property passes into the hands of his Execut., the Assignees, or Trustees and hold the legal title to the property. Now in these cases a B, has arisen whether he may buy of the trust estate goes trust, has beneficial interest? This has been the subject of dispute. Some have said that if the Trustee purchases the estate of the trusty goes trust for less than its value, that a B of C, or his with interference, t treat the contract as void. Others have contended that it is voidly
Powers of Chancery.

wrong for him to purchase, whether by the contract, the deposit goes trust, and receive the face value of the property or not. The principles on which these two opinions were given were very different. Those who decided on the first position went upon the ground that the trust was not abused; the conveyance should be good. The ground for the latter opinion was that the Trustees being a Board for the deposit goes trust, he should not have the liberty to trade to speculate with his estate, and it gave the Trustees an opportunity to make money out of his trust, when the object of the Law was, to give to the deposit goes trust all the advantages that could result from the trustees faithfully performing his duty. 2 Bro. Ch. 490. This was a case where the Trustees bought the estate, of this deposit goes trust for 40,000L; and, soon after, sold it for 55,000L; and the C. of Ch. interpreted statute, as one: over the 10,000L to the deposit goes trust.

There came a case before the C. of Ch., in which the contract appeared to be a fair and honest one, and the Chancellor refused to interfere on the ground that the Trustees had acted fairly with his deposit goes trust, and had not abused the trust. This was decided in conformity with the first position. But the decision has been subsequently a number of times overruled on the ground that the trustees are instanced shall not be permitted to trade with the deposit goes trust for the reasons above given.
Powers of Chancery.

Neither will the Trustee be permitted to purchase or a circumscribed manner of the bankrupt's property as the Trustee's Estate is required as a rule, whereas they will not be permitted to bid themselves nor to procure another to bid for them. Indeed the rule is well settled that the Trustee cannot purchase in any case, so as to give himself any apportionment to gain any thing thereby. 6 Eq. 397. 4 Bro. 119. 253. 3 Park. 746. 5 Ilr. 470. 670.

Suppose the Trustee is willing to pay more for the property than any other person will, will not be permitted to purchase in such cases? Nor unless he receive a license from the Ct. of Chy. That however will always cramp this license if the subject is care taken of it. It appears that the Trustee is willing to give more than any other person. One of these has grown.

Another Dec. Many the Assignees of a Bankrupt purchase the property provided a majority of the creditors are willing? Edw Hardwicke in 1804, rather gave it as his opinion that they might purchase in such case, but this has been overruled, and the opinion of Edw. Coke was (see 6 Curtis 628) that the in most cases a majority of the creditors could control the property, for that this was a case in which the minority were not bound to acquiesce, or the opinions of the majority, and therefore those degrees could not be permitted to purchase.

In what manner does the Ct. of Chy.
Powers of Chancery.

Intervenor? See us take the example before given. A the lessor purchased the estate of B. The conveyance was for 40,000 L. and then sold to C. for 50,000 L. Now it is a clear case that you cannot cut off the title in the hands of B., for it is a well-known principle that when the subsequent bona fide purchaser, purchaser of them who holds the legal title, (in fact, he may be a Trustee for another) the purchaser will not be provided he was ignorant of the trust, and in this case too there can be no laches on the part of B. for having the estate, because A. can deduce his title from B. and claims it appears that he has not only the legal title, but the beneficial interest too. What remedy then has the conveying gone astray? The can compel B. to pay over to him 10,000 L. for so much he (B.) has received for the estate, over and above the amount paid for it on the original contract between B. and C. But suppose A. has not sold the property, that can be the remedy if it is sufficient to take in his hands, he being a responsible man, able to pay in case he should sell for an enhanced price. But they may compel him to give up the contract at least, on the ground that he may be liable to sell the property for less than its valuation, he could not be liable to consult the interest of his conveyee gone astray. As much care as he would provide the title for beneficial interest in the property, still continues in the conveyee gone astray. Before this 6th of Nov. 1846. 123.
Powers of Chancery.

Suppose the Ct. might at least compel the
Trustee to give up the contract, but it is not a
way that they will allow him to give it up. If we
suppose it is necessary that the estate be sold for
the payment of debts. (Suppose the Trustee
purchases if
the estate) you trust I agree to give 10,000£ for it.
Now perhaps this is more than any other person
will give for it. A Ct. of Ct. will therefore let him to the
contract, and order the estate to be set up at publi-
court vendue. And the amount offered by the Trustee
will be considered the first bid. And if any person
will wait to give more than the Ct. will compel him to give
up the bargain. So if no one will give as much, he
will hold him to it...

Again, suppose the Trustee has purchased
and given the full value of the estate, and afterwards
the estate rises in value. Now a Ct. of Ct. will say
that as the Trustee may be compelled to give up
the contract, so the estate you trust will be entitled
to the rise. But suppose before the rise, the Trustee
has gone upon the estate. I propose it, will he not
have some right, will a Ct. of Ct. compel him to give up
the contract? Yes. But they will compel the estate you trust
to pay back the purchase money, and the amount of
the improvements, for in this as in all other cases
a Ct. of Ct. would strenuously to their manner
of doing perfect justice between the parties. 620£.
620£. to 620£. 600. This then is the establishment.
Powers of Chancery.

It is a never failing maxim that property of a person deceased, must be applied to the payment of his debts, before any other use can be made of it; therefore all voluntary legacies are to be postponed till all his debts are paid. Now it is the duty of the Executor to pay the debts. Suppose there is nothing due or in his hand, and on 1st January, the sum of money due five years hence. The estate being insufficient, it pays all the debts except this one debt, is not yet due, and for this he reserves sufficient money to meet it on the day of payment. Having done this he distributes the rest of the property among the legatees or beneficiaries, according to the directions of the testator. Suppose then when the debt becomes due, he finds A a bankrupt, what is he to do? He may have an action on him at law, but this will afford him no remedy; for after obtaining a judgment he will be unable to collect it. His Executor can go to these voluntary creditors, to collect his debt out of their estate? The argument they use are, that the debt has now become a part of the estate, the money to pay this debt, that the consideration was given to them, and that it is no more just for them to be compelled to refund it, for B not to lose it. But the maxim is unyielding, that the debts are to be paid. No fault is to be imputed to A, or B for the original debt. To collect it, to be in a proper manner, you must not make a demand for payment before his debt becomes due. This forms a failure of the Executor's ability to pay the debts, in three hands.
Powers of Chancery.

An action at any time, than the Executors, But in this case, the reason is, that the survivor having an interest in the estate, the Executors have, therefore, the power to sell the estate and divide the proceeds among the creditors. In neither of these cases can the Executors be sued upon the lease, if the estate is not mortgaged to the creditors. 

Again. Suppose the Executor is not a Bankrupt, and has paid the whole, partly to the creditors and the volunteers, without saving any thing for the payment of this debt. Can the Executor, in any case, recover his money from the volunteers that they paid this debt. Or do becoming sure. Now can notices the creditor call upon the Executors, I collect the debt out of them. Because he has an adequate remedy at law. 

The most that one can say of the Executor is, that he has taken no bond, but has paid over all the property to the volunteers, I trust to their honor to pay this debt, and the Executor cannot compel them to pay it. Now can the Executor sue the volunteers to recover it out of them? I have never seen a decision of a Court of Chancery favor of in fact, in such cases until he takes a bond from the volunteers.

But this is really a very hard case, and appears not perfectly inconsistent with those principles of Equity to justice about acts of the profiteer, to be governed by. What has the Court done in this case, that they should refuse his a remedy? Why the most that can be said is, that he has been guilty of carelessness, for no fraud.
Powers of Chancery.

...can be imposed on him. It is for carelessness, that the
...ld, if they have seen fit to deny him, their moral
...s of a penalty upon him, i.e. he is compelled
to answer the debt out of his own Estate. In respect
...rrupse is this case, but ity accords with the
...inciples of justice & Equity, which are putting
...poller share to all their actions. But so are y decisions.

It is a rule in Equity, that where property
is devised for the purpose of paying debts out
of the rents & profits of the land, that if the debts can
not be paid without selling the land, that they will
ordinarily be so paid. It is not devised to be so paid, but devised
to raise money out of the rents & profits to pay debts.
In such case the intention of the devisee fully ap
pears, viz. to pay his debts, therefore if the means is
considered wants pay these, should prove inadequate
to carry his intention into execution, the devisee is
orded to so pay, or so much of it as is necessary to accomplish
the purpose. 2 Tindal 357. Thong 256.

Suppose at mortgagor is found well 20,000
for 10,000. Now the mortgage is considered as a
trust for the mortgagee, but still he is allowed to pur-
chase the Equity of Redemption. He will not, it is plain,
the purchaser's interest. To whom any one holds prop-
erty as a pledge or pledge, for the payment of debt, he
is permitted to purchase the property, although he is a
trustee for the payee. These are exceptions to the
general rule before last power...
Powers of Chancery.

It is a rule that the property of the deceased is to be applied to the payment of debts. The Debtor's Estate and among other claims, must be paid to be satisfied. It appears that the Debts had a right to the Estate for $1,000.00. The Debtor was entitled to be paid for the purpose of procuring for the Debtor without any design of defeating the claims of his creditors. Now is the Debtor to be treated as a Third Creditor? It appears to be absolute and the obligation is incurred by it. Only persons who have a right to complain are the creditors of the deceased. But it so happens that if this bond is paid, the estate will be defeated, as there will be no property remaining. Now the payment of this bond must be postponed to like other creditors and paid, and then the claim of the Debtor is to be preferred before any other creditors. Therefore if the Debtor cannot have this to be a voluntary bond he will so consider, i.e., he will pay the debts first.

But suppose he does not know it. Suppose he (the Debtor) has a right to receive $500. He owes $500 at the expense of the creditors or the Debtor calling them in to dispute the Debtor will as the Debtor decide so he will act. This has given rise to some difficulty under our practice. The principles here are the same as in Eng. but there is upon our lawn no preference to the creditors. If the estate is insolvent, it is all sold and the assets come into the Debtor's probate, or by the distributee paid for. Now suppose if this voluntary bond is thrown out, then there is sufficient property to pay all the debts. Can the Debtor refuse...
Powers of Chancery.

The authority under which they do this is found in the Commissioners having power to make an order to the effect that the Court is for the convenience of the parties to admit this as voluntarily made by the parties. If it is admitted to be valid among the other demands of the deceased's estate, or not. But in doing this it is said another principle of law is violated, and that is that the Court of Probate are judging of a matter of fact. This is true, but this is no other remedy for the person aggrieved than to make application to the Superior Court. 16th 1920.107.

Leet 18th May 19th 1815

Courts of Ch. also exercise the power of

Issuing Injunctions.

This power (unlike those mentioned) originates in those cases where relief from a prosecution cannot be obtained at law but which, owing to the particular nature of justice involved, demands the interference of a Court of Equity, as e.g. when a contract was procured by harassment or by legal duress or such case of recovery cannot be had at law, but a lot of injury or being made to a guarantor with the means which were made use of in order to obtain the contract would arise on injunction, not to proceed further than they may determine upon the rights of the parties. These injunctions are

...
Powers of Chancery.

has occasion of the case, they either render to the plaintiff a sum of money, as they justly deserve, to dam a
1st. are those of waste. For when one tenant commits waste, an action will lie at law for the damages. But what the power which the courts is to prevent this waste is to prevent it, as suppose the tenant is about to cut down the timber on the lease, they will issue an injunction ordering him to desist. Now an action will lie for the waste of a tenant, but it may be an inoperative remedy. As if the tenant is a bankrupt, it would be to pay the damages which may be recovered by him at law.

When can this injunction be obtained? It can only be obtained in all those cases where an action at
law will lie for the damage. As if, as in many instances, where an action will not be maintained.

In these cases, it appears to have proceeded upon a principle, unknown to the law. But the fact is that they have extended the principles to cases which the law refuses to consider as falling within them.
E.g. if A. cannot gain an action for waste, B. who has the legal title, E.g. a waste be done to J. for the use of P. Now if the trustee should go on and commit waste to an indefinite amount, the action of waste would not lie at law, the accor-
ding to modern opinions, there is no doubt but lots of law as well as lots of E. will not sustain an action.
Powers of Chancery.

action for a breach of trust. The action of Waste is however the best specia
action as it gives true dam-
ages, the thing wasted. But if not exercised to issue an injunction to prevent such a
cause, any person or other person who had not the

A Tenant in Tail, after possibility of the
extinct, cannot be prosecuted to a Ct. of Debt for the
commission of Waste but a Ct. of Chancery can issue an
injunction to him. This happens where one is
tenant in special tail, and a person from whose body
the issue was to spring dies without issue, or having
life issue, that issue becomes extinct in either of these
cases, the remaining tenant in special tail, becomes
tenant in tail of the possessor of the estate. But
the waste must be warranted, or unreasonable,
to induce the Ct. to issue their injunctions. 2 T. & R. 69. 1 Eq. Ca. 26. 221.

The law knows nothing about having
injunction for waste to the mortgagee whose life
in possession of the estate, for they consider him as
Tenant at will, and have nothing of his Equity
of Redemption. But if by committing the waste
there is danger that the mortgagee can lose his
security, the issue issue an injunction to him.
As if the property mortgage is worth very little
more than the money lent. But of notwithstanding,
the issue of the security, will be sufficient, they
will refuse to interfere. So of the mortgagee is in-
Powers of Chancery.

A tenant for life is always liable for waste, let him come to his tenancy how he will, unless it be conveying to him one of those words "without impeachment for waste." And whenever it is the case that the tenant enters and he does all those things which are commonly called waste, such as cutting down the timber trees, or that it never was designed that the tenant should do, liberty to cut down trees in orchards, shade trees around the house, or to pull down the buildings.
Powers of Chancery

add a 3d. of Chy, and always issue an injunction to
stop this archity & waste. But in these cases.
1st. of S. know, nothing of giving an action of waste
against the riprofe of the conveyances. 2 Bl. 709.
2 F. 422, 141b. 20th 24th. 11th 141. Ald. 107.
2 Bro. Ch. 89.

Under this head there are two or two cases,
of the conveyances of which I have been doubtful. E.g.
Suppose the farm is leased to A. Without enforcement
of waste, now it has been decided, that if the tense
rents the S. 400 for rents of metal, coal etc.,
that it is waste, for that is a detriment to the en-
hirmees; but if the rent or money were open before,
it is no waste, so the tenant to continue digging this.
This is a case I think not falling within the prin-
ciples. 2 Bl. 256. 5 Rep. 12. 76th 295.

11. Est. of Chy, will also issue an injunction
to stay proceedings at Dice, even after verdict and
judgment. It is all those cases where Est. of Dice will
enforce specially, against which Chy gives relief.
3 Bac. 172. 2 Crey. 46. Per. 129. 489. 9 Lem. 11.

Est. of Chy, always on issuing an injunction,
impose a penalty to enforce. Observe, always for some
reason, the action or this penalty. In Eng. always
brought in the Est. of Chancery. But here Sec. 10.
the last reason why an action with not the action
upon it, as well as on a Bond. Some lost in actions
aforehand, and no one doubts but it will suit. Since
that time, it has been the universal practice. 2 Bl. 109.
Powers of Chancery.

A suit on the ejectment was once brought before the Federal Court of Equity. The case being novel, they refused to render judgment until they had taken time to consider upon it; but before the next term the cause was settled by the parties, no decision ever having been upon the question.

These injunctions are either temporary or perpetual. The temporary injunctions are usually granted to the party and to the Court. Where one is issued on a contract, which is a Bill filed in Chancery against to be performed, they will give a perpetual injunction to this proceeding further. 1 Chit. 625, 636.

330. Ambler 56.

The form of proceeding in an injunction is a Bill of Law in the Court. Somewhat singular for our Civil Courts, the Court of Chancery is composed of the same judges. When the Court proceeds as a Court of Law, they are governed by legal principles, while as a Court of Chancery, they are governed by the principles of Equity. Now a bill was sued out in the Court of Law, Judge was pleased to do so, but it clearly appeared on evidence that there was no necessity, but that a mistake had crept into it, on favor of the parties of about 508. Now as a Court of Law, the Court unable to rectify this mistake, but as a Court of Chancery they could; therefore they sued on an injunction to this object, (as a Court of Law) could not rectify this mistake, and as a Court of Chancery could rectify the error, and thus being done, they proceed to render judgment for the sum amount. 2 Leon. 81, 418.
Powers of Chancery.

A bill of chancery will always give an injunction to parties acting in a particular capacity, where their right to do so is disputed. As if it were not under such a right, it were entailed to the Executorship of the estate, if parties can allege

Exorc. Bill 2 to require him to desist, &c. the right to determine 2 Bro. 460. Fedd. 68. 10th 1793.

There was formerly an authority of some
by Cts. of Chy. to issue injunctions on persons 1800 =

THIES, &c. all who would attempt to republish their

works. This was no uncommon thing, until the Stat.

of Anne was made which gives the party a remedy.

This Statute has been copied in most of the States,

therefore application to Chy is now no more made

unless it be in a particular case, not within

the Statute. The grounds on which the lit. proceed

was, that every man had a right to the more

propriety of his own ideas, the spread upon paper

published to the world, and the unprotected by any

positive Law. Then came up a Dec. whether the

author had this unlimited property to his own

ideas, which was well examined in a case reported

in 4 Burr 2417. Three of the Judges, among whom was

Lord Mansfield, were of opinion that by C. S. no

author had this right, and that for the violation

of it an action would lie. But it seems to me

that the instruments of Justice Gates, who was

in the minority, are conclusive, the my feeling not

arises one to the other side. — There
Powers of Chancery.

There was another Question which existed in the Pleas of Anne, viz., whether the later Statute, which was passed in 1707, gave certain number of years' rent taken away by the Crown, to substitute another in its place, or whether the Statute was cumulative. The history of the case was this. Some one of the judges were of opinion that the author had a right to his books at C.D. But some of the others were also of the opinion that the C.D. Statute was later an Act of the Statute of Anne, and the right neither taken away nor curtailed, but that the Statute gave a cumulative remedy. The issue was then carried up to the House of Lords, and they were equally divided, and the Chancellor was called in to determine. He decided that the Statute of Anne was the only remedy. Of course one Statute, according to this decision is the only remedy in such cases.

The Court of Chancery have also enforced the power of issuing injunctions in cases of ejectments, where the right has been several times tried in the Courts of Law. The action of ejectment is an ejectment maintained by a fictitious person, and when in failure to recover, the party can commence another action to try the same rights in the name of another fictitious person, and they did not only issue an injunction on such cases, the certainty would be interminable. But in that case the action is not ground on fiction, but on a real claim to the soil. For necessity for the rule here, Br. Ch. 861, 1 Br. Parke Cas. 226, 1 B. & C. 671. It
Powers of Chancery.

It has been said that they were not great in jurisdictions or in any Criminal Case. But this proposition is too broad. Support it is procured by a Public officer for directing a Watercourse, which subjects the offender to a Penalty. Now if there is any defense on the part of the offender, they as to whose is the right to the Watercourse, they will enjoin the public prosecution until the question of whose right is determinate in the Civil action between the parties. This is the only instance of Criminal Cases where they are enjoined. If no civil action has been brought at the time, no injunction will issue, unless security is given that an action shall be commenced. 2. with 3623. 2. P.B. 64.

This power of giving injunctions in Eng. has been extended to our all their Courts, and in this Country the same power exists, in as some cases it is necessary to protect it, as in the cases of proceedings before Courts of Probate, from whose judgment an appeal may always be taken, etc. etc.
Powers of Chancery.

By Mr. Grose.

General powers of this are not easily defined. Authority, Lord Howard, description.

1. To abate the right of the C.I.
2. That it decided according to the spirit of the rule, not letter.
3. It is said that fraud, accident, & trust are peculiar to contracts in chancery. Pala. 374. 40. 14d.
4. Not bound by precedents or rules.

5. Its broad power to e.g. hardship, former, before Stat. 214. Pr. 3d. of lord Bodley, whose executors devised away their real estate. If lands devised or inherited, not now liable to simple contract debts. That father's heir never inherits. In half blood excluded from intestacy. Estates cannot charge expenses to the landlord. 9 B. C. 96. 239. 244. 246. 268. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284.

6. "Deciding according to the spirit," so must a st. law. rules of construction common to both. 9 B. C. 934. 935. 936. 937. 938. Same rules as to the construction of contracts. Doug. 249. 250. 472. 473.

7. "Fraud, accident, blast." The fraud of perhaps every kind is in some way or other copiable in the fraud. Something suspicious, as obtaining a devise. Many accidents also, as leads, deeds, mistakes in accounts. Contingencies which pander profane and rare inventions, which
which are not relatable in e.g. s. 1.2.3.4.5.6.7.8.9.10.11.12.13.14.15.16.

Truly are generally recognized in e.g. s. 1.2.3.4.5.6.7.8.9.10.11.12.13.14.15.16.

Incidents in e.g. s. 1.2.3.4.5.6.7.8.9.10.11.12.13.14.15.16.

False in e.g. s. 1.2.3.4.5.6.7.8.9.10.11.12.13.14.15.16.

Mistakes in e.g. s. 1.2.3.4.5.6.7.8.9.10.11.12.13.14.15.16.

Remedies in e.g. s. 1.2.3.4.5.6.7.8.9.10.11.12.13.14.15.16.

9. Of Relief

1. Of Relief; compelling a recovery from a party under oath, affidavit to party. Section: facts relating to his knowledge. 1.2.3.4.5.6.7.8.9.10.11.12.13.14.15.16.
Powers of Chancery.

25th of May. In Equity the interlocutory decree of a court of justice, in which decrees are given out of court, may be in case when parties are about to leave the kingdom, and in forms of instruments the parties are required to execute, ibid. 33 S. 3, ch. 43, 180.

In consequence of this power to make orders, the courts have jurisdiction which will be exercised at law. 49:34, 18th.

3rd of Relief. This is the same as in cases of Equity, where it is equitable to make such orders, as will be the same and jurisdiction in many cases, where they are recoverable at law. 50:43, 18th. 60:269, 18th. 80:410, 18th. 90:32, 18th.

Injunctions to prevent, or to prevent and remove the multiplicity of suits, vacating contracts, etc. 39:12, 18th. 30:38. 80:37.

See also Law & Equity, and also in these three respect. But they are in others also, e.g., at 49:34, the whole penalty to be recovered on future in Equity, ibid. It is thus made the case of mortgage, etc. 20:120, 39:12, 18th.

When a contract has been legally executed, the bond, in the capacity, ibid. 39:12. But the will not devise, perform or case (if any) has or any advantage, to which must set aside, ibid. 20:120.

Trusts are contracts distinguished from, whereby the another source of jurisdiction. 39:12, 18th. 45:464, 18th.

Besides 39:12. Distinction perhaps more real truth is that, ibid. may.

1. Enforce justice where positive law is silent
2. May abate the rigor of equity, and enforce the duties of the contract.
Powers of Chancery

where such relief is a collateral pecuniary consequence of the rule of law. Secus if it be a direct and obvious consequence of the rule of law, the means designed for, causes to which it literally extends. 2 H. & C. 213. 15 Vin. 50. 7 S. & R. 278.

E.g., Marriage settlement agreements, specific execution, injunctions to waste.

Power of decreeing specific performance has been exercised in England from the times of 22 Ed. III. There was an action between Lord Kings Bench and the time of 17 Ed. 1. This power was soon after established by the exercise of it in common in the 2nd year of the reign of 11 Etch. Eliz. 68 Geo. 5th, Noll. 22, 354, 368. 2 2 Salk. 174.

Marriage settlement agreements made before marriage, specific performance decreed in 6 H. 1. 20 P. 39.

General rule of law is contra. 18 Eliz. 2, 42. 6 Ed. 8, 51.

So, if the instrument is a Bond to make a settlement either after or during coverture — it is considered as an agreement, adorns to the substantial object. 1 1 Forb. 24, 1 21 1, 249.


Such a bond was formerly held to be good to be avoided at law, whether forfeited during or before coverture. decided that a bond forfeited after coverture is good at law. 4 4 2. 2 D. 85. 2. 86. 97, 80. 2 26. 72. 2 242. 2 21 26. 8 3 2, 2 25.

If such bond were payable during coverture it is to be void at law. 2 2 2 2 2 5.

Formerly if agents were made beneficial and personal during coverture, they were not enforceable in equity, but their personal services.

E.g., 1 1 Forb. 24, 2. 2 20. 8 8. 2 26. 7 7. 2 26. 8 3, 2 26. 8 3. 2 26. 8 3. 2 26. 8 3. 2 26. 8 3.
Powers of Chancery.

But now agreements during co. parties to her self separate use are set p. 73 c. 1 4th. 27 p. 3. 40 p. 337. P. 23 p. 1. Torn 25. 14 14. 245. 2 1 4st. 305. Torn 3. 85.

And the wife may dispose of the property as a free sole.

But such agreements if mere voluntary conveyance it without such indications of fraud are not valid. Cases of purchasing. P. 24 p. 93. 3 21. 4 p. 399.

But its being merely voluntary (i.e. in this case without such indication of fraud) is not conclusive. Evidence of fraud. P. 2 2. 24 p. 93. Torn 3. 21. 4 p. 399.

Thus being indubitable is a badge of fraud. P. 26 29. 14. 26 29. 14 4th.

So it is a power of revocation. So is this conveyance of the whole a greater part of grantees property. 3 3nd. 2 20. 510. 2 Ybd. 218. 1 2nd. 262.


E.g. every to the substantial object of all contracts drives effect to that not regarding forms e.g. bond taken as an agreement.

So in Eng. if one Ed oblige pays the whole Ed. with either comtell the other to pay his hurt or. If action is lost to him on the bond as pays will restrain him from pleading the payment by Ed oblige. It is considered as an agreement between the debtors. Will not hold at. For money paid or if there use as in compulsion. P. 2 24. 14. 2 4th. 74. 12 21. 3 99. 973. 3 31. 3 3nd. 166. 14. 24. 12.

This laid down. Equitable intervention is tends to all cases.
Powers of Chancery.

Case in which the subject of the contract or the parties are within the jurisdiction of the C. In the C. acts as well in personam as in rem. 2 Term. 484, 1 Term. 204, 447, 444, 434.

Meaning that, when the matter in dispute, is such as to require the interposition of C. C.s will take cognizance of it, if it is, the subject contract, or, the party bound is either the local limits of the C.'s jurisdiction. E.g. the C. within the realm, the land which he agreed to convey beyond sea, there, the decree acts in personam, in *pro bono* contempt discretion of Court land, house in *Pro. B. *in Eng. to boundaries of Penn. & Maryland settle Don C. in Eng. according to articles. 2 Term. 449, 2 Term. 204, 447, 444, 434.

Formerly C. acts only in personam, not in rem, now it can act in rem by issuing process to put a party in poss. of land, within its local limits, by injunction with assistance to the party, or injunction to Def. to deliver, &c., now his subject a suit to the C. ordering him to aid & assist in quieting these in poss. 2 Term. 31. 2 Term. 489.

The practice of acting in rem first began in the reign of *ac. 1. 1824.* 2 Term. 31.

General rules is, that C. will decree specific performance of agent's property falling within its jurisdiction. In those cases, & generally, those only in which the land with give damages for non-performance. What cases falls within its jurisdiction? post. 2 Term. 14. 6 Term. 1879.

**Note:**

*Note:* agent a day *C. 204* under seal. 2 Term. 489, 1 Term. 204, 447, 444, 434.
Powers of Chancery.

Exceptions on both sides of this rule. First, when not always clear, the party might be recovered at law. E.g. B. to have conveyance of land it is not clear to B. to give his purchasers for valuable consideration without notice. (Fo. 359.)

But agreement to convey to or any valuable thing of good use, manner, and title. In such case, if the consent of the grantor is very inadequate, the party might be had at law, no decree can be given in such case. (Fo. 365, 101 Ed. 161.)

So where the bill is to compel debt to accept a conveyance to pay the consideration and not deceive if itself life is under embarrassment, not immediately removeable, the party might be recovered at law. (Fo. 175, 101 Ed. 161.)

So if one agree to sell land belonging to another, no decree, yet party recoverable at law. (101 Ed. 161.)

Secondly, Exceptions on the other side is, where by decree, the no party at law. E.g. B. to be given power to convey land to her tenant. And, (as supra), unless at law by the intermarriage, so no damage, but good agreement in E.g. So agreement during coverture, (ante.)

So also in the last case, where one party were an infant if the agreement was with the approbation of his parents or guardians upon adequate consideration. (Fo. 243, 101 Ed. 163.)

So where one lends money to an infant, ability other expenses brought in, (Fo. 263, 3 Ed. 483.)

So where obliged in an infant's bond takes a discharge, obliged after notice. (6 Ed. 578.)
Powers of Chancery.

So where the action arises under the acts of the City, e.g., in a judicial sale of an estate, a purchase by an assignee, the no dam� at law, 2 Vom Eu. 196

So where the coverture of a lord is destroyed by obligors becoming seer to obligee, 6 Mo. 372, 76, 2 Vom Eu. 259.

Court states the distinction between cases where City, even if not decree, specific effects, (where no assignee can be had at law) to be thus. If there is a good agent in substance, which is inoperative at law, by reason of personal defect, the City, decree, e.g., case of the infant Jones, solo. Super. 96, 66, 243, 524, 662.

But where the action is collateral, at law, by reason of the events not happening & provided for by the grant, the City, even if not decree, e.g., lease. 2 Vom Eu. 17, 106. 256.

Court also seems to consider the rule, that where no dam� can be had at law no decree is universal, so far as relates to the juridical which enables City to carry agreements into specific eject. The true ground is said by Bay's decreeing in such case is found in its jurisdiction over trusts (and, accident, e.g., obligee being eject to obligee, by wrong to recover, e.g., 3 Vom Eu. 28, 132, 298, 241.

If recovery of dam� at law to be an adequate remedy to generally, but not decree, specific eject. 2 Vom Eu. 132, 298, 241.

This will not generally decree the issue of Contracts respecting personal effects, in such cases the law can give as complete remedy as the City, & dam� not to be used.
Powers of Chancery.

Claimed by Chancellors Conscience. But cases of this kind depend very much on their special circumstances. 1 & 2 Eliz. 447. 5 Eliz. 113. 2 Eliz. 116. 3 Eliz. 56. 4 Eliz. 206. 5 Eliz. 271.

And where the ends of justice require specific performance, if the party wishes it, the will divider, it is if the contract be to perform something relating to the person, not at several times. E.g. if Covenants to have & deliver to stand in his place, as to the performance of certain acts, to a 3rd person. Deemed that S. performed in specie. 2 Lew. 867. 2 B. & G. 205. 2 B. & C. 233. 10 B. & W. 178. 1 Q. B. 304. 2 B. & C. 95. 181. 15 B. & C. 95. 258. 187.

So an assent for 300 tons of corn to be paid by in sealed ment. So a sale of timber trees. 1. B. & C. 89. 1 Q. B. 304. 2 B. & C. 246. 15 B. & C. 95. 258. 187.

Another specification is the general rule, where fraud is mixed with damages, E.g. A owes C 900 l. besides at s.w. 13 l. sells as good for composition for fraud. A files a copy bill for relief on this case. If the case is established they will direct an issue, & decree the damages. 2 Lew. 867. 6 Eliz. 17. 1 B. & B. 326.

So if a bill is based on a contract of a particular nature, if the defendant does not demur to the relief, but files an answer. They will decree for period. 13 Eliz. 80 B. & C. 277. If the agreement respects an interest in lands or stipulates some act in specie, e.g. rate regularly decree a specific item. Because Dam's are an inadequate remedy. 1 B. & C. 15 B. 277. 6 Eliz. 80 B. & C. 277. 16 B. & C. 354. 1 B. & C. 277.

If an agreement concerns the personally of one side, the all in the other. By rate decree on a bill filed by either party. E.g. A agrees to sell land, B. to pay for it, if may have
Poears of Chancery.

A decree for the money. In this cause it is much more
in favor the whole purchase. E.g. 2 Pet. C. 2. 19.

A general covenant to convey lands of a certain value not
specifying them creates no specification, therefore not decisive.
1 Pet. 2. 5.

Generally, the demands specific relief, note to show
that he has performed, or is willing to perform his part. If
he will not, or if his own neglect, cannot perform, he
is not entitled to a decree. 1 Pet. 2. 5. Pet. 3. 20. Pet. 3. 7. 2 Pet.

General rule. When self has performed in part of
his side, it is prevented by subsequent events from performing
the rest, he shall not have a decree. For the agreement
must be decided on both sides. Entirely or not at all. E.g.
I agree to pay £1000 to X, within two years, B, marrying
his daughter and settling jointure on. Marriage takes place
but wife dies within 2 years and the jointure falls. B can
not have a decree for the £1000. E.g. 2 Pet. 3. 11. Suppose
he agrees to settle a manor on his wife, heirs, or their
children in possession. The settles the manor, but before
he appoints the pensions he lady dies without issue.
Her father was to pay £3000 per annum. Without

Exception: Where self, after performance of part, one
default on whom is not in statute quo. Here he may have a
decree. E.g. Where an agreement, besides hedges between
it is stipulated that hedges shall be paid only on this
Powder of the Chancery.

Homeward bound passage's the freighters have no pass on board: if there having performed in part, shall have freight decreed. 2 Bar. E. 266. 7 Ed. 1 Ed. 3528. 20 Ed. 2768. Eq. R. 212.

But if hepp has been willing to perform, it has been proven to be Burt, his readiness to perform is equivalent to actual performance, eg. 12 Ed. 266. 7 Ed. 3528. R. 2768. Eq. R. 266.

They will not decree, even a smaller agreement, which has been afterwards discharged in part. Failing as 1 Ed. 354. 12 Ed. 248. 7 Ed. 354. 2 Ed. 5820. 7 Ed. 5820. 1 Bu. R. 220. 7 Ed. 5820. 7 Ed. 5820. 2 R. 2768. 2 R. 2768. 14 Ed. 5820.

So where an agreement has not been in force for many years no decree will be. But, delays is explained by special circumstances. As by agreement was a person agree to purchase a little lands within 5 years of covenantor has been on trade, or need his money or by reasons of other circumstances at not expense it. This is not a hard, but affords evidence of a waiver or release. 2 Bar. E. 266. 7 Ed. 280. 11 Ed. 2761. 2 R. 610. 1 Bu. 6384. 12 R. 6384. 1 Ed. 5820. 8. 7 Ed. 5820. 1 Ed. 5820.

But no length of time will prevent eg. from relief. By fraud and not a trust. 11 Ed. 322. 1 Ed. 156.

But plaintiff omission to perform his part precisely in the time fixed is no objection to his having a decree. Said this rule is landed altered. 17 Ed. 584. 1 Bu. 584. 12 R. 4

Pre Ed. 322. 1 East 523.

If hepp has trifled, or shown a backwardness to perform his part, no decree on his favor. Especially of certain circumstances are altered. 2 Bar. E. 266. 1 Ed. 2768. 5 Ed. 5820.
Powers of Chancery.

Difference between marriage agreements and others.

In the former, the children being purchasers, may construe performance of one part, as the other has failed; the same principle is favor of a wife under marriage articles, to which she was not a party. She has performed her part by marrying. 2 Pol. 367; Term. 450, 461, 471, 472.

If after an agreement made as Stat. intends rendering complete performance impossible, part performance will be deemed of desire by the party claiming. E.g. agreement to make a lease for 40 years & Stat. prohibits longer leases than for 10 years. Lease for 10 years. By pres. 1 Foot. 2341. 2 Bea. 281. 3 Bea. 32.

So if complete performance is prevented by accident on the act of God, it seems. 2 Bea. 329. A 47, 48, 49. 3 Bea. 284. 15, 16, 31, 32. At 391.

Doctrine of cy pres obtains in many cases at law. 3 Bea. 352. 214. 42 Bea. 79, 81, 212. 2 Bea. 284. 2 3 Bea. 381, 165.

This doctrine seems at first view to contradict the rule of law in Salts. That where a Stat. renders the performance of a contract unlawful, contract is voided. But the Stat. makes the contract void only as far as its performance is made unlawful. Salts. 198.

So where one has a power to lease for 10 years, a lease for 20 years, the lease will be good in Eq. for 10 years. Not at law, it seems. 2 Bea. 244. 47, 57, 212. 3 Bea. 79, 285, 212. 325.

It is as much as the law that whoever consents by grant, conveys the freehold. For if one by twise of dusty relies. It has an estate in it. 1 Bea. 77. Bea. 81. 37. 38. 39. 40. 41. 57. 21. Bea. 82. 51. Term. 3. 385, 386. 72, 73, 74. 293, 320. 27, 572, 61. 30. 4. 47. 9. 9. 57. 2. 16. 4. 32. 118. 38. Term. 38. Term. 38. Term. 38.
Powers of Chancery.

...art. 25. to settle lands on a for life, but suppose thy wife desires a settlement on A for life only, and in strict settlement upon the first of other children in tail. 2 Poc. C. 61. 1 Eq. C. 49. 2. 2 Poc. C. 49. 3. 2 Poc. C. 37. 4. 2 Poc. C. 38. 5. 2 Poc. C. 39. 6. 2 Poc. C. 40. 7. 2 Poc. C. 41. 8. 2 Poc. C. 42. 9. 2 Poc. C. 43. 10. 2 Poc. C. 44. 11. 2 Poc. C. 45.

Decree the same the settlent. is made, after mar. giving A an est. in tail. Decree will go according to the art. 3. 2 Poc. C. 29. 3. 2 Poc. C. 30. 2 Poc. C. 31. 2 Poc. C. 32.

So if the settlent is made before mar. but in pursuance of the art. 1 Poc. C. 62. 12. 2 Poc. C. 33. 3. 2 Poc. C. 34.

These rules in favor of issue, said not to expire to for male issue. 2 Poc. C. 35. 2 Poc. C. 36. 2 Poc. C. 37. 2 Poc. C. 38. 2 Poc. C. 39.

But if a settlement has been ex. before mar. giving A an est. in tail, must it expire in pursuance of the art. "settlemnt must stand. A new agreement is pre. pursed. 2 Poc. C. 40. 12. 2 Poc. C. 41. 2 Poc. C. 42. 2 Poc. C. 43. 2 Poc. C. 44. 2 Poc. C. 45.

De. whether the issue can be relieved. 2 Poc. C. 46. 2 Poc. C. 47. 2 Poc. C. 48.

This con. 3. agreements as execurl from place at which they ought to be executed. This is the time of m. the agreement, unless another is fixed. 2 Poc. C. 50. 1 Poc. C. 51. 2 Poc. C. 52. 3 Poc. C. 53. 4 Poc. C. 54. 5 Poc. C. 55. 6 Poc. C. 56. 7 Poc. C. 57.

But the reader is consid. as trustees for the reader, this god is equally bound. 2 Poc. C. 58.

Therefore many articles or devises to be laid out in land, will be consid. as land from the time of the
Powers of Chancery.

Contract to go to the heir, tho' now actually laid out.
2Bow. 83, 21C. 419, 42C. 832, 483, 366, 221, 226, 171, 149, 154, 16,
6Ch. 357, 20Ch. 287, 1Turn. 506, 1803, 175, 192, 176, 1807, 1665, 77.

Money thus advanced, is subject to curtesy of husband, i.e. it shall be laid out on land, which shall be settled on her for life, or he shall have the interest of money for life, not subject however to the power of wife.
1Fonk. 441, 2Bow. 836, 583, 588.

It will pass by a devise of land or real estate. 2Bow. 326, 2Bow. 110, 2Bow. 567, 1Bow. 172, 3Ath. 239.

General rule: It will not pass by a general bequest to a Legatee post. 2Bow. 222, 1Bow. 112.

These rules hold whether the money consists of a particular fund in the hands of trustees, or of the owner, or mixed with his general funds. 2Bow. 837.

But Eq. will not consider money as land in these cases, unless the agreement to lay it out be positive, as "to remain in the hands of A. till a purchase can be made," to is not so precise enough. 1Fonk. 414, 2Bow. 227, 3Ath. 255, 2Bow. 84.

So if money is agreed to be invested in lands or securities to be the election of a party, the election must be made. Thus, it remains money. 3Ath. 255, 2Bow. 298.

So land articles to be sold, treated as money, according to the foregoing rules. 2Bow. 536, 46, 86, 154, 1Fonk. 414, 2Bow. 83.

Upon this general principle in Eq. of considering as done what ought to be that the property is transferred...
Powers of Chancery.

from the time of the agreement made, it is held that the vendor, under the articles shall be liable, vendor being in no default, to all contingencies happening to the party between the agreement and the time fixed for the conveyance. As in Case of an Earthquake in Jamaica. This case is said to be misreported. But the doctrine seems to be established. See a case of...there the thing originally article to be sold was a

A case was put for which Covenants w. not to have a decree, but the party in this Case put was to be in a conveyance, & accident has prevented a conveyance.

There was an agreement to purchase a lease for slaves & to take conveyance at a day fixed, before the day one life dropped. It was bought by the purchasers.

But of the contract, is not an agreement for a sale, but for a future agreement for that purpose, the property is not changed in eq'y. It is little more than agreeing that one shall have the privilege of resumption.

But the money article 1st supra, is prima facie, as land, yet one who is tenant in fee simple, if it may at his election treat it as money, have it retained as such. There are no 3 persons, who are purchasers under this article, no injury to others. Bow.C.112. 1797. 415. Ad. 467. p. 2 1798. 298.
Powers of Chancery.

But to make it consider as money, he must show such a stipulation, that it shall be so consider. E.g. Declaring in a will that it shall go to his exec. or describing it as so much money, agreed to be laid out in land. This it shall pass with the solemnities of a devise. 28th, 155, 3 P. W. 221 note. 5 & 6 236, 234. 139, Ch. 223, 233.

And proof of facts, or even declarations of the intestate (the tenant in fee) is admitted to show his election or intent, as the fact of his having received part of the money to appropriate to other uses. So proof of his declaring that he considers it as money. This is rebutting an equity. 23 P. W. 375. 189, 483, 3 & 4, 294.

Want of mutuality in an agreement is a decisive objection to a decree for a specific execution. So is uncertainty. E.g. A. agrees to sell to B. as manor for £1800, by whom any other purchaser to give, if B. was not bound to take it unless it is mutuel. 28 P. W. 233, 4, 288, 418, 1 & 2, 207.

But if it was originally mutuel, no subsequent want of mutuality is an objection to a decree, basis and of the distribution of the subject, agreement to pay £200 per A. for stock, which afterwards fell to pay an agent for the sales of an estate, for an annuity. The agreement dies before the first payment, but a conveyance is decreed. 28 P. W. 232, 4, 25, 28, 415, 4, 6, 12, 193, Ch. 186.

And this must be waived by Jeff. in E.g. or the bill side

Moreover. For if Jeff were obliged to render without waiv

and Jeff is not to 26 P. W. 209, 4, 417, 135. 65.
Powers of Chancery.

Generally, the will not suffer advantage to be taken of penalty or forfeiture, when the substance of a contract may be obtained without it. (e.g. interest on a mortgage of £100 with a clause of increase of 2% per. c. 204, 212, 234, 241, 247, 252, 260, 264, 269, 278, 289, 293, 295, 320, 323, 334.)

When therefore compensation can be made according to a clear rule of dam? the substance of the agreement can be obtained. 2 Bow. C. 265.

But where there is no rule of dam?, they cannot relieve to the penalty. (e.g. Self-complets not to alliways without license of Jov. and no penalty of forfeiting the Sease. There as the substance to cannot but obtained without it, there being no rule of dam?, penalty is not relievable at. 7 Bow. C. 205, 206, 211, 313.

So, there is a rule of dam?, yet if by reason of intervening events, no compensation can be made as a par. statute for the penalty. (e.g. in his many articles concerning that if he dies not settle such a jointure within 2 years, he shall lose all his wife's portion, except the interest. wife dies before joints settle, within time. Forfeiture must ensue, the the amount of the jointure is known. For the wife not dying no compensation can be made. 2 Bow. C. 205, 211, 269, 329, 337, 339.

Wherever one party to an agreement voluntarily stipulates an advantage or favor to the other, on certain conditions, the latter must lose the advantage or unless he strictly complies with the conditions the penalty is effective. (e.g. a creditor offers to take £100 than
Powers of Chancery.

If a debt is paid at a certain day, payment must be made precisely at that day, or the debtor must pay the whole. 2 Bn. C. 270, 12. Can. 220. 48. 2 Bn. 25, 98. 3 Bn. 160.

General Rule: When by virtue of law, no penalty in an agreement it will enforce performance of every article, vice versa. 1 Fos. 141. 1.

Formerly holders that where there was a penalty in an agreement, the party bound had his election in all cases to do the thing to pay the penalty. 2 Bow. 276. 1 Fos. 141.

Present Rule: When the penalty of a bond appears to be merely a security for the performance of something collateral, so that the enjoyment of the collateral object appears to have been the thing intended to be secured by the violation of the penalty, the penalty will relieve the penalty, in case of performance. 1 Fos. 141. 1 Fos. Ch. 418. 3 Bow. 691. 1 Bow. 271. Jac. Bent. "Penalty."

Dec. if there is no rule of Damages or no compensation. E.g. a bond, mortgage. 1 Bow. 431.

This is done by injunction generally or payment of principal interest, as the case may be. Costas. But in these cases the courts will decree specific performance of the collateral thing, for the obligor in this case has not his election to do one thing or the other. 2 Bow. 106. 10. 3 Bow. 533. 2 Bow. 191. 10. 3 Bn. 612. 3 Bn. 528. 2 C. 476. 9 Bow. 2228.

When the sum to be paid or non-performance is in the nature of a rule of Damages, the court will not relieve with the rule of Damages, if the penalty is not intended as a more security for another thing (itself), but as a compensation for the loss of it. 1 Fos. 142. 4 Bow. 2228. 9. Bn. 63, 11. 173.
Powers of Chancery.

In this case the court, not deeming performance of the contract generally restrainable, its violation for the obligor has his election to do as to pay the damnum assessed, or to perform the covenants to pay $5. for every acre of meadows plowed. Sec. of Covenant "not to plow" under a penalty. 1Daw. 232.

But when the penalty is a mere security for a collateral thing, or not a compensation for it, the obligor has no election in C티.
Powers of Chancery.

Setting aside Agreements.

By will sometimes refuse to decree specific execution of an agreement to which it would not grant relief, e.g., an unreasonable agreement not attended with fraud for more unreasonable relief is not sufficient grounds to set aside contracts. 2 How. C. 143. 223, 22; 2 How. R. C. 20, 2 How. C. 228. 1, 182. 158. 200. 3 Blr. a. b. 294. 1 Eq. C. 587. p. 9.

It is for the discretionary in some measure, to decree or not. 2 How. C. 578. 221. 259.

But fraud in the transaction is good ground for setting aside an agreement. 2 How. C. 148. 226. 263. 3 Blr. 290; 2 How. R. C. 226. 292. 2 How. C. 356. The unreasonable relief may be on circumstantial or evidence, paid in 324. 12, 167, 129. 12. 6. 2. 11.

Agreements obtained by improper hardship or the use of a fraud, e.g., distinct from fraud, i.e., deceit, set aside. By e.g., an agreement in a mortgage that if interest be not paid at the day, it shall become the principal. But such agreements afterwards ratified, and with his eyes open are not set aside. So if there obtained two years after 185. 188. 163. Taib, 413. 124. 149. 130. 1. 8. 7. 323. 18. 4. 168.

Where the oppressive agreement is unlawful, but, e.g., a officers received. e.g., to pay a bill, that the debt is not considered as partly, criminal. 2 How. C. 148. Taib. 36.

But whatever parties are equally guilty, they are not. Volant. no fit, injury. e.g., one loses at gaming to pay the money. They have not relieved the reparation provisions of positive law. He paid debts. 2 How. C. 200. 2 How. C. 157. Taib. 41. (East) 98.
Powers of Chancery.

Any unfairness to the plaintiff will prevent a decree in his favor, he must have clear hands. E.g. misrepresentation as to the value of the subject matter. So where the plaintiff pretended to be purchaser for sale. Sister, when he was not, thus obtained an agreement of sale at an under value. 2 Cow. C. 225. 3 Atk. 186. Miss. 227. 2.

So a suppression to the disadvantage of the plaintiff prevents a decree for the plaintiff. E.g. E. C. 277. to compel the sale to complete a purchase of an estate represented as paying a rent of $40, one notice given of an annual rent of $70. 2 Cow. C. 225. 3 Atk. 186. Miss. 227. 3 Atk. 225. 227. 227. 186. 3 Atk. 225. 227. 227. 186.

So in some cases where there is misconception, without any deceit or unfairness, as where an agent, for sale of an estate, sets at an under value, from a mistake as to quantity of interest, the estate being prehoted to last for leasehold, to some other particulars, Case of a Schoolmaster. 2 Cow. C. 225. 3 1. 3 Atk. 224. 2 Cow. C. 196.

Rule is that if the fault misconceived is the cause of the agreement it is set aside. Since if the mistake is not a sine qua non to the agreement Schoolmaster's opinion. 2 Cow. C. 196. 166. 604. March 364.

General rule, that voluntary agreements or covenants are not decreed in this, you have only nominal damage are recovered at law even in case of a covenant. (Exception supra) 2 Cow. C. 225. 3 1. 3 Atk. 224. 186. 3 Atk. 225.

But the compromise of a doubtful right is sufficient. 186. 3 Atk. 225. 3 1. 3 Atk. 224. 220. 220. 186. 3 Atk. 225.

Different from the case of a mistake, which is a sine qua non.
Powers of Chancery.

you are now of the agreement. Here the parties are apprised of the doubt, it makes a contract of hazard intentionally.

2 Atk. 587, 592.

Carol contracts respecting lands are deemed in Chy. if partly executed. See Stat. Bradt's Eng. & Contracts p. 1 Bow C. 425. 5 Bow. 527. 7 Eq Cal. 28. 16

So in case of private trusts, provable from circumstances of facts. See St. Pr. Br. 1 Bow. 35. 119. 2 Bow. 237. 2 Bow. 238. Tabl. 60. 7c. C. 520. 2 Atk 71. 7c. 2 Bow. 1799. 23c.

Agreements obtained by coercion, not amounting to duress, are not deemed, but set aside. 1 Bow. 118.

So from undue influence, e.g. that intended husband releases his wife's guardians of all accounts of man's profits of the wife's estate. Not so in case of fear arising from a just reverence or respect, as in a debt towards a parent, if the agreement be reasonable. 2 Bow. 187. 1602. 261. Nov. 19. 1 Atk. 11. 1 Bow. 639. 1 Br. 339.

Intoxication is not sufficient cause for vacating an agreement in Chy. unless effected by the other party, or unless some unfair advantage is taken. 1 Bow. C. 29. Nov. 19. 3 Bow. 120. u.

So weakness of mind, of the party, be legally competent, is, juxta, no ground for setting aside his agreements. See if attended with fraud or any suspicious circumstances. Case of a young noteholder entrusted to a servant, who was to guard him from imposition yet procured from him a bond for $1000. 1 Bow e. 30. 1. 38. 329.

Contracts are sometimes enforced in Chy v. Infants.
Powers of Chancery.

the not valid at law. The Chan. acts as Guardian, etc.

If money is borrowed by an infant, duties, expenditure necessary, 200 C. 258, 136, 555, q. 3. 187, 766. Salk. 357, 74. 69.

So in other cases where the contract is clearly for the infant's benefit, 200 C. 258, q. 1. 65, 69.

Agreements operating as a fraud on 3rd persons are never deced, but set aside. 200 C. 166, 76. 1q. 258, 66. Salk.

168. Touch 348, 472, 673, 249, 376. 1. 200 C. 165, 76. 1q. 258, 66.

Not now good at Law. 417, 156, 166, 196, 532, 563, 772, 766. 1q. 165, 76.

35, 385. They cannot be ratified by the parties, being void. See Contracts subject to. 1200 C. 602, 475, 102, 606, 6, 76, 75, 76, 76.

So marriage licenses bonds. Do we think it good at Law?

Such contracts unlaunched. 194, 5, 249, 302, 1q. 1, 259, 5.

Contracts with heirs apparent for their supports always vacated by the former, not set aside in cases where the terms were disadvantageous to the heir. The rule holds whether the heir is an infant or not. 200 C. 181, 1. 200.


This is set aside the afterwards executed in some cases, if the executors in a decree of a former decree in favor of the agrmont. 200 C. 183, 256, 4 q. 4, 182.

Rule: if the original contract is shown to have been fair, it is ratified freely on full information, it is good. Otherwise, the ratification is not good. Are these contracts void at Law. 200 C. 184, 2, 159. 187, 53, 2, 180, 520.

Evidence of a title, descendent in Chancery is to be delivered up. 9, 150. 297. 22, 37, 373, 32.

Agreements to do a thing which would lead to sp.
Powers of Chancery.

Interposition, by letter, or criminality, are not decreed. 2 P. 237. 1 P. 183. 2 Vin. 258.

A suit of is decreed in Chy. To allowed in Eng. under 2 B. 23. C. 117. 3 Bl. 329. 4 Bl. 173. 6 Bl. 656. 2 R. 440. 1 R. 66. 5 Co. 56.

In non-original petitions in Eng. are to be tried before a general assembly of the demands. 2 Co. 215. 3 Co. 335. The alleged value determines if uncertain. 2 Co. 130. 2 Inst. 92.

No appeal from decrees in Chy., but in instance of error lies as at 2 S. 14.

Of the power of Chy. to issue Injunctions.

Injunction is a prohibitory writ, restraining a person from doing a thing which appears to be: Equity = Conscience. 3 Bl. 176.

They issue in various cases. The most usual injunction is to stay proceedings at law, on the ground of equitable circumstances, not adverted to at Ser. 128. 3 Bl. 176.

If a declaration is filed in Eng. 2 Co. 173 only is played, if not, all proceedings are stayed till answer or further order. 3 Bl. 173. 2 Com. 246. Merw. 26. 339.

If a tenant at will goes to law for recovery of money owed, it having been in the courts paid forcibly taken from him by the lessee, Chy. issues an injunction. 1 Com. 486. 2 Th. 71. 3 Bl. 176.

Chy. cannot issue an injunction to stay proceedings in a criminal case in kings bench, by it old kings bench would protect any one the sl. provide in contempt of it. 3 Bl. 176. 3 Mo. 96.
Injunctions to stay wastes, as for cutting timber trees, placing ancient meadow, their favor of a tenant might tenant for life or years, is granted, for favors a reversion.

Injunctions to stay wastes were given in all cases, in which the action of waste was at issue, for many others, e.g., when of waste to his only in favor of the immediate remainder a reversionary, having the inheritance; injunction issues in favor of a distant remainder. 3 T.R. 227, 2 R. & Sh. 314, 25 Geo. 3, 752.

So it goes v. mortgagee for a copy for cutting timber, if he does not apply the awards in paying the debt. 2 v. mortgagee in goods. 3 Ed. 4, 20 Geo. 3, 215, 12 Geo. 4, 752.

So a tenant for life, without permission of waste, pull down the buildings, as injunction issues; tho' it does not for his cutting timber. 2 T.R. 227, 3 T.R. 314, 10 H. 3, 12 Geo. 4, 215, 12 Geo. 4, 752.

So in the last case, the tenant is decedent to repay the buildings injured. 2 T.R. 227, 3 T.R. 314, 10 H. 3, 12 Geo. 4, 752.

So an injunction will issue v. such a tenant in some other cases. As to restrain his cutting trees entered by own servants, 3 T.R. 227, 215, 12 Geo. 4, 752, 2 Geo. 3, 51.

It sometimes issues v. one having the inheritance, as a trustee. 2 Geo. 3, 51.

Action of Waste lies not v. tenant in tail after possible it, to, but an injunction is given, v. if the waste is very unreasonable. 1 Ed. 4, 2 Geo. 3, 51.

So an injunction issues to restrain nuisances. E.g., v. of a building obstructing ancient lights. 2 Geo. 3, 227, 752, 12 Geo. 4, 752.
Powers of Chancery.

But the right must be founded on prescription: or, if they are not ancient, an agreement. 3 Rob. 489, 1756. 2 Fig. 274, 1756. 266.

It goes to stop a building on another's ground. 3 Bac. 174, 1756.

But the nuisance must be such as the law deems a nuisance; therefore it goes not to the building of a house for the small pen. 2 Roll. 129, 1740. 2 Atk. 350.

It does not issue to restrain common trespasses, but if so long continued as to become a nuisance, it does issue.

2 Qos. 52, 214, 1791.

It does in some cases issue being for a penalty at law. 3 Bac. 174.

In 2 Qos. 174, 1791, it was in Eng. by Stat.

Injunctions sometimes issue to stay trials at law, as where it appears that suits on Equity must arise out of suits at law.

3 Bac. 174, 1791. 2 Ch. 66, 1793.

So injunctions are granted to establish the prevailing party's title where he is harassed by different suits of ejectment.

Rev. 29 in the House of Lords. 2 Ch. 66, 1791. 15 R. 266.

This is a perpetuam injunction to prevent vexation.

3 1816, 489, 1756, 362, Ch. 469, 1816, 671.

So in some other cases injunctions issue to quiet a person in the possession of his estate, as where he has an apparent equitable title, that has been in peace several years. 1 Bac. says that it is now very often granted, e.g. a trustee agrees to sell to A, and another, who does sell to B. Then in trust, B. dispossesses the trustor.

2 Qos. 52, 1791. 1816, 2 Ch. 66, 1792.

Injunctions also issue in the cases of those sued to prevent a multiplicity of suits, as where many suits are
Powers of Chancery

depending or likely to happen from the same thing. 5.2. Several of persons claim the profits of a joint. To be the bounds

of land of: Allow 9, 10, 9, 17, 8, 9 Bac. 179, 180, 22, 26, 5, 38, Bac. 26:

14th 28, 30, 40, 39, 43, 82, 38, 28, 38, 17.

So presents to. Several persons claiming to be true to an injunction issues to prevent either proceedings as such.


As they will relieve 4, 79, so it will issue an injunction or suggestion of power to stay proceedings at law. Provisionally 4 Bac. 410, 212, 4, 79.

Injunctions on favor of authors restraining others from publishing their works were frequent before the State of amm.


Decision in Bem. Proc. was 1°. That at C.L. an author had the sole right of first printing, & might maintain an action 2°. By 3 judges + 5. And + 38 2°. That the C.L. action is taken away by Stat. of amm. 5 4°. But 5. But 5... was with the 5 3°. That printing did not take away his right. 4°. 5. But... was with the 5°.

How far 4°. will relieve to a judge at law. see

What observations I shall make in this discourse will be merely introductory to the general subject.

A Crime is said to be an act committed in violation of a Public Law, or something to do an act which the Law requires. Either of these are punishable. This may be either its C.E. or Statute Law. The C.E. is that act is used in Courts of Justice, for the evidence of it is found in the Reports of the proceedings of a Court of Justice, no matter how it originates, whether from that or otherwise, so double is much of the C.E. is used on ancient Statutes which are no more, but it is in material what it goes out of. The term Misdemeanor is often used. In common parlance it seems to indicate a smaller offense than the word Crime. But as used by Century or Contradistinction from Crime, it is an attempt to commit a Crime. A Crime to which no punishment is inflicted by particular name. It is often a very high offense, as an attempt to commit burglary or murder. It is not the Crime of burglary or murder, but it is an attempt to commit these, which is a misdemeanor, or any high one in the other case. The Crime is not committed, but there is an attempt to do it. A misdemeanor is an attempt to commit a Crime, which has no name.

Sometimes a Statute is made prohibiting some certain thing, but no penalty is inflicted if the thing is done. It is a misdemeanor, for which the person may be indicted. We have a Statute here that none but a certain
Public Wrongs.

Class of persons can commit, but no penalty is inflicted for the violation of the statute. Now if any others than those specified, do so many, they are guilty of a misdemeanor. This is always the case when the law forbids an act, and no penalty is inflicted, nor is there any punishment that can be necessary.

The doctrine of Merger. In most crimes there is a private wrong, when it is said that in most cases there is no remedy for the private injury, and according to the English law it is the same atrocious crime, for it is said, the civil injury is merged in the public wrong. In some instances there is no such principle of merger, as theft, robbery, among others, but if felony, than there is no remedy in the civil in case. The offenses for which there is no remedy at all, amount to felony as theft, forgery, &c. Felony is a crime which causes the forfeiture of all man's goods, & chattels, and always, punishable with death, and mitigated by statute.

This doctrine, I conceive, cannot exist, except it be because our laws as to punishment of crimes are entirely by changes, they are not the English laws. They say the civil injury is merged. Why? Supposing a man commits forgery, an individual suffers by it; why is it not recovered for this injury? There is no reason why you should not, in the nature of the thing, but still you cannot. Why? because the action would be entirely nugatory for the goods or chattels are all forfeited by the public force, but cannot you take the body? No, the public want it, it is hung, this is the doctrine or principle. It has been
Public Things.

moderate by the allowance of beneficial clergy in many cases. But when the rule was relaxed, the punishment was Death, to prefer justice of all the goods of a chattel, so as to be reason of the language of the civil injury is 
drug. But only for a case where there is no forfeiture for the civil. If the injury is done, there has a remedy, as if one pulls down your house and that.

In this country where the laws are all changed, the criminal may be punished sometimes capital, but still there is no forfeiture of goods or chattel. You may have them leave your premises for the private injury of the goods or chattel. The person robbed has his remedy for civil injury he has sustained. This is neither breaking in upon, or departing from the land. It is following it up.

There is a division of Crimes into Mala in se, Mala prohibita. Crimes which are males in se are those which would be crime if not prohibited by law. Society, crimes which are mala prohibita are those which are prohibited by the laws of the land. This is an exact definition, but it is not strictly correct. There are crimes male in se which grow out of the state of society. Mala prohibita, this grows out of his breaking the wrong of another. So that all those crimes where a man's own conscience incurs him are wrong, are male in se. Where this is not the case, but it is something prohibited by law it is male prohibita. E.g., they have a
Public Wrongs.

That in every case nothing can be lawful or forbidden to men by virtue of reason alone; but it must be acquired by the will and consent of all men. Thus, if any one should reason that the crime of murder in Wien (i.e., Vienna) was lawful, or, by analogy, that many other crimes might be given. Writers tell us that there is a moral obligation in all men not to commit crimes, makes it so, as to crimes, makes it prohibitory.

...there is an express contract entered into by all the members of society, that they will be bound by the laws. Thus, I think it is not altogether correct, for if there was only this express contract, might be bound by the law, he might make an express declaration that he would not be bound by such a law. But this would not make any difference; he is bound by the laws of society, let him make what express declaration he pleases. It might have suited the ideas of our sturdy Saxon Ancestors to say there was the express contract, whose part did their to believe that they should not be bound by what they did not consent to.

The grand object of the law in punishing crimes is not reformation. But to deter others from committing them. If a reformation can be effected, it will be so much the better.

There are crimes which are Crimes at 0 B.C., and others, which are Crimes by statute only. In every common case the (add) a crime by statute, which was so at 0 B.C. The object is to give an accumulative remedy, as e.g. false is a crime at 0 B.C., but also it is crime by statute. Now, when this is the case, the State, providing a punishment does not refer to the 0 B.C. ruling, there is no express crime in the State. In this case, the intent is not to make either...
Public Wrongs.

at C.D. or on the Statute. If not at C.D. the indictment will be the one provided by the C.D. of or on the Statute. The punishment will be such as is provided by the Statute. This is not applicable sometimes the Statute requires a different species of evidence from that required by C.D. To enforce the Statute. No limit or time in which an indictable shall be preferred when there is no limitation at C.D.

Now if there is an indictment on the Statute, and it cannot be supported under the Statute, as the limitation has expired, the indictment may be good at C.D. if the conviction is on it. This principle may be applied in civil actions. St. 9 gives double or triple damages, and the C.D. never gives more than simple damages. E.g. in case of a man goes on another lands, and fully commits trespass by cutting down trees or carrying away any of them claiming them as his own, but doing it with deliberation, a Statute has given triple damages. Now in an action on this Statute, there is one essential requisite which is different from C.D., for it must be proved that the cutting was done with full knowledge of a man that committed. It is a tree or another lands, he went to sleeper triple damages. Now you have sued on the Statute, and you cannot prove the trespass to have been willful, you cannot recover the triple damages, but are you to lose your action? No, you have declared for an injury to C.D., you have pled a sufficient in your declaration, you have proved a trespass, the act a wrong, only you will therefore recover as is provided by C.D. To in case of an indictment on the Statute, your may fail, while
Public Wrongs.

In speaking of the sentences of C.E. One thing further. If the Statute gives a life punishment for a crime, and the C.E. it is always a repeal of the C.E. for it is suppose the Statute was made for the purpose of introducing a mild punishment. And in such cases the indictment must be that of the Statute. But when the punishment is not life than that by C.E. the persons may be indicted for either. We formerly had a Statute against blasphemy, punishing it with death. (see the Black Book p. 128) The punishment was so excessively severe, that I knew I knew, an indictment best upon the Statute they were always best at C.E. This is now left out of the Statute Book.

There are some crimes which are not punishable either by C.E. or Statute e.g. the crime of ingratitude, it is worse than stealing. Thus, if for the latter a man might be hanged.

Of those persons exempted from punishment:

Committing an act which will a crime or punished in others.

In order to constitute a Crime there must be an intent, i.e. will in a class of cases. If shall of act or omission, and if it is positive act, not in omission, there must also be an intent. That intention to commit the greatest crime, but an attempt made towards it, is no crime, nor is it punishable. That act must follow there must be a concurrence of the Act with the act, or it is no Crime. If the will intends a wrong act is committed, it is criminal, punishable. So if the will wishes to omit a duty imposed by law, it is omitted, it is punishable. But when person labor
Public Wrongs.

under a disability which renders them unable to perform
what was required of them by law, it is no crime if they
omitted it. As if a man should require a man to be at a cer-
nom place on such a day, he had both his legs broken
five days previous, then it is no crime that he is not
there on the day. In all cases of impossibility where
a man is compelled to do an act he cannot resist. And in
all cases of perfect accident where so far from concen-
trating on the act it was his will, it is no crime. As
if a man should innocently shoot at a partridge, and
accidentally kill a man in the bushes. It is no crime. It is
a mere accident. There is no concurrence of the
will with the act.

Suppose there is a concurrence of will and fact
that a man may be bound to do a wrong act. Yet it cannot be punished by
the laws of society, so on the other hand a vicious act,
(even which may be vicious otherwise) without any concurrence of the will, is not punishable. To do an act without
the person is a mere machine does a wrong without
any intention, and it is by accident, there can be no pun-
ishment. So where there is a total want of understanding,
there can be no punishment.

The cases will not square with all these positions
than are children who are not liable. This is the case
with Infants. Nor a person under the age of 18 cannot
Public Wrongs.

But between the ages of 14 to 21 the infant is as capable of committing crimes as any other person after 14 infancy is no excuse, believing that it is an age of uncertainty, if they have discretion they are to be punished the same as men under 14 years of age, and this is to be inquired of the man in his malice prepense, and when there is being capable of wrong motives. When an infant is under the age of 7, there can be no inquiry into his discretion - it is not punishable for any offense - this is a presumption of Fate, it cannot be rebutted. You cannot show that a child under 7 has understanding sufficient to make him guilty of an offence. You see that the principle that he must have understanding is not given up. Under the Law, says he, has not understanding, believing that an inquiry is to be made, over 14 he is as liable for crimes as an adult.

In case of Idiots there is no understanding and they are not punishable. So in case of Insane, if they are properly madness, they have no understanding and are not punishable. As they appear to yourself, cannot distinguish. But in case of partial derangement or a derangement of that order (i.e., not on a certain subject, but equally all others) they may be liable to punishment, but it is matter of inquiry. I meet a case of this kind, a man was rational as to all subjects, except he said there was a duty imposed upon him to kill certain persons, to this he was no doubt restricted. He killed his wife as was executed for it, and he was sane when they were.
Public Wrongs.

conducting him to the following that a Reign of Anguish
awaits him. Now as to that thing, he was certainly and
manifestly, perhaps ought not to bare punishment. For case of
criminality, they are certainly not liable. Then is left to
the discretion of the priests, who are always stated that
they are to decide the law on this point, yes whether the
person was capable of distinguishing right from wrong.

There are a class of persons who are inculcated un-
derstanding, yet are liable to punishment for their
offences. I mean drunkenards. Intoxicated as they are,
these drunkenards are, as liable as sober men, yet many
by more than intoxication are as devoid of understanding
as any fanaticke. Do not know how they got along with
the justicer of justice in this matter.

But with us a man in of policy governs, it would not
reason to suffer drunkenards to be dead as an excuse for
it ever, many would yet drink for the very purpose of
mitting crimes. Now it is said that lunacy occasioned
by drunkenness is a mans own act. This is true, yet argues
by time that he was deprived of his reason. Whereas in
case of lunacy this is not upon by the act of God, but
therefore in the former case, they say he shall be always
able, to not in the latter. This is carrying it too far, for
suppose a man has been an habitual drunkard for
10 years, then become an absolute drunkard, other than a
man, he is not liable to punishment, yet he that
this Drunkard himself. For if a man by getting a
Drunk, brings upon himself a lot of sickness, and all the
very time of his sickness he was compelled by him.
Public Wrongs.

Certain act, in account, of his brevity, he cannot do now. He is exculpated not punishable. But suppose he was lying down drunk at the time, it would excuse for him to plead drunkenness. It will never do to add to the idea that the man is not to be punished.

When the thing done is unintentional, as in the example above of killing a man by inadvertently shooting at a partridge, the mind is entirely neutral. There is a distinction in the English law, which we must observe. Suppose the man had a lawful right to go out and shoot at a partridge, and ordinarily, with diligence, he kills a man as a love. He is not liable; it is him a mere coincidence. He was pursuing a lawful act. But suppose he was pursuing an unlawful act, as e.g., if suppose a man's lot to shoot his horse, and a man dethrate hills on mine him, he would be liable to punishment; if he broke his leg only, he would be liable to damages (and I suppose he is to be liable to damages of pursuing a lawful act). So you see he must be pursuing a lawful act, if not he is guilty, the law will not excuse. But this principle is not kept up entire, for in the last case, the mind is as cautious as in the other. Principle of policy governs us, that if a man will go about an unlawful act, he must bear the consequences. So it is a principle of policy that governs in the case of drunkenness before. One of the ways was pursuing a lawful act becoming an injury; he is not required that he shall be unanswerable.

Suppose an injury is done in ignorance of fact, as e.g., a man's house is broken open, the owner a telling
Public Wrongs

attempts to kill the Burglar, kills one of his own family. He is executed, he attempted to kill, but it was a person whom he had a right by Law to kill. If this occurs without other. That ignorance of the Law will not excuse a breach of the Law.  The remedy unsuitable. To society to allow a plea of ignorance of a positive Law to an armed person that after the publishing of a Law all the Citizens are acquainted with it. It may be supposed the punishment different from what it really is. If he had known of the punishment he would not have committed the Crime, it is still no excuse. I knew a case of that kind in Cornwell. A man had served his term in one of the Newgate, down to the Southward. Our Newgate was abolished for some time; the return to the Court. (Committee) committal a Crime. Newgate then being revived, although he did not know it) when brought for sentence, he said, he had no idea that Newgate was required. If he had known it he never would have committed the Crime. He knew too well what Newgate was now to run the chances of getting a third again. His ignorance was no excuse. Here again a principle of Policy appears which is, that after published all men must be presumed to be acquainted with the Laws of their Country.

At Compulsion. Civil Compulsion will (by the Laws of society) excusing what will be a crime by you consider.

Suppose majority established by Law at the citizen compelled to commit Crimes. Now before the bar of justice (for a great many of these Crimes) he must be accused for it by Civil Compulsion, an obligation imposed by Law to the Judges must determine. If to Conscience they cannot
Public Wrongs.

carry such a disastrous effect, that they must cease the

Persons compelled by a superior to commit a

Crime are not excused as a general rule. They are just

liable by the Laws of Society. e.g., a master compels

his servant to commit a Crime. The servant is not excused.

But, there is but one exception to this rule, and that is this. If

in certain cases it is excused on the ground of coercion

merely. But if she does it of her own will, she is not en-

excused. I know a case where a husband commanded his

wife to go and throw down a man and fence, and she did it—she was

excused. If she does the act by the Command of his wife

with the husband she is excused, as it is presumption

does it by Compulsion. But if she does it of her own accord she

is liable. This is another case where she commit a Crime

in Company with her husband, and yet she is liable—this

is where they sleep with each other. If it is the acting for

two together, the governs it is liable. There are things that

are punishable, yet when done by Compulsion they are

excusable. e.g., this country are invaded by an

enemy, they go to the waggons to transport provisions

for them. This Compulsion excuses whether they are foreign

enemies in a regular state of States. So when an Enemy

gets possession of a part of a Country, compel the habitants

to furnish them with provisions, then the

habitants are excused. No guilt at all is attached to act.

Further you may justify an Enemy to pre-

sent a greater evil—e.g., save a City from Conquera-

tion, you may agree to a contribution, it is no Crime.
Public Wrongs.

No one seeing this Country could do it until absolutely compelled. But in rural society, compulsion is not a crime if the person agrees to do it after being compelled. But if he is made to do it contrary to his wish, it is used as a mere machine, then it is a crime. If the act is not a crime, as if it takes B. by the hilt of a sword, being held at the head of C. and C. now B. is guilty of no crime, for he is made to do it. The case of stealing to satisfy hunger is a classic. A man ought to steal sooner than starve. The man unaware knows nothing of giving man a license to steal, and this is just policy. It would not be a crime in one's conscience to steal to prevent starvation. Indians think it a duty, but it is wrong to allow it.

Sec. 102. April 10th, 1818

Of Principals & Accessaries

When crimes are committed, certain persons are principals. If it often happens that certain persons are accessories. A Principal is the perpetrator of an offence. An Accessory is one who gives aid or countenance to the perpetration of an offence. He may be an accessory after the fact, which is by giving some aid or service to the person who has perpetrated the offence. Now the question is, what is a principal? Whoever is present at the time the act is done, although he does not commit the crime, yet if he countenances it, he is a principal. He is a perpetrator of the act. The only question is, What is a principal? It is not necessary that the person be actually present on the spot in order to make him a principal, for he may...
Public Wrong.

commit a Robbery (and 3) may hurt or kill at a distance.
non. This is called 'a principal act'. So as many persons are not, watching (e.g.) as principals in the view
the law they are present. Raffles Co. 185 8513. Monday 2.2300.

There are crimes which can be committed with
and the presence of any one in such case they are prin-
cipally the not present, as if a man lays poison. Sets
a trap, makes a pit fall, turns out a mad bull, while
loose a mad dog. if any injury ensues the person of
persons are principals the not present. But always
crime is of such a nature as robbery, e.g. to eat in
stitute one a principal, he must be present in the
sense I have mentioned.

An Accessory is of Two Kinds: one before the act.
After the fact. An accessory before the fact is not in
the sense of the term, present at the commission of
the crime. Who is he? He is any one who procures the thing
to be done. He is not there at the time, he is only present to
but he sets it in motion, as if he had authority or
Commands it, as in commanding a servant, or advises
or encourages it, or lays motives before the party to
it. An accessory before the fact. However he may not
be an accessory, he is then which happens to come or every
case. The distinction is this. A. advises B. to do an inju-
ry to C. and B. does a great injury then B. is accused.
Yet if it is the consequence of the injury, he is accused B. still, he
is convicted. As it is. But if it is done by C. and B. dies in consequence. Yet now A. is accused. He never entered
and C. B. S. have treated him so much as to have occasioned
In Accessory After the Fact, or after the Crime is committed, no person is allowed by law to aid or assist another who has committed a crime, I mean so to aid and assist him that he may escape from justice. Also under this is an accessory after the fact, as in furnishing ammunition (when pursued) with a horse, or concealing him while the pursuers go by. So if he is almost overtaken, it has not value for some time: if you furnish him with provisions, this is aiding to hasten him to escape. But if he is confided in, and if you furnish him with foot, it is no offence: the idea is that you must not assist a man to escape from justice, so that the act of furnishing a criminal with foot, knowing it will assist him in escaping from justice, makes an accessory after the fact. Etc. by John Bruce, Etc. Suppose a man were imprisoned for a crime, if another furnished him with implements to commit suicide, would he be considered as the first Crime? I suppose says Judge Bloom, that he would be accessory after the fact to the crime, for although man was confided in, he knew the facts to be true, and the reason for the first is, that it is by enabling the
Public Wrongs.

In his own defense, thus aspects B. to escape from the harshest justice. 2 Thess. 3:19. 1 Thess. 6:20.

The crime must be complete to make a man an accessory after the fact. How A wounds B. Dies of the wound don't take it for granted that it was murder in A. But one day after the death of B. it is. Does this give him some relief? Some comfort. How is B. accessory to the murder? He has committed a misdemeanor, I think. B. lived in (C) it, have been accessory to the wounding, but he cannot be an accessory to murder, for the crime was not complete when he assisted at. Then may be punished for a high misdemeanor.

There is one character alone, no one else, who has no character to one who has been married a wife, and this is to a wife. His obligation to Society one person inferior to a superior wife. Here from punishment of he is accessory after the fact except the single case of a wife. The may be every thing in her power, as our husband is his escape, after she is killed a crime, I take she will not be liable as accessory at all. But on the other hand it is only Dependent fidelity. 2 Thess. 3:20, 1 Thess. 6:21.

There are two offenses in Society, the highest of in Council, in which there can be no accessory. This is

Treason & Treason. Whoever commits so as to continue

Treason, tho. I. is not present, is himself a traitor, who
ever acts with a traitor in any way, is himself a traitor.

This rule is established under the idea, that treason is

a crime which strikes at the vital principles of Society.

Therefore, every one who has any thing to do with it.
Public Wrongs.

As a principal, the punishment of the other is the same as the act; on the other hand, if the crime is the criminal offense of the principal, it is not punishable to make a distinction between the committing of an act of principal or accessory. The Law will not stoop for real with things, as common nuisances.

There are some premeditated crimes, and in these there can be no necessity for such as manslaughter. There can be no necessity for such, for as you will hereafter see from the subdivision of manslaughter that it is a crime premeditated, if it is from dillet, it is not manslaughter, but homicide.

After all this, it may be argued, what is the necessity of drawing so nice a distinction between principal and accessory — how is an accessory punished? It is a case of the same measure of punishment. It is all out to both persons accused accessory. There are now statutes on Eng. In most of the United States making a distinction between these, it has therefore become necessary to consider them as distinct in the statute: But there are other reasons for drawing a distinction there may be particular statutes where they have no statute, now in drawing a distinction, the person knows whether he is indicted as principal or accessory, it requiring this he is prepared to do it himself. The crime of aiding or assisting is distinct from that of committing the offense; the the punishment may be the same. But further an accessory cannot be tried, all after the trial of conviction of the principal; if the principal is acquitted there can be no case against him of he is convicted, the accessory may be tried.
Public Wrongs.

They are clearly distinct offenses to be considered. You may, e.g. indict a man for forgery, the next accepted, then you may indict him for having tried to escape. This does not militate on the principle that no man is to be punished twice for the same crime. For here the person is not tried for the same but for a different crime. Suppose e.g. he is indicted for burglary to constitute which crime he must break open the house in the night, it turns out that it was by day when he broke and stole your property, then you may indict him for the theft for this is trying him for two distinct crimes. The maxim holds good that you can never try a man twice for the same crime. But it is now a well settled that a man acquitting a principal, may afterwards be tried as an accomplice, 20th S. 86. 1st B. 625.

Of Felony.

All the crimes which are denominated Felony are called felonies in this country but what constitutes felony is not the same with us as it is with them. In crime at L. T. which causes a forfeiture of a man's estate to the Lord, this goody calls to the House is felony, e.g. Forgery in Eng. - Well. is forgery a felony here? No, but there is here no forfeiture as in Eng. - still we call it felony - we call the same names felony while they do, but what constitutes the crime is not within the same - we say in our indictment he "feloniously" broke open the house to, or he "feloniously" stole.

The severity of the L. T. has abated in Eng. The first section of one of most felonies is not punished until
Public Wrongs.

Death. They are allowed for the first offence.

The Benefit of Clergy.

The case is that, when any person was charged with an offence, his neck was to be privileged by the benefit of clergy. His being able to rest made him also such a clergyman, and as making became common, every one became entitled to the benefit of clergy upon the presumption that every one was a clergyman. So that every man was a clergyman. I had only to ask for his benefit, it was granted. But women were never allowed the benefit of clergy, upon the presumption that they did not be clergywomen until the female reign of Queen Anne. They are now therefore clergyman likewise. It is allowed for the purpose of attaining the security of the C.O. This privilege was afterwards considered as extending mercy too far, & Statutes have prohibited it in a variety of cases.

I shall now proceed to particular offences. I shall state to you the C.O. of the alterations made in England by Statutes. The C.O. remaining in this Country, where no alteration has been made by Stat. The great object is to understand the C.O. If the C.O. may be altered in certain particulars in the State - but the three above universal principles remaining, which cannot be altered, as e.g. we have altered the punishment of crimes in many cases - nor the crimes of treason, which is the first. I shall state if it is the same here as in England, what is treason there, is treason here - but we have altered the punishment of it.
Public Wrongs.

Mr. Benson.

This is an offense at law. "It is a wilful malice to burn the house of another." The word in the Latin is 
"Demos" his Democrit. The word "malicious" is here 
used in the same sense that malice is used throughout 
the Code. It is not necessary that the person that have 
a spirit of ill will, but it means any thing done 
with a wicked motive. A man may mind another 
legal his moneyWy not have the last spirit of it were 
not to him, but his motive is wicked. This term is better ex 
plained by the Latin word "malicia" which means wicked 
ness in the abstract. What is done by one, these wicked 
motives is malicious in the cause what it was. This 
the case in Florida - the declaration states "that I male 
iously slandered him the P.C." tell how much motive 
was there? Why it was a telling petition - the story was 
a good one, the to it or spirit. He did not act it perhaps 
in a spirit of ill will, but he had a wrong wicked 
motive to this for it is malicious. So if a man burns 
the house of another, it is malicious of a man burns 
his own house but further (damage is more, it is not 
A treason. 13 n. 155.

Suppose a man burns a house, which is not a 
common or dwelling house, no one lives in it, it is not 
sufficient distance so as not to endanger other houses 
by it is not a arson of nothing more happens. But if 
it was a house, in which persons live a part of the 
year, the they are not lives in it at the time, it will arson. So 
if one houses, which are within the Curule Age, are set
Public Works. By Eason.

In every case there are considerable cases of
mansion house. But a house built at a distance to
not inhabited by any one, as a Place, e.g. of barns it
is not arson. But by an Engl. Stat. burning a house
at a distance is even a barn with even a hayrick it
is arson, and at Co. by burning a house of the last description
of it occasioned the burning of a dwelling house,
was arson. 4 Co. 2 4o. 4 Bar. 223. 1 Hamb. 166.

Burning a mans own house was not arson.

At Co. Statutes have 12 some cases numerous it so.

At Co. 223. It provides that the willful
burning of any house is arson. But at Co. it always
was so that if a man set fire to his own house it
was the means of burning another, it was arson, but
then it is the burning of the other house which makes it arson. Now if a man set fire to an old house in
his own, while he wishes to have out of the way, and
he has no animus malus, and there is no intention
either danger of burning his neighbors house, but a with
arises, if one of the lighter things is blown on his neigh-
bor's house, by which means it is burned down it is
not arson, it is an accident. there is no malice.

But if the animus malus is evidenced by the act, it
is arson, as if his neighbors house is within a barn
of his, the set fire to his own house, this neighbor is
thereby burned down, it is arson. the act is not only
improper, but evinces an animus malus. So you
see there must be the malice in order to constitute
the Crime. 1 Co. 2 4o. 1 Hamb. 166.
Public Wrongs. Of Arson.

It will appear from the last authorities (viz. Landsborough) that there are two authorities on this point, viz. Whether a man who has leased a house to another and has burned it, is not guilty of arson? One says it is arson, the other says it is not because it is his own. The answer to this is, that it is also the house of the lease. It is the house in possession, it is burning the house of another, that is what was intended to be prevented. The reason of punishing arson as it is punished, was to prevent persons from burning others out of doors by burning their houses. I thereby deprive them of dwelling. There is no difficulty in deciding this. If we refer to the principles - it is the house. Conceive a case, it is arson. No regard is to be paid as to whose property it is.

Arson, In my book, was the unlawful malicious burning of a house. Now what is burning? Must the house be burned down? If other things concur, it is arson if there is the least reflection. If you pay the animus malus it is arson, the house is not burned down. In a case where A. intended to burn the house, but this mistake got here to that of B. it was certain it was not arson, as there was no animus malus of B. But be it this a wicked motive, I think you call it arson; his being mistaken makes no difference. It is the same as if B. did or burnt a house to B. 12. 13. C. Comes along, he tells him, thinking it was B's. So guilty of the murder of B. The mistake would not affect him.
Public Wrongs of Arson.

The punishment of Arson at D. is Death. &

If it is not, the punishment to authors must be by statute. The D. punishment for assistance of a skull is wrong. In Cor. it is also with the cessation. Whether life is wronged by the free.

The punishment is Death. Of Change is the carrying the punishment of by sending them to New York. More takes the opportunity of burning a building house when the knows the family are all absent. It is arson but the punishment is not death but it serves a purpose in New York.

1683. 4th April 22. 1812.

Of Burglary.

Burglary is the breaking and entering a house in the night season with intent to commit a felony.

It must be with an intent to commit a felony, it is one of the crimes which it is punishable at the with the deprivation of goods. The intelle. The is the deprivation and is wrong. The crimes are not felonies, be the punishment what it is. To the different branches of the definition there has been a variety of definitions settling the law to this meaning.

I shall not pursue the order of the definition. The first part, which I shall consider is, that it must be in the night season. That is meant by 'night season.' if the act is committed in the day, when a man face may be distinguished by the light of day, it is not burglary. But by the caper of the law, you are not to understand by this that the face must be up. The
Public Wrongs. Burglary.

The place must be a "Mansion House." So add to the definition and it makes one after the words "mansion house," etc. Church for it is admitted that Burglary may be committed in breaking open a Church. But Lord Coke, in giving the definition, did not add this for he says a Church was a mansion house, you inquire, whose? He says "God's." State is not to be a mansion house, but still the act may be committed upon a Church. If it be broken open in the night with intent to commit a felony. It must be a mansion house. Now a house not inhabited at all, is not considered a mansion house, but it is not burglary to break it open. But if it be inhabited at all, then, e.g. a Farmer's residence, it is a "mansion house" within the meaning of the definition. No building is considered a mansion house unless it is within the curtilage. It is difficult to lay down any precise rule as to what buildings are within the curtilage. We generally mean those buildings so near the
Public Orders.

...
There must be a "breaking" what is meant by this? It must be not merely a legal breaking or
breaking; for if a man goes into another's lot or open area, this is said to be a breaking into his close or open area. So if a man enters a house at night, he does not commit a felony, but if the door or window is open, this is allowed. It is an entry or breaking; but it is not burglary within the meaning of the definition. In so-called burglary, the house must have been shut or then broken open. It need not be fastened with a
bolt on anything of the kind - lifting a latch is sufficient - it is a "breaking." There is but one instance, and a person can commit burglary if the place where he enters the house is left open and this is entering a house thus the opening - it is burglary, as much as if he had broken a door or window, first. It was necessary to make this burglary, for a dishonest person cannot easily be fastened or shut. Burglary is frequently committed in this way. Reiling, 62, 63, 69, 202, 208, 220.

A man a man about to get into a house without breaking or letting a latch be shut, it is trespass, but
admission by stealth, it is the same as if he had broken open the house - it is burglary. This is the effect of force in all cases. It is theft, and the benefit is what other wise receives. E.g. Surplus, A. goes to the house at night, he knocks, B asks, "Who is there?" A answers a false name, and B opens the door. A rushes in - this is a breaking.

To of one without any cause procures or warrants to enter another thing, for more harm for his injury, whereas it is a constable, knowing the person, the constable accompanied the constable. Now if it is a private change, the officer serving is obliged to do his duty, break open the door of a building, and enter, but if the door is open, he should enter nothing in, like the constable, as what he pleases. This is a breaking; it was a mere fraud to obtain a sentence in.

There must be an entering. No matter how particulars the entering is as to the door part of it, so if it is a part of it, it is sufficient, it is an entering; the door over the door still is sufficient. But there is no necessity that there should be any entering of the person of the person is committed with an entrance. As the man in the London, just in a house, he took out some clothes; this was entering. Indeed, this entering is carried to quite near; I could not mention all the cases, as they are multitudinous. I do not mention one case which will sufficiently explain it. Even the turning of a key, breaking a door, but this is sufficient. The case was this; a man got a false key, unlocked the door, the family were alarmed, and he escaped. The case determined it, was an entering; for the key, which was an instrument, was suppose, had gone through the door, now from this case, one could suppose that any instance you at first to be so entering. In the last case, if the lock had been in the door outside, so that the key would not have to be put through the
Public Wrongs.

If burglary.

Door, according to the precepts it would not be an inciting authorities...

There was a case, where a man had taken a gun, and a pistol, and did not put his hand into a pole as in the case above. But the man of the house coming in the room, he aimed the pistol at him, and showed him the many of the man's property. The man to deliver it to him. It would undoubtedly under another head, in robbery; but the 3d case, whether it was burglary? The 3d case is, that it was, that it was an entering. If the pistol in this case had not been put through the window, but the man kept outside it. He did not have two burglary. St. 1854, 520.

Any persons concerned in the transaction are burglars; that is, the man who breaks the house, and if he has confederates helping without. They are concerned in law as present. So if the confederacy is with some one in the house, as of a servant (e.g.) opens the door, it is burglary, in both the servant and the person entering it is the same as if he was without. St. 520.

It must be "with an intent to commit a felony." The felony need not be committed, but there must be an intent to commit it. This intent need not be expressed in most cases, it is the usual provocation, will lay upon the person to prove there was no such intent, for this provision. It may break into a house in the night, we may naturally suppose his intention was to commit...
Public Wrongs Of Burglary.

It is rather difficult to ascertain from certainty when there is, or when there is not this intent. The presumption however is, in the person. But there may be cases where the person entering has no intention of committing a felony as if he breaks in to procure aught to do there. The thing intended to be done must in a felony if it were committed. I knew one case where a man broke into a house, it was not to be guilty of Burglary on the ground that there was no intention to commit a felony. The owner frequently finds that his house has been broken open, nothing but Rome could find out that anything had been stolen. He afterwards discovered that it had been done by his neighbor's negro man, who came in to see his black slate roof. The presumption (when it has been) that if person broke intention?) that it was done for what the felony is only a presumption of fact. It may be shown that it was for Jone 52, 48, 137, 168.

One thing farther. Suppose one is an inmate or servant, in the house, or a landlord, putting up at an inn. Then steals a break out, is it burglary? Now this depends upon the Inn. Whether he intended to break out and go off, or so it is burglary. In case of a traveler stealing a break out, it is burglary. If the evidence is strong of the inmates or servant, it is the same as there. But a man may live in the house, put things towards break out. If it were not to break out, if the design at the time of the stealing is not to break out of the house, it go off, it is not burglary. If this is designe
Public Wrongs—Of Burglary.

At the time of burglary, the punishment of the offender at E. & S. is death, without benefit of clergy. Several of our Acts have altered the punishment by Statute. In Court, the punishment for the 1st offence is imprisonment for 2 years, unless, if he persist, then the jury can give the punishment of a term. Such a crime of which I have treated is Perjury.

Perjury is "a false swearing wilfully, in a point material in the case, by one under oath, relating to some proceeding or a suit of justice, which oath must be administered by a person authorized to administer an oath." All these requisites must combine to make it perjury, but all the three do not, it is not perjury, until in may be false swearing. I have given the definition in the order I find it, so I shall not repeat it in that order.

It must be false swearing "wilfully," because if it can be made to appear to be a case of mistake or surprise, it is not perjury. One may swear he saw it. But he a place or a certain day, if the it can be proved that it was not be yet he may not be perjury, the mistake might be a mistake in his mind. If I knew his mistake, he very much resembles each other. There must be an intent to do a wrong to constitute perjury. U.S. 339. 10 St. 170. 1 Polk 313. Black 347.

The must be a "false "swearing. "False" is not mere that it must be false in fact, if it is not necessary that it be really false. It meant something more than mere that the fact were true.
Public Wrongs of Perjury.

A man may swear falsely, and the fact may be true, as so much the other hand, he may swear truly and yet the fact may be false. As he swears, truth or falsity, he knows nothing about it. This can be shown; this is perjury. The word "false" is applied to the situation: a man swearing to what he knows nothing about, or swears conceivably, & it is false. "Swearing false" 292, 3, 182, 37, 112, 322.

It was formerly held that this swearing must be positive, or that if one swears according to the best of his knowledge he cannot be guilty of perjury. This opinion is now obsolete. A man might always swear (if that were justice for the purpose of gaining credit), he is not sure, Perjury is to swear on this cautious and mild, to swear finally to a fact which is untrue, or to one which he knew nothing about.

III. To the must be in a "material" point. It appears to me almost impossible to find a person so foolish as to swear to an unmaterial point concerning which he is wholly ignorant; or else known to be absolutely false, without knowing some object to do so. Suppose such a case, as if the witness swears to the death of a horse, which is wholly immaterial, but in fact it were a Black Horse. Now it is said this is not perjury - nor is it, if he had no object in view, or falsely swearing to this immaterial point. But if he had an object in view, as to gain credit in the minds of the 10, or jury, it is evident that swearing to it is perjury, as the facts beyond it is wholly unmaterial. As thus a witness came into court, commenced by saying, "that he
got up in the morning to tell his wife something about
his old lawyer. She went out into the field and told
him to pray. She went to and called all those simple things
for the purpose of gaining credit. Those not bound by
the oath of truth in those lies of praying, it always was if
false concept about a crime it is not perjury.

What is necessary to make the point material? Must it be so material that if believed it would
of itself, turn the case? No. It is material to prove the case, it is material it is perjury. E. Young 254-255.

IVth. This false swearing must also be relative
to some proceeding in a place of Justice. The oath may
not be taken in a Court as one may commit perjury
in any thing which not justify proceedings in a Court, as
E.g. in the Deposition taken out of Court. So also of the
commission issued for the taking of Depositions,
again oath amounts to Perjury there was formerly
an opinion that Deceiving falsely to before arbitrato-
ry was not Perjury, on the ground that it was not
before a Court. But this is all exploded. So it was
true. The oath is relative to a proceeding in a
Court. 1 Wark 329.

It was formerly supposed that the Court
must be Court of record, i.e. when it was not perjury
in any false. But this, as it was not a Court of
Records, this is exploded. So by affidavits of relation
to a proceeding in a Court makes the person guilty of per-
jury. But if it is a mere private affidavit to
Public Wrongs. - Of Injury.

Notwithstanding anything in Court, it is not perjury. If a man swears to an affidavit with an intent to perjury, or to deceive, it is considered to be it can be done, it is not perjury. So if a man who makes an affidavit of an oath, by the law living, you that he does perform such & such things he does not, it is not perjury. So if a man does not fulfill his oath, & is indicted of a felony prior negligent to inform, in all these cases, it is not perjury, as it may be, but, erring, it does not relieve him of providing so after justice. This distinction should be kept clearly in mind.

Cod. 105, p. 155, 669.

VIII. The oath must be administered by a person authorized to administer it. Suppose a certain person swears to administer the oath in a case. Depending upon him, it is not perjury to swear falsely in such case. It must be administered by a magistrate or other person having authority to do it. But administration has no such authority. Hence it is an offense for any person to administer an oath, who has no authority. It is also a law that any person authorized to administer an oath, who has no authority, it is perjury. It is also a law that if a Court has no jurisdiction, or having a jurisdiction in a certain matter, if they extend it, they administer an oath, to the wrongs & such falsely, or in perjury? The modern Code says it is perjury. It is a rule that when the Court has jurisdiction, or suppose they have it, when it is true, they have not. Yet, if they have jurisdiction, it is to be decided by a higher Court. But, there are not considered.jurying the case it is very great. Per. 138.
Public Wrongs.

If the Party be a Public Officer, then he may be convicted of perjury, as is usual, or by Statute, in some cases, in an Office given, it is perjury, as much as it is in things off an Office. The offence was one punishable by death, but this has long since ceased. This was certain punishment beyond the dignity of the offence, in the times of Society. They punished in those early days according to the atrocity of the Crime, or the effect of it on human conscience. But this is not now the matter in paying the punisher of offences; it is to punish the offence commensurate with the evil. Selling a ticket from the Con mission. The old punish for perjury is not now any where in use. Strictly, towards it was punished with Banishment, in some of the barbarous ages with cutting out the tongue. But these are all done away, so it is now punished with fine, imprisonment & Bilking, at the discretion of the Court, to follow with this consequence, that the Convict, never after shall be admitted to testify in a Court of Justice, or in other words, the consequence is legal injury. It is the Cenner false. But you will remember he is excluded from testifying out, by proving the conviction, which is done by the record alone. They have Statute, or Statute law, delimiting the time of imprisonment, however long it shall stand on the Public Duty, so that the minister of the Law seems to be taken away with it. And then, our Convict State, or in any others of the State which punishes the Convict as above, in Eng. cases entitles the person required to damages. Now under this last clause.
Public Wrongs.

Jurisprudence.

Of course, it has arisen whether the insurer injured
his duty to take up with the same 
they will
whether he may resist this issue at law for the
the damages he has sustained? It is on the
the damages. Now I conceive this to be no DM.
at all - the most difficulty has arisen upon it.
the opinion is this of the party injured will take this
the amount of his damage it will be his own
satisfaction. But I cannot conceive he can take just
receive this sum fixed by law, or even by the
legislature itself. Suppose the party is an injured
$1000? If the fee is $100 only. Now I conceive he cannot
be compelled to take up with this, but may resist
it. It must be a sound acknowledged principle that a party may waive a provision of
in favor of his private interests - but if it were otherwise it would be compulsory. The public
pursuit, if the individual relied, they have many
together - the public may waive - why may not
an individual? Suppose a statute gives a 
penalty to the Public if there be damages to the
persons. Now the Public may waive t why may not
the individuals? There is no reason to the contrary.
I conceive that whenever the Law mingle a pub-
ic punishment, of private damages, as the public
may waive the punishment, so the party may
 waive the provision of Law in his favor of the
wills.
of Subornation of Perjury. Dec 14th, April 23d, 1813.

As to Subornation of Perjury, nothing more need be said, but that it is "where one person induces or procures another to swear falsely." The punishment is the same as in Perjury. The distinction is different. It is for a different offense. It is not indicted for Perjury, but for Subornation of Perjury.

Of Forgery.

Forgery at C.S. is "making or altering any public record or any authentic matter for Public Nature, or any thing aforesaid, with an intent to prevent justice being done." *11* Any matter of Public, this refers to judgments of Courts & Legislative acts—nothing, but these are public. These are certain things records, which are properly called Records, they are not so, but are of a public nature, as Parish Registers, Certificates of Marriages, deaths, births, &c. Records of Deeds are not records within the meaning of the definition.

The first subject of forgery, this is engaging of Courts & Legislative acts, which are Public. Unlike matters of a "public nature," as Certificates of other ages &c., the next is Deeds, &c. are private instruments, when deeds—the most is stills, frequently having to seal. Some are other instruments, but these are altered, it is not forgery at C.S.

You will also remember it must be done with, price and intent, of what the present juncture may.
Public Wrongs. Of Forger.

The statute on your ancora. Rule has perhaps not many things to say. For if it were not so at 6:30, but this you will be able to use, and it is not a question by information your statute. Second. It was not forged at 6:30. But it does not make a note of hand, or 1:30. And any instrument or a note in solvency, thet is 6:30. One could at once. It was a mismeasure for which the person might be punished, but it was not forgery. 17th 335, 654, 296, 350, 1400, 66. I will explain by example.

A. Coningsby & co. by Dis. is a note in a document. He (A) then tells & co. 1:30. The note at 2:30 before that. & c. Now this is forgery, because the antedating, thes there has been no alteration made. It was made with a fraudulent intent to 3:30 at 3, & ses titles. 17th 335, 654, 1400, 66.

Again, a man employs another to write the note, & causes him how to write it, & the person inside. A forgery never intended by the Statutes to be printed, and it is said the Statutes may not issue in such a piece. But if he does not discover it, or it is not a piece, or if it is not to win, the reader purposely omits the clause, containing the forgery. It is a forgery. So whereas some names is forged on a piece of paper, the person using any instrument, or in it substituting the name to payment of money, or any duty, nor if a seal is applied, it is forgery at 5:30. It would not be forgery at 5:30 of another, as a 5:30, 654, 3 1400 65. &c. 1920 189.

In Eng. by Statutes, the crime of forgery is to tend to a variety of cases, 655 in the different States.
Public Wrongs.

Of U.S. By a Stat. in Conn. it has been decided as to the
writings, in enumerating several kinds of instru-
ments, is Stat. concludes with the scribbling clause:
"any other writing the alteration of which is pre-
vent Justice and Equity." How far it has been insisted
on in the other States I know not - any object of you,
your self, and then you can easily see the variations
made by Statute or your several States.

Under the furnishing clause in one Stat. it has
been determined, a man can be convicted of forgery
on altering a writing not specifically enumerated if
it was to prevent Justice and Equity. The object in ma-
tending the alteration must be prejudicial, so what-
ev'n alteration may be made, or autton if it
may have, if it is not done to prevent justice and
Equity, it is not Forgery. A case in the Books where
a man drew a bond for 5000 dollars at 500 marks.
The obligor drew the bond to the mistake was at himself.
The obligor took the bond home to find it revealed the mistake
stands out the word "Pounds" and inserts "Marks," are
the honest fellow was indicted for Forger. But the
interprets it was not forgery, so it was not allowed
with a view to prevent Justice and Equity. The bond,
or never could recover upon it, for it is a rule
that if a bond of $ is altered in a material part, by the
obligor, the $ is himself to recover can recover after
it - still it is not forgery, it is no offence.

Thus has been a great Que. whether this is For-
gery, inserting a Legacy in a Will, contrary to the
Public Wrongs.  Of Forgery.

directions of the Testator had always been held to be Forgery, but this case was this: The Testatrix was directed to insert a Legacy, to the extent of $1000. She wrote the same in to the Testator, as if it was hers; it was no specific, a simple legacy, but was it Forgery? On the one hand it was written there was no making or altering, which was necessary to constitute Forgery, on the other there was no forgery—and on the other hand it was contended to be a forgery of the whole will, the property was not disposed of at the intention of the Testator, it failed. It was brought to the Forgery Hall of Nov. 337. There are different opinions upon this, but it is not well settled. One thing is clear, if it is essential to Forgery that there be a positive act, it is not Forgery; on the other hand, if the one giving the instrument a totally different effect from that intended, why is it not Forgery? Besides it is manifest that this Legacy which was given to A is now distributed among the other Legatees. Contrary to the intention of the Testator, the instrument directs to be made as one thing, all that made of another. Then why is it not Forgery? I think there is much reason in the affirmation of this Eq. not because of the one section in itself contrary, but because that one section gives the will a different effect from that intended by the Testator. No matter if said that to have a new will, a man’s name or a place of paper, if he write a will alter over it, it is not Forgery. It was not intended
Public Wrongs.  Of Forgery.

to prevent justice being done. But if you have written a false book about it, as is not done by State practices in the same section, it should be difficult to collect it if it be forgery. But if this was done for more profit than to damage the objects of the magistrates, it is circumstantial that, as no intention of preventing justice is apparent, it is not forgery. To ascertain whether forgery is not, the question must be inquired into.

The Punishment of C.C. was fine or imprison ment or hanging. This is taken away in Eng. by that. The punishment substitutes to Death without benefit of clergy. And the C.C. punishment is taken away I believe in most of the States. In Can. it is Death. But in a great Commercial Country like Brit. it was found necessary to lay a more severe arm upon this Crime, than that of the C.C. Also note, C.C. Jura dision, can expressly taken away the innocent might still have been at C.C. For the punishment in your several States, see your Statute Books.

Of Sarceny.

There are two Offences viz. Sarceny & Theft, called Compound Sarceny. These are the kind of Crimes in the Trespass Stat. 41 Geo. 3, 239. There is also what is called Temple Sarceny, or what is known as Larceny is called Theft. It is plain these two offences are by any general usurpations. It is decided in Eng. by Broadly & Child Sarceny. The one ground for the distinction is an account of the punishment. The
Public Wrongs. Of Sarceny.

Petit Sarceny does where the value of the property stolen does not exceed 12. But at that time, the value of 12. was a year as 12. would in this reason. Some think have more money to lose. The Sarceny in the 12. would formerly paid the value of the property, which the 12. more, 12. be so much. But the distinction between Grand & Petit Sarceny is now done away. Stolen on all of the. The 12. are different. made between those still being punished in the same way. I state the Law of those under the head of.

This excludes both Grand & Petit Sarceny. Those is the felonious taking & carrying away by any person, the personal goods of another, not then his person nor from his House. This definition miss some explanation and some addition. So know of property is taken from the Person, it is Robbery, if from the House in the night season, it is Burglary, and so on. But there may be a stealing from the House in the day time. I would therefore add to the definition, that it must this “not from the person or the House in the night season.”

It must be “ felonious,” it must be aimed, without. with intent to steal. Whenever there is that intention, there is by the law. Some are particulars of the Chattels. If there is not this intention, it is not theft. As if a servant, takes his Master’s horse out of the Stable at night. There is to a theft. e.g. this is
not theft. It was not done henceforward. So that a
person goes to his own house, he rides his horse at a
distance of three miles to his house, or his place, to
place the horse loose, or his horse loose, it
is not theft. Or turning the horse loose, or tying him
about the premises of his being done, arising guaranty.
But yet if on being pursued he has left the horse loose
for fear of being taken, it would be theft, this presump-
tion that he took the horse arising, because one exists.
Suppose he goes into his neighbor's field, at night, be-
cause he has off his plow, he goes to using it himself.
this is not theft; it is a trespass. There appears no intent
to steal—no annum guarrantee.

Suppose further, e.g. a man is hired to a jour-
day, and the bailment at the time he receives the horse, has
no intention of going off with him—but afterwards,
it is not theft in such case—but if that was any
person procuring the bailment as of the bailment
is to go off with the horse, it is theft, if he goes off
with him. The other bolts at all the benefit he
was to receive from the bailment, the bailment of
bailment is explicit. E.g. Suppose a man hires
a horse at half price, to ride to Hartford, if he turns
the other way he goes to New York. To be sure about hold-
ing the horse, when the other comes up, there is no
 doubt, but it is theft. This contract justifies even
that the bailment was procured because
But if it appears to be an afterthought—that is the
idea of yours, off with the horse, arose after he knew
him, it is not theft. Three cases, of this nature—bailment

Public Wrongs.

Of Theft

Some people, in the beginning of the American War, found it convenient to make articles of war on other people. They had a right to take it to the enemy. At one time, there was a Frenchman, who wanted to go to the American War. He stayed there for 3 or 4 days attending to his business. During this time, he met a man who was enquiring for a man, to claim him to be his wife. The wife of that man was his sister-in-law. He took the horse and went off, leaving all his property behind. It appeared lying on the table. Now was this theft? No, that was a Transcendentalism clearly shown it was an afterthought.

There are a number of Cases of Theft in Canada. One of the thefts to the People of Canada is that a Countryman had received a quantity of money; they were traveling along with him, and at length one of them dismounted and picked up a stone which they had found was a ten pound. The other man said that it was but fair that all three shall take a share of it. The other agreed. They took it to a jeweler who examined it, who was also in the post, and pronounced it to be a diamond of the first water. How then is it valued? One of the Thieves goes to take it to pay the other two. Their protection, that they be not able to raise money, the innocent Countryman said he believed he was very sufficient to pay them their share, and take it himself. The 3rd so it turns out in a Town not worth a point. These fellows were indicted for theft, and at the benefit of Claypoole, executed. Another case. A fellow went into
In those cases where the stockinster's he meant a great many of these, at last, pretending to have a great hurray off, wish you to have many pairs of these and propose that they be sold to the freelancers. Wish to have them examined before purchase, a great quantity of the full paper sent them over to the fellows took the stockings and off this was left they were obtained by force, he was made to BLEND.

Now these are cases in which the principle is clear.

But there are cases which seem to puzzle one with regard to the Court, or Court. There are cases of Dullment to certain character, as delivering grain to a miller for grinding. O'tis to a tailor to be made up. Goods to a common carrier to be carried. Now here it is, grain made use of is taken the bailment and it is taken by a bailment. Some of the miller takes down the bale, cultivate is your cloth, or the Common, made off with your goods according to principle. Cite down, it being a bailment, it is not theft, and still it is made theft. How then do you make a difference between these or other cases of bailment? There is manifest difference. If you have a horse you hire, the horse obtains the whole control over him, receives the benefit and the bailer has no opportunity to choose his value. But in the cases above he has only a certain part. And it is a case of necessity for the bailor is obliged to employ this miller. The tailor, the carrier, you must trust when you employ him. These bailors have also a lien on the property they hold. The miller has a right to his toll, the tailor unmakes it, he has
Public Wrongs.

Of the n

A right to retain the possession of property of making a bond... the Com. has a right on the Poss. and when this is thus done it has always been held that the... gives rise to the distinction. So again in Cases where the judgment is on specific property or... if a man alone you employ, the C. may be committed as S. to... ship delivered to a Signal, and a great reliance to an affidavit... none in either of those cases the person has nothing but an immediate, but he may commit theft by taking them. Mer. 1836, 36 63. 1 Mo. 73, 75. 1 Mo. 266. 1 P. 181. 1 F. 164.

Fl. those who steals from B. and then steals the same property from C. can the C. can be sending to? Is it not... taken in B. and not from A. why are from B? Because it had no property in C., he stole it himself. The C., look it from A. yet in point of law the property, and C. is to be indicted as stealing from B.

It is a Rule that all crimes are to be tried of the indictment brought in the County where the crime is committed - as e.g. if one murders another in County A, he must be tried there, it cannot be tried in the County of B. and yet if one steals on the County of B. he possibly may be tried in the County of B. The very of the person the property there - And he steals a horse in the County of B. He rides him into the County of B. and he there taken up, he may be tried there. This principle it is evident to this is
Public Morals.

Section: But when the act or crime committed is complete in one County, where Commission the offender can be tried of that County only, as e.g. murder. And in those cases where he may be tried in another County, the first part, must be forfeited that So or he cannot be tried there, as e.g. if a man is accused for stealing a horse, he is at the house, loose it escapes into another; he cannot be tried there. A Day of some difficulty has arisen us to Murder. Suppose a man receives a death wound in one So it dies in another; when is the offender to be tried? Statutes have generally provided that the crime in such case may be to either County.

There must be a felonious taking, carrying away. The least an base is sufficient to satisfy these words: it is a carrying away. Though he then have done some questions left to this - a man went into a field, carried a horse, it died here one. No, I was then. diluted - it was theft - there was an action. But if he had not moved him out of his tracks, it would not have been Theft for there must be some commotion, there there would be none. So in the case of the Sleighs, where a man took part of the cake out of a chest (and spurning) he laid them on the floor, but did not carry them off. It was not due to be guilty of Theft as to those he had taken. So when one had nearly cut the piece off a Turkey back, but not quite, he was held sure to be guilty of Theft, there was a sufficient commotion - ruling 315.

There was one case not strictly falling under the operation, because he took the property from a person -
Public Wongs.  37th Ed.

but it was not robbery as there was no putting in

for it was this a man snatched a king cow away

too.  Sudden it in his hand, it was not to be

a snatching. Carrying away to constitute theft.  37th Ed.

The reason is, goods given in, as if a woman gave a

to another with an intent to place, is theft.  37th Ed.

The case is one case where a Dole of goods was raised a plain

in a perpendicular position of the person

then dealer. The C. were much divided on their opinions

whether this was a sufficient circumstance to constitute a

toll. But it is clearly theft according to the principle

that was in another. The code did not occupy the

same space as before.  37th Ed.

All Persons of sufficient discretion may con

vict them, except in one instance: it was not theft

and theft of her Husband. This principle is establish

ed altogether in favor of things, not because she has

ownership in the thing, for she has none. It has been

said that a taking from the house after she has taken

from her Husband is not theft from the Husband. I

deny this. She has no property in the things she takes, and

therefore it is not theft upon her, but the Husband has

the property. I can tell it is theft upon him.

To make it theft, the thing taken must be "her

own." Property. It is not theft then to point a pistol

cat and drive away those off. They are found

with distinctions to be observed as to the taking of the

person. If you go into a man's hotel and knock his coffee

off, or if you take off his from his trunk, it is not theft.
Public affairs.

They are attached to the fruit only. But if the fruit has been diverted from the stock or the apple from the tree, it would be the same reasoning, that they are now personal property not attached to the stock. This is the case of a tree in another land. I have at my own time, but comes afterwards, it would be if he had carried them. If not, the same as if he had carried away the roots without the tree, which would be, if he had. If they had been rooted, it would be the same.

And in truth, conformity with this is the injury. The punishment seems to be the taking or a man is to be punished for stealing these, even if he has obtained it by taking, still he must be punished, if this makes him fear and denounced. These distinctions above an恶意 or a crime, but still they exist, must be observed.

[July 5th, June 29th 1813]

A C.D. there cannot be one million, or 500,000. The description, as lands noted by the they are personal property. They are being used to any one, but that every one was thought there was not much danger of their being stolen, and the rule as above. But it is stated the taking of those in action is made punishable on the 5th of December. They have been made in most of the U.S., in the and the E. prior to this was no negotiable interest in it. If they have made rules, that certainly, it was and upon them, they would be of use to the things. 1 Kings 12. 30-33. 1 30-234.

This being a letter pointing that shows of action.
Public Wrongs.

are not the subject of theft. The two cases are Bank
Notes are Bank
Notes the subject of theft? Does not the
Not the subject of theft? They are not the subject of theft. But of
subject of theft. But of abundant caution. A Bank Note is made
to theft. Bank Notes are not a par
ade. A Bank Note is not
made to theft. Bank Note is not a thing to take,
subject of theft. It is not a thing to take,
but the absolute title of the person of whom he
comes into possession dishonestly, yet the title of the
subsequent holder cannot be questioned. This is due to
the necessity of giving facilities to Commerce. If you consider
them as a currency or circulating medium, but on the
grounds it is no more theft to steal them. (This without
Problem) as it would be to steal have stolen. We never
had a Bank in Conn., till 1813 years ago. Then it was not
out of abundant caution. To act does not prove that
they were not subject to theft before it existing.

There are other kinds of Property, in which this
cannot be committed - as it may be a true fact that these
are such as are called articles of which by money as
are, Dogs, Mankind? To take these as not theft, but is
theft to take cattle, horses, deer or a Park Ellephant.

There is a certain right which is a very impor-
tant one in many parts of the Country, the invader which
will not subject the invader to theft - it stands perhaps on
the footing of Real Property. Men frequently have the ex-
clusive right, either by occupancy or grant of fishing
Public Orders.

**Steed.**

a certain part of a River. Now if any one plants on or takes the fish from this place, it could not be theft. It is an invasion of Real Property. It is an encroachment he is so much less than to cut boughs away off a Tree. But if one makes a fish pond in his garden and puts fish in it, it was always the case that persons took them out. The reason of this distinction is this. In case of fish in a River, the fish are his only while in that salmon place, they are putting in the river. Where they get above or below the place own which his prescription or grant enters his property. Case 2. But when the fish are in a Pond, the case is that fish are his. His property in them is as absolute as it is in his flock of sheep, hence it is theft to take them. 

Noyes, 144.

I observe a man might steal his own goods. E.g. Cloth is backed to a tailor, to make up now he has the property in the Cloth while it remains in his possession and yet he may be guilty of theft in taking it. See Noyes, 333. 1908, 145.

You will remember that I have not said so on the case of the physician and in considering this case it is probably to be observed it was not necessary that a person should be taken. This opinion is except in the case of the physician. I do not assert we have that example. Saracen was divided into parts, Etc. 

Saracen is not punished with death. Saracen does subject to walk but three as far as sight with the law under. Etc. Etc. Etc. which are might be termed Saracen. Steal is this taken for that a person's property is not altered by taking the thing at superior picking in his. It is not written further it is no use to, etc.
Public Wounds

of Piracy.

Piracy includes every species of depredation on sea or land, that amounts to felony in any of the before mentioned cases. It is Piracy to bord a ship on the Coast at day or night, or a vessel at sea, to rob or murder, the boats to be used publicly by officers only. All that constitutes Barbary, Robbery at Sea, or piracy at Sea, except those it is done by an inmate, it is not Piracy, but it is another offence known in the Admiralty Courts by the name of Embezzlement. Piracy must be committed by Persons who are not the ship or inmates, and it is no matter whether it is done publicly or privately by violence or by fraud. 1 Edw. 162, 2 39, 69, 70, 72. Wood's 26 Vict. 421

This crime is recognized by the Laws of Nations of all civilized Countries. The punishment is death. You must recollect however, that the crime must be committed without authority. For if it is authorized by the State or Nation, however insidious it may be, still, it is not piracy. Throughout all Europe, except in England, the Caliphate is that by the Admiralty Ct. without question. As he was in France till the State, 22 Hen VIII gave him a title by jure, as at 1570. So also in Venice so in the U.S. By having before explained the Crimes of Robbery, Theft, and Burglary, I have explained Piracy, except that if persons are committed on land, the latter at Sea. Piracy cannot be committed if the object is within the body of the County, it is then one of the other offences, burglary or piracy.
Public Wrongs.

There are a set of crimes which statute provides against, which are breaches of the peace, and which are punishable by

Trespass, Riot, Unlawful Assemblies, Offenses against

Battles.

These are all breaches of the public peace. The definition of a Riot is somewhat simple. It must be a disturbance of the peace by three or more persons, after the together of their own heads, with an intent mutually to assist each other in it, every one who will oppose them in their enterprises. They must have joined to assist in this object; or enterprises must be of a private nature, and it must be actually executed and be executed in such violent manner as to inspire terror, and that it is uncertain whether the act be lawful or not.

We will consider each branch of the definition and

1. It must be a disturbance of the peace, but any

disturbances of the peace is not a Riot, for a Riot

must be committed by 3 or more persons. If they

must assemble of their own heads with an intent mutua-

ally to assist each other to carry on or oppose them in their enterprises. To satisfy this branch of the definition, it is not necessary that they have set out from home with that object in view, for suppose, we

are in Town or a General Assembly, we agree to go—

pull another. For, if it has all the other requisites, it is a Riot. Again, it has been explained that a run

away to guilty.
Public Strangers. 4

Ex. 3. 21. 22

way of setting by a party of persons going to pull down a house. This power is first exercised in Burns, and is made guilty of the theft as the rest. Tit. 29. 346. 466. 666. 666. 536. 692. 692. 692.

It must be to execute an enterprize of a private nature, and it must be actually executed. If a private nature means by some private person on his property, if it is not the public or by public authority, it is something worse as rebellion or treason. If the enterprize is only attempted and they fail to execute it, it is not a blunder, but an offense.

I now presently mention and if for only apparent, not to attempt to execute it, it is still another offense.

15. Reg. 595. 11 Sta. 19. 7. 20. 10.

Again it must be done in such a violent manner as will inspire terror. Suppose a dozen of strangers nonenters the house, unusually armed to go on a savage-like manner. This is no riot. There is no unlawful assembling to constitute a riot, there must not only be an act, but a violence must be offered, and such violence as to inspire terror. Suppose a man in a calm and mild manner, throws down an old house which is in the way. He may be inspired with terror, it is not a riot. It may be unlawful, but it is no riot. Sec. 12. 355. 12. 12. 12. 12.

If it is not material whether the interprize be lawful or not. Now a man has a right to go on his own land and cut wood. Suppose some person is detained, he shall not execute this right. Now if he demands upon his land without assembling a company of people.
Public Wrongs. At Riots, rude unlawful assemblies 7.
and he does assemble there, they enter upon the enterprise
with clubs, lances, and pikes; it is a Riot. But say you do
not wish to be kept out of the possession of your property? It
is true, the law is for him. It is with the assistance of the law
he is to obtain possession. In short, private right must
often give way to the superior claims of public peace and
quiet. If a man meets another on his Horse, driving
him as his own, he cannot knock him off for the purpose
of regaining the possession. He has always a right
to retain his property, if he can do it without violence
or breach of the peace. So a man may defend his house,
but if he is out of possession, the law will subject as
a rioter if he regains the possession by force. Violence
fights always inspires terror. 314. 2 cls. 231, 138. 235.

Having described a Riot, it is easy to describe
the rest. A Riots is the same offence, as, and has all
the incidents of a Riot, except one, which is that it need
not be executed. If it is executed it is a Riot, but if an
attempt is made, and they fail to execute it, it is a Riot.
An Indictment for a Riot will always embrace
a Riot. Of course if they are indicted for a Riot, the
jury find they did not execute the enterprise, they may find
them guilty of a Riot, or not guilty of a Riot. All
the difference was that at 40, they formally put peo-
ple in the Pillory, who had been found guilty of a riot.
but for a Riot they did not; they are in other respects
punished in the same way, except that they are
not punished in the same way, except that they are
not punished in the same way, except that they are
not punished in the same way, except that they are
not
An Unlawful Assembly in the same thing. And if
triumphs should be a trial of attempts to be executed. So a
Rout, in order to an unlawful Assembly, there must
be a trial of attempts to be executed. So a
Rout, except it must not be executed in the one case, nor
attempt to be executed in the other. And the attempts to
the man riding these towns, unusually armed, propelled as
if it had been a treason to capture them, it is an unlawful
Assembly. The reason on this is, if a Rout must be exe-
cuted, a Rout must be attempted to be executed but there
is no other of these to constitute an Unlawful Assembly.

But there may be an Unlawful Assembly, where
the persons do not assemble to commit a Rout or Rout,
at that time. Under this head it has been determined that
persons meeting to consult whether they shall not die have
the several means to mean, in an Unlawful Assembly.
If that that may be an Unlawful Assembly, if there
is no attempt to do anything which would not be unlawful.
No. 92, 1682; 93, 1682. 364, 339.

Under this head it is necessary to notice, that when several
are to come together to resist a man in his dominion, not aggregating, when there
is just reason to fear an attack as upon a mob; if they do not
use uncommon weapons other than a peaceful manner, it is an
Unlawful Assembly. It must not happen to in a manner that
will inspire terror. If a man suspects an attack from a mob, he may
always assemble his forces to defend him or to defend his property,
they have a right to so prepare things to defend him, as he is allowed
to do himself. 5 Co. 11, 224, 116.
Public Orders. A colt read. "Understand:

These powers of taking and confining are to be used in the same sense as in a degree and in public offices without warrant, and a right to stop these offices. This is a power given from the necessity of justice; the law of progress is to be insufficient. In other cases, the officer must act upon a warrant from a magistrate. There are frequently statutes made to control the reading of the acts as they do not prescribe, they are subject to greater punishment. If a private person or persons have a right to put a stop to it, if they can. Co. 5. 121. 4. 30.

The C. P. punishment for thefts was fine. In prison, and tillage, for the other crimes was imprisonment. Most of the States of Europe have made statutes regulating the punishment you are referred to those for punishment.

There is also the offence of TREASON. This does not require 3 persons. One man can make an affray. It differs from a battery only in this; it must be done in the time of some persons. A battery may be secret. Treason is a French word signifying TERROR. It is of little importance to make a distinction between them. It arose in the first place for the difference in the punishment. As formerly the punishment for an affray was fine, imprisonment, for a battery it was only fine. 4 St. 195.
Public Wrongs

(Dec. 8th, April 26th 1813)

Besides those offences already considered, as those that do
themselves arise from breaches of the peace, which have an
other name, except they are sometimes called Desertion
or the like.

Threatening may be a breach of the Peace, without
any beating at all, if done in a tumultuous manner
in a shelter to fight. In any other thing which tends
towards public harm, to disturb the peace or tranquility
of Society. The C.L. punishment of fines, &c. through
have made no other provision. You are not to understand
by this that every quarrel, or dispute is a breach of
the Peace - but of the persons conduct. in a tumultuous
manner, which gives reasonable ground for alarm.
it is a breach of the Peace; bearing one out to fight, and
being to beat another, and it appears that the question
was the subject of the necessity of registering only.
So they do not fight, is a breach of the peace. For
always is a breach of the Peace; when the Parties com-
to Know for which an action lies. It now amounts to
a Battery, the injured individual is entitled to Dam-
ages. So if it is attempt to Beat, it is an assault for which
the person assaulted has a Remedies. But you in
sally manner no action will lie.

When an injury arises to an individual in con-
sequence of a Riot, about 1819, the individual has no
action to recover that Injury, and the History are liable
ever to the public likewise: for the breach of the Peace
and the private action is not, nor was it ever magis-
in the public prosecution. Thus is no forfeiture in this case for the public officers and the doctrine of
magna non applies to those cases only when the Goods & Chattels are forfeited, in consequence of which the possibility of a put
satisfaction for the private injury is removed. The cause
is all the injury arising from an Assault and for this
the action then & in those cases a very fallacious
argument, is often used at Court by Counsel. When a
Offender is sued in the private action, for the bullying
example - the Jt's Counsel will often tell the Jury they
should give great & exemplary Damages, on account of the
breach of the Peace, to the authority of the Officer to the
Laws of Society. This is fallacious reasoning. The pub-
lic will take care of themselves and if the Jury give
the individual greater Damages than he has sus-
tained on account of the breach of public Law, it is
be punishing him twice for the same offense, fall
the damages to the individual be even so great it is
no bar to the public prosecution. Suppose, e.g. the Law
punishes a man $100 for an Assault it has been injured
to the amount of $200. But the Jury give $400 in con-
court of the public offence. Now the parties have been
punished to the extent of their guilt but state the public
have a right of action to the same damages after $100
more. This is one of above what justice demands.
Indirect Damages should never be recovered in these
cases. There are Cases where the Law does not punish
the Offender, as e.g. in slander, but gives an action to the
injured individual. In such case there is no reason
Public Wrongs. Breaches of the Peace.

for paying the public damage should be given to the Individuals. But in cases where the Law does punish for the offence, vindictive damages should never be given to the Individuals. He will receive his damages, and the jury may not be constrained in giving something as small money, as it is termed. The insult, the character of the person, the unreasonable degree of conduct, the time, place, &c., are all to be considered.

Barratry.

By Barratry here, I do not mean the Barratry talked of in the Mancrients. It is there some concession to the Abuse of Power. Here it is a distinct offence.

A person is a Barrator who causes others with an unjust, malice and frequent Suits and also those Barrator who does off others for Chiroscopy, &c. 12 McAd. 240, 4 Bl. C. 184.

In order to subject a person under the first head of the definition (e.g. injuring others with unjust, malicious frequent Suits) it seems the longer one such suit, will subject him as a Barrator, but a second such suit will render him liable. But under the latter head of the definition (e.g. stirring up others to sue) it is guilty of Barratry if he once stirs up others to sue. We are not to understand that because a man seduces his suit he is also jointly guilty of barratry. For if every person exposed, p Elliott to be guilty of the Offense, No; it must be apparent that the object originally was a be, and he must have known that he had no right to recover, as if conscious he has because of
actions. If it brings an action at tort, knowing it is not entitled to
recoup damages—this is Barratry. So also if the suit is to
gratify spleen or spite, it is barratry. Suppose a
man signs another, when in good conscience, he well knows
he is not entitled to a recovery, but procures that same
man to sue will give him his case—is this barratry?
No. For although, however contrary it may be to the prin-
ciples of justice, yet of the law, declares for him, he is
entitled to the benefit of the law. In this ground it is
that application is frequently made to the court that the
recovery of the law may be abridged in this favor.
At C. D. the individuals are allowed an action to recover
the damages he has sustained in consequence of this
incidences, lawsuit. In Corrupt State the individuals
are allowed treble damages—but all our cases do not
seem to square with this. I would never myself say
it was Barratry, unless it was instances.
A lawsuit will subject the person to Barratry not
only when it is malicious in without founda-
tion—but also it may be barratry when there is a
right of action, owing to the manner in which the
suit is brought. As if a man has a son and Sweden
for spot and he takes out a bond, demanding $100. And
has the debt been declared or in a reasonable time
have might have procured bond—but owing to the just
daughter on the part's part, he cannot procure a bond.
man (this is barratry—this is Barratry). He makes use
of the law as a Cook to gratify his appetite. I put it
tot to come among hardship and troubles. So also under
our attachment Joint or Concomitant the property is liable to satisfaction of debts. Suppose then he had taken property of the value of $600 as a demand of $600 as a demand due and had a mortgage by the foregoing clause of his bond and could this being the case unpromising that is liable for a voluntary lien, and as his action is not without some foundation.

I have known some cases where the Cl. took upon themselves to presume the help knew he had no cause of action, from this conclusion the suit proceeded but it appeared to me that the suit was not hot but so much to our as to get money. E.g., a woman had been charged with that which affected her character not only in the connection the circumstances were such that she must have known it was all true. However she lost her action at Stanwood and it turned out why? That she was not entitled to any her ages. The man sued in Stanwood afterwards paid her for a supposed lawsuit, on the ground that she knew she had no cause of action. Now it can hardly be considered that she lost the action for the purpose of verifying more nearly, for knowing she had no cause of action she must have been sensible it would have terminated in her shame of disgrace. Now it is more probable to me that she supposed she could recover a sum of money, I obtained a verdict in her favor which would clear her character. For my own part I do not believe it was a voluntary lawsuit. The Substanti ate decided it was not, but the Court of Errors reversed it and decided by a majority of one.
Public Wrongs.  A Parable.

The Punishment for Baratry, when convicted at the suit of the Public is very severe. It subjects to fine, imprisonment and a consequence of the conviction is that it prohibits the person from ever again testify, or be a witness in a Court of Justice. It is the crimes false, and under our Statute the offender may be bound over for his good behaviour, and perhaps the C.P. would do the same. doubtless. Another offence is that of

Champerty.

This is an offence at C.P. It is the buying up of other lawsuits, or quarrels. At C.P. it includes any security, as notes, bonds, etc., in any thing on which in action is to be founded, and when has but what is part of the C.P. The who in the course of trade, buys bonds, notes, etc., is not guilty of this offence, the former by his ways, on the ground that every man wants to take care of his own case. Furthermore, it was thought the practice was productive of litigation. But of this is the object (i.e., litigation?) It is Champerty. As if A. T. being rich, buys a note or Stock for the purpose of paying him & putting him to trouble, of bringing his family to court, or any such unjustifiable motive, it is Champerty. It never was Champerty to buy bad negotiable instruments. The Reason is to be considered to distinguish this offence from what it once was. Suppose a man without any particular care, is in a wish to do, buys up notes to his neighbour, or in the course of trade, at 1/2 on the Pound, and
Public Wrongs.

Since then, they mortgaged their farms by legal process of foreclosure. Now he is guilty if it be. This point is however a dispute one, but think the 

or by 

in the purpose of speculating merely for the sake of 

these suits, it is not Chanparty by custom or statute. Negotiable instruments are not in 

by which, if sold on pleasure, may be bought.

There is one species of Chanparty which stands upon a distinct ground, which originates from what may be called "Pretendee's title," i.e., bringing disputed titles to Court. By a "Pretendee's title" is not meant, as which it would be to say or dispute, that it may eventu 

ally turn out to be a good title. It is when the person in possession claims the land by one title, and another out of possession claims it by a distinct title. Now the man out of possession cannot sell the title, unless being guilty of this offense, and how it is wholly immaterial whether his title is good or bad. The how 

ever may sell to the person in possession for this sale the hard at once, but to sell to any other will tend to increase the quarrel, at least to produce litigation. As said, if a person sold his title as above, the Disputes wholly void. So that if the person buying such title were to sue the one in possession of the land, the Defendant might prove if he could that the title he 

or in such case the
Public Wrongs.

Puff could not occur, tho' it fact his might buy title, title - besides all this, the person is subject to a fine at R.R. The practice of buying title and pretended title became so mischievous to society that they made a

Hev. VIII. and it may be considered within it does not operate here. But be that as it may it asserts

One of the States - it is supposed that

the man in profession claims by title - that he is not a mere true farmer. (Rev. 305 foreign) Favor this latter page.

A Deo another kind has grown out of this

considerable magnitude - It is whether the mortgage, being out of profession, to another in claiming by title, can sell the mortgage? The Deo. came up in this way. A mortgagor his farm to B. for $10000

borrowed money. B. was to recover the land to whom he (A) paid 7% money (of tenor when being stipulated)

Before the time of payment arrived & got into possession by a distinct title - Thus A got the money to pay the mortgage B. B. recovers the money & Conveys the land to A. Now the Deo. was whether 135 convergence told being made when he (B.) was out of profession, as void? The true ground I take to be this, a mortgage

is not Real property - it is a chose in action as much as a word of a thing done within the province of the
Usury is a crime consisting in the taking of interest on a loan with a future payment, as well as a forfeiture of the obligation. Usury is of 2 kinds. One where a man reserves in his obligation more than he lends; as if he lends $500 and takes a note for 1000. This is what is called usury, usury. This is no crime, no offense punishable by the law of society. It is true, if this man to prevent his note is void, but he cannot be punished for it.

The other species of usury is receiving too much. Suppose e.g. A. lends B. 100% in reality, A. lends 100%
Public Wrongs.  

At the day of payment the obligor comes he wishes to keep it longer the obligor is willing provided he will pay him 12 per cent interest. and he pays it. he has not received too much. this is the reason for which the man may be prosecuted. But you will observe this kind of usury does not make the note or obligation void. there is no corruption in the instrument. When you receive too much interest your obligation is void but you are liable to no penalty. but if you receive too much your note is good but you are subject to a penalty. This is the distinction. No Contract to receive interest not received subject to the penalty than is locus of indeterminate. occurs when received.

Suppose the contract is to take 12 per cent interest. but the obligor receives only simple interest. and the note does not follow up the parol contract. i.e. it gives for the sum lent lawful interest only. how is this note void? This has arose in my practice but we could find no decisions to point the some analogous. This lawyer engaged with me on the cause wrote to me. Cast the Engt Reporter. He returned for answer that he knew no such case. but he sent us Justice Dallas opinion. in which he cites cases and said it was usurious. I doubt this says the judge.

A man may subject himself to the penalty of the obligation be void too. E.g. Suppose one lends $500 and takes a note for 100%. Now this note is void. nothing can save it. but the obligor has incurred no penalty as yet. will suppose it the cist of the year.
the obligor becomes a giver of interest, now when the
obligee receiving this he owes the penalty, he has
received too much in coats but payeth the receiving
the interest. on 100£ this subjecteth him to the penalty
of receiving too much the note is void. But the
obligee may avoid all this danger of having to
receive the lawful interest on 100£ only.

Sec. 4. April 21st, 1812.

When in the subject of usury yesterday, I did not
intend going into the subject any farther than to in-
plain how it was a crime. The English Statute
most of the States in the U.S. & this same subjec-
the transference to a forfeiture of double the value.
The Code Stat. differs from the Eng. only in the pen-
alties, & Subjecteth him to the full value, by way
of penalty, a forfeiture, of the obligation. Suppose
the 20th of this year the obligor receives 12£ per cent.
now there is no doubt but this is a crime, but as an
obligation owed? There is no ground for saying that it
is owed unless it was agreed at or time the money
was lent. What the obligor oweth receive this unlawful
interest. The receiving 12 per cent. is not conclusive
evidence that the contract was usurious when made.
it may be an afterthought, i.e. the taking 12 per cent.
there is no doubt but the receiver is subject to the
penalty, & liable for the credit of the laws of Society.

There is a question raised, growing out of this.
Eg. Suppose a man lends money upon a Premiun.
The question is whether that Premiun being received by the
lender consummates the offence of receiving too much. E.g. B. comes to another to borrow money, say 100£. B. refuses to lend his money. A will give him a premium of two half pence. A pays this premium and lends the money. B. taking the premium, he is guilty of usury until the end of the year. A comes and makes a payment to just the amount of principal invested. Now there is no offence. But suppose he pays one dollar more, has he now committed the offence? That depends on this: in what point of light was the premium paid? If we say he has received no more than interest, no more. He has not incurred the penalty. But some say he has incurred the penalty. If so, the obligation is good. The true point of light is never to be this. B. is not guilty of the offence, but the obligation of course there is too much. For what difference does it make to A whether 2£ give him 10.14£ for 100£ or whether he give A. 100£ and then A puts his hand in his pocket, returning to the 2 half pence. This however is a legitimate point. In fact opinions are to be found upon it in the different States. Different opinions on this same. Rates are high. Subject of usury. See Con. But. Was abol. It usury. I think, 'Usury.'

There have been some cases.
Public Wrongs.

of Libel.

The nature of a Libel is, in respect to the injury it does to the individual, injurious in a very considerable degree.

The Libel is also an offense to the Public. In saying this offense don't depend upon which party is libeled, applying it to private wrongs will not particularize terminology. It arises from Sandman (which is defaming a man's character by word) in a variety of cases. Libel must be by writing, printing, speech, &c. 

Whatever is false, is a libel; if written, but untrue, things whose author in Libel, which by force are not slander. In charging a man with lying is no slander, there is no punishment for lying. But charge a man with theft it is slander. The criterion of this is, if you charge a man with such an offense as if true, would subject him to punishment, it is slander; then you it would not be slander to call a woman a thief, in any place or time. In London, in a London only to be punished if the crime. But are such distinctions as this exists so to Sandman and a man as a liar, or any other thing outside the reign of society would render him damned as a thief. The person liable to an action at Law. A rule was laid down in 2 Train 408, which has sometimes been to tradesmen, that publishing "whatever is a tendency to rend a man ridiculous in society is libel." In the private action, there never has been any rule but you may prove the words spoken to be true; and this is a good defense.
Public Wrongs. of Libel.

There are two kinds of Libels considered. One is a Libel on a private person, and the other is a Libel on the Government. These are both offenses, but standing on entirely distinct grounds. I mention this, because it is a subject which has not been well understood, & concerning which some very misleading opinions have been published.

As to a Libel on a private person. I have already observed, that that would be a Libel when spoken or written, which if spoken by parole would not be Slander. For, as Black on any person the Libel is guiltless by an offence, and in the public prosecution you cannot prove the words were lies, and have the public prosecution differs from the private action. But why are you not allowed to give the truth as evidence? It is because the public prosecution is not based with any reference to the injury done the individual's character, but for the disturbance of the public quiet. The private libelled will be as apt to revenge himself on their libeller when the words are true, as he would if false. It tends to increase people to quarrel, to break the peace & disturb the Community. On this ground it is an injury, & it is no defense to the libeller at the suit of the public, to say the words spoken were true.

Suppose a man's memory is libelled as if a person renders the character of another who issued erroneous to by publishing something respecting him. This is an offense, the truth cannot be given as evidence in the public prosecution. The reason here is...
Public Crimes.

of Libel.

The idea whether true or false will not be worse the occasion, because in the excess of the desire, and the court be ordered to revenge in a summary way the crime, but to the meaning of a Father or a Brother. The peace or tranquility of society is endangered in consequence of it, and for this the libeller will be punished.

Public quiet alone is the ground on which the prince a plea is establishing. Besides the public prosecution, the individual is entitled to his action, but when the latter is brought, the truth of the words is a good grace.

There is another set of libels which proceed upon a distinct ground, and that is

When a Government, on Administration of, are libelling. Now supporting the Elementary Meeting have laid down some rules on this subject which are unsuited by cases. I have no doubt but the truth of the facts stated, may be proved or evidence, but what is the ground on which they say this shall not be allowed. It is seen here, because public tends to bring the Government into disrepute. A thing, true or false, makes no difference. No tendency to break the public peace. If this principle is carried to full length, no public measure, or proceedings of the government can be despaired of a view to Easen. This has ever been understood in Eng. or this Country, that the citizens were prudence the privilege of publishing, their opinions of the measures or conduct of the government. We have known repeated instances of prosecution for votes on government, but never in libel.

...
their citizens have been punished so that what was mere matter of opinion, however unjust, supposed that opinion might be, or from whatever incorrect source it might have been drawn. The reason why the truth should be allowed to be given in evidence in a prosecution for a libel or governable is very different from that in case of a libel on an individual. In the latter case it evidently induces the individual to abate, or moderate, or tend to humidity the slow progress of the law for satisfaction, and in doing this the peace of society is broken, but no one would conceive that the administration of justice would go about the blame, as in the former case, sufficient to ridicule them. The peace of society is not, on the least, in danger in the latter case. But this raises the distinction.

What constitutes a libel on government? This is no matter with what is no true is a libel. When considering the measures of government harm might be supposed that opinion that they are unjust effects the person, but in doing this there is no necessity to charge them with having acted corruptly, I know it is done, and I have no doubt but the person doing it it is liable. There is a sort of presumption that cannot be contradicted, that the administration of government in their offices without corrupt designs. To change these with those, is a crime, and in this view of the subject, it is wholly want of public laws resting the truth to be given in evidence under the proof.
Public Wrongs.

Since, for it was so at S. F. It is clear, there are no words to be found which go further than those that it is the duty for the true of the party can prove the charge made to be true, be he is not liable and to charges the administration with corrupt motives or conduct. The Governors would be absolute either who by law should establish a different principle.

The Petition was so much confined to allow the truth to be given in Evidence. This was a provision inserted in that act which was enforced to prevent anything as it could not be prevented according to justice dignity of the principles of the Feud. It was inserted out of abatement caution to silence all duty upon the subject.

The punishment of a Libel is fine of imprisonment as the case may be. Pillory, 43B, 2 B. 12 is case of any convicted of a Libel on Government, they have to find Sureties for his keeping the peace, and all due description of the act. He may be committed to 30 days when the Libel is on a private person. 43B, 18D. 3. 352. 39.

There are certain words which are not Libels on individuals, or on Government. These are Libels on virtues. I mean certain Books having a mischievous tendency. Some Books where a subject was discussed truly. Honesty, contrary to the truth. it might be, which would be considered a Libel on virtue. Suppose one should publish a book in which paganism was incalculable as being the only true religion, the subject truly discussed, the author would not be subject to a Libel or violation. What this is, it is evident in the writing there were recommended to the
Public Wrongs.

of Libels.

pursuit of certain vicious practices or encourage to
break the laws of society, such as are calculated to lead
youth from the paths of virtue. This libel must be
published, i.e., that is done, it is no crime. If the act
of publishing is broken open at such writings found there
it is no publication. No offense in him.

If it has arisen as to what is a publication?

where a letter is sent charging him with crimes?

Now, it was contended this was not a libel, because
it was not published. But the (e) deciding it was a
sufficient publication, for it had the same mischievous
quality that it would have had if it had been
published in the newspaper, that is, it intended to go
give it a wide circulation. Consequently, by which
the peace of society would be disturbed, which was the
very thing intended to be prevented.

It is also said that all persons repeating the
libel are publishers. But this will not always be
true. Suppose the libel is published in a newspaper
and a man reads it to his family, it is no publication.
This is common, it shows no evil intention to injure.
But suppose he parts the paper in his pocket to read
the story far a wider, he is no doubt a publisher himself.
This object is now plain, he means to to all of his pow-
er to give the libel a circulation, it is to injure. Upon
your eye, this rule above is not universal. It depends upon
the circumstances attending the fact, whether it is a pub-
lication or not.
Public Wrongs.
Of Cheating.

Cheating is not only a private injury, but it is sometimes a public offence. The distinction is this: if a man gets a bargain out of you by false representations, concealment of circumstances, or it is a private injury only for which you have a remedy by action but it is no offence. But if in this case he did not use these artifices to get a bargain out of you, it is cheating for which he is liable to be punished. E.g. Suppose I'm a poor speaking fellow in Philadelphia, whom procure in an elegant suit of clothes to horse & go to New York, and then call himself Bob. The public, not owing to his appearance the merchant then should give him credit it is a cheating. He may be prosecuted for it. So when it is cheating it is cheating; it is very frequently theft now.

So also if he sells by false weights and measures, it is a public offence; it is cheating.

The Punishment is pretty severe; it is fine imprisonment, pillory, & sometimes whipping and fine, besides for his good behaviour. In the common ordinary cheating there is no public offence.
Public Wrongs.

Of Adultery.

The crime of Adultery was not punished by P.C.E. of England. It was an offense cognizable only by the Ecclesiastical Courts, which punished it with Excommunication. In this the P.C. also kept us. I declared the person to be an incompetent titling, & in all States of Justice, I disqualify him from the action of his debts. But we have no Code of civil in U.S. & Co. then Adultery is no Crime at all. In short, if course, it is no crime in U.S. unless made so by Statute. We have a Statute which has given rise to the term known for cause of adulteries. By this Statute, a distinction is made like this. If the person co. is with a married woman, whether the man is married or not, it is Adultery, but if the woman is unmarried, it is not Adultery, whether the man is married or not. It is another offense differently punished. The reason of the distinction is this to be, that it is more important the woman should be chastened than the man. And besides, the weight of property will be a question. The punishment of this crime is by the old Blue Book, a system of fines and a punishment which has occasioned much ridicule in U.S. But, while there is no doubt was admirably adapted to the government of the society of the time they were made. To say the least of them, the stage regulations by whom they were made, were radical (as new system) minor under possible violence. By this gives the power CONNECTED with Adultery & to be bound with the latter. In the w
Public Wrongs. of Adultery.

She is to wear a harbor the course three weeks outside of the Closer, so long as she remains in the State, an
power is given to all justices of the peace to order the
convict 30 stripes if he is found without his wife so
this as often as he offend by putting it off. This is
now the punishment as have known some few
convictions, but never knew a convict to stay in the
State any longer than he left leave out of it, and
is the thing most wished for. Adultery as a private
injury is considered under the title of Private Wrongs.
As Criminal law by adultery we mean only the Crime
of a married woman, but as a private injury
or cause of divorce, either that a wife has committed it.

Bigamy.

This is where the Husband or wife have another
or Husband living. It was once considert a terrible
offence, as it was punished with death. But this is now
away or wrong, by Stat. which inflicts a million punishment.
our State punishes this crime the same as Bigamy off for
7 years absence of the. Husband, or wife, unless if it is
no offence to marry again, on the ground that it is pre
sumpt the person absent is dead. There is one but few
cases. There was one where a woman married after
a 7 years absence of her Husband, without of it was considert it was Bigamy, because she ought to have pre
ceed a divorce before she marry a second time but the jury under direction of the Just acquitted her.
It was fair to presume he was dead.

Is it?
Public Uprights.

Sect. 5th. April 13th, 1817.

There is an offense now to be by a very ancient Statute which in the United States and in the States in the United States. Our ancestors adopted this Statute, as they did the U.S. Constitution, that because it is very much to the advantage of all that there is a State in the United States, the offense known is that of

Forcible Entry and Detainer.

Now this by the Statute was no crime. Forcible Entries and Detainers accorded exactly with the military spirit of the ancient Laws. They were accustomed to lead their respective troops, to decide by the sword those questions, which are now decided by Courts of Justice. Of course when a few, more beloved, two of them, to their rights, in a certain tract of land, possession had to be obtained by force only by the intervention of armed forces. The mischief produced by their domestic quarrels became so great that it produced a Statute to it, so that persons out of possession were prevented from gaining possession however good their title might be or unjust the detention. It was real robbery, the same going with personal property to subjects. A person who attempted to gain a possession by force, to gain it in imprisonment, under this Statute, some cases have arisen.

It must be such force as is calculated to make terror, of breaking down a door for all to take possession and have. I would observe that it makes
Public Wrongs.  Forcible Detain and Detainer.

no difference whether the person breaking has a good title
or not to it is a forcible detain.

A forcible detainee, is where a man keeps possession of the same forcible manner when he has no
right. The owner of property may oppose force to prevent
the attempts to disturb his possession without force, but
if he does not keep it but is in possession without title,
he is liable to the penalties of the Stat. if be detain.
The owner in attempting to have by force is also liable,
so that the wrong done is forcible - the owner also
may both be subjected.

It is true if it is in possession of B's property by
agreement, he has been allowed to hold over his term,
he is allowed to keep the property of another upon occa-
sion to know he is not thereby a reasonable notice. Suppose
I rent to the house to go on a journey and on his return,
he finds T in possession and this without any claim
of title. Now T's rent cannot enter by force - it by such
way down the door, but the rent is his. But suppose
T does go in by force and put N his out. Now T may
call a particular kind of rent the rent the the law when
I used force to obtain the possession of so they enter,
gives it the possession again. But they try to D, as
to the title, the pacianas left to try the title at law,
and I may be subject for a forcible detain or liable
for a forcible detention to the penalty the Statute
fictily. Co Lit. 254. 1 Spen. 943. 28. Ray. 1514 Cas. 149.

This is a law of policy altogether more than it
does the peace & tranquility of society, to which all
Public Wrongs. Forfeiture of Detained.

the rights of individuals are lost to justice. The governing principle that must be sought and the equity of particular cases is to be thrown out of view, for equal justice enforced for it is better that an innocent man should suffer than he can obtain his remedy at law, than that the whole community should be the victim in his attempts to do himself justice in a summary forcible manner.

Of Treason.

There is much talk in this relating to treason with which we have nothing to do, as treason to the King, and his royal family. But it is treason there to counterfeit his coin on the ground that it is defacing his majesty's image, but with this we have nothing to do, as farther concern them with any other historical point. I shall therefore omit taking notice at all of this part of the subject.

There are two cases however that require some attention. It is treason to counterfeit the coin of the King as his realm, on the same principle it is to treason in us to long war of the government of the United States. But the question is whether it can be treason to long war of an individual state. I shall make no remarks on this thing. I think it certain that it is treason in a State which is the treason in an individual, as if the State of Cal. declared war on the State of New York, it would be treason in the legislation of this State. For the State of N. Y. is a component part of the whole union, entitled to protection.
Public Wrengs.

This language is an attempt to raise troops for the purposes of overthrowing the Government. They may not be admitted on condition, but they must go into the business. To support the object is to continue Government in a different form, in procuring the one thing our purpose—so that it is need to attempt to remove by force grievances which the people of Government impose upon them, and in doing that it makes no difference as to the manner in which this object is to be obtained by force or by compromise.

An act was passed in 1791 granting to property certain privileges (which they had long been denied, but) which they, as good citizens were entitled to as a right to acquire property? Some demagogues called together a band of desperadoes, whose professed object was to compel Parliament to repeal that law. Now this was begun, for it was an attempt to compel the government to allow a law thus by force. To make it becomes necessary on the government to make use of force to quell a band of men whose object is to continue the Government in a lawless way of its own, it is true. These may be cases where the government is so arbitrary, so oppressive, that the citizens rise and establish one more suitably just. Having succeeded with its acknowledgement as a most glorious Revolution, the authority entitled to the admiration of the world, to that they found; they would have been discerned as Tyranchogel, executed as such.

There may be very great disasters which are
not amount to treason i.e. where the object is not to overthrow the Government. E.g. Towns sometimes get into violent quarrels, so the Sailors at Newport will often declare war to the President at College & if the boys of town will all turn out to fight the boys from Town. Now these are real treasons for the object is vile, at the very unjustifiable, is not treasonable.

It is only the object must also be universal. This is a certain sense is true. E.g. if a person act or get a party got together for the purpose of pulling down all existing houses but had nothing to injure Churches. Now it was contended to make this treason, its object should have been to pull down all houses of public worship. But the Court decided it was treason.

The other Species of Treason, is adhering up enemies of the State and thus whether the Enemy be open or public, or whether it be a private Enemy. Adhering to him is furnishing him with arms or munition provisions, or giving him any aid or comfort. This is treason. Sending them intelligence is treason.

It has been contended that when a rebel has fled out of the Service and that he is treason in all he who affords him aid or comfort. But it is not so. It would undoubtedly be treason to furnish him with means a carry on the war but to supply the enemy necessities of nature it is not treason. E.g. Mrs. Gordon, 1787, June 27, 1788, 132, 158, Parties, 241, 219.
Public Wrongs.  

It is still difficult to learn from elementary writers precisely what is, or what is not treason. The Stat. 3 Edw. I. defines in some measure what it is, the two doubtful terms are those not then recognised, that is treason. Suppose the supreme magistrate or his liege, but he is the supreme magistrate de facto—now suppose it to concern his life. It has been decided it is not.

No fewer treasons committed by the 11th and 12th centuries were punished under Edw. IV., the name of the line of Lancaster had been previously declared usurpation by an act of Parliament. But the real rightful heir of the Crown of England is the fact, who hath never had plenary possession of the throne, as was the case of the house of York. Among the three reigns of the line of Lancaster, is not a reign within this fact, 15th all whom treasons may be committed. 4 El. 7, 15. 27 El. 3, 104.

Words now constitute treason. (1 W. & M. c. 15, 17. 1 El. 156.)

With respect to the proving of treason, it concerns that 2 witnesses are requisite to produce a conviction, unless the C. & S. does not require but one; provided other facts are proved which cannot be supposed to exist, unless the principles of that exist. It appears to be settled, that when it says 2 witnesses are requisite, it is not meant that every count must be proved by 2 witnesses. One witness is said not to be sufficient, but if there be but one true act, they must be proved by 2 witnesses. So it is said a wife may be compelled to testify on her husband's charges.
Public Writings

... According to the Constitution of the United States, it is provided that the Senate and House of Representatives shall have the power to try all cases of impeachment. But I am of opinion that this power is only vested in the Supreme Court of the United States, and that the House of Representatives have no power to try any case of impeachment.

Of Offenses vs. Religion.

In this country, there are two offenses vs. Religion that are not punished in the United States. These are what they call Apostasy and Heresy. There are 20 Apostates and Heretics in this country. These are certain offenses of the Church which are punishable. The principle which governs in these cases is that they are punished at all is on account of the disturbances they produce in society. They are not to be punished according to the nature of the offense or the opinions of men or the rights of God. With respect to any religious opinions, men may maintain them as organs in whose opinion, they are protected in those opinions, are allowed to worship according to the dictates of their own consciences. If a sect of men should choose to worship in Jupiter, I deem this as the only true religion; it would be arbitrary to require to restrain them by law. There was once a time when the minds of people were bigot that they considered the established church was the only acceptable manner of worshiping God. That all those who were opposed to them, or who did not conform...
in their views of religion were fit subjects to be driven
up as an abomination to an infidel deity. But the sent
ments of the people on this subject have been entirely
changed. Now all are allowed to worship God as
they best think fit. But unless his name be profaned, or
his laws violated in this particular, there are offenses
which are punishable by the laws of society. Such as
blasphemy. Blasphemy with us is the same as
it is in Eng. In all cases where we adopt the terms of
the English writers, we adopt their construction. Then
when a man is said not to blaspheme, it is said
blasphemy the essence of which is contained in the
authority. What is blasphemy? Denying the being
of a God, his sovereign power, his omniscience, or
triumph of Christ, speaking at his holy scriptures, or
are all blasphemy. But on considering this it has
never been understood, that questioning the divine
character of Christ, or denying the Scriptures to be
true, was blasphemy. The opinions of men are not
to be restrained. But scolding at the Scriptures, uproar-
ing Christ's character is blasphemy, for it is unreason-
ably, it revolts all reason, or the minds of leaders.
But the rights of conscience to the privileges of inves-
tigation in a sober and rational manner are not
to be restrained; much less are men to be punished
in such case. But if one should deny the doctrine
of a God, or should publish that Christ was a poor
Public Wrongs. Of Offences to Religion.

Some famous characters, if it would be blasphemy to punish them, it is perfectly just to restrain such conduct by law, at the same time I should never say that a law was a good one which in any degree interferes with the rights of the individual. Again, persons can not be prevented from worshipping God in their own way. If a certain sect should conceive it their duty to glorify God, the women with spinning wheels and the men with axes, they would have a right so to do. But if they should bring their wheels or their axes into Aaron Backus's meeting-house on the Sabbath, it should then begin to count. If God in their own way they might be restrained, you see then, the law will have nothing to do with religious questions of any kind, till the community at large are disturbed, or thrown into unnecessary anxieties by the command of others. But still the rights of conscience are not to be violated.

There is one thing which has entirely changed since the punishment of it has been abolished. I mean witchcraft. This was formerly considered as a most serious offense to religion, punishable with death. And so long as it was considered a crime to the punishment of it lasted, there were witches in abundance. But, as soon as all were allowed the privilege of becoming witches — migratory to this without fear of the law, as it had ceased to have any effect on the offence, the profession dies away, and the more it is extinct...
Public Wrongs.

Religious imposture is an offence unpunishable by law; it means such persons as falsely pretend an extraordinary commission from heaven, or terrify the people with false denunciations of judgments. This attending to subsist in religion by bringing it into the temple is done at the hazard of fines, imprisonment or sometimes pillory.

Originally, the religious societies or courts were fixed according to one plan, and on the ground that all the religious wars of one denomination, the ministers were supported by laying it to the apprehensions of the inhabitants. But as new denominations rose up, it was found just as necessary to exempt them from the payment of taxes as to the support of the established order. But in order to bind themselves to their obligations, they are obliged to register their names in the town clerk's book, mentioning the denomination to which they belong. If it is found that persons do this merely as a cloak to get rid of paying taxes, or as an effort to divide worship or to get a chance of an opportunity offering, they will derive no benefit from it.

Properly, the Sabbath is also an offence to religion. The tranquility of this day has always been considered as entitled to the protection of the laws in every civilized country. What is a preparation of the Sabbath? The Statutes of the same at Salem have regulated the manner in which this day is to be kept. Unnecessary labor, recreation because of being a holiday. Securities, notes bonds, are
Public Wrongs.

I observe it is forbidden in Sunday. The Jews say, 

"Profane swearing is another offence. Profane swearing is no new or guilty offence. It must be a curse by something. If a man is not called upon it is profane swearing to call upon God if this is not done, it must be a cursing, which is also worse. 

Profane swearing is another offence. Profane swearing is no new or guilty offence. It must be a curse by something. If a man is not called upon it is profane swearing to call upon God if this is not done, it must be a cursing, which is also worse.

We can conceive that it is a cursing, but it is not easy to explain it. It would not be a cursing, but subjecting the offender to punishment. 

"God", "your soul", "Jack how are you", for it is the chances to one said not in his heart. Choose his own cursed rather than demand. It is calling a person necromancer, sorcerer, witch, etc. to be cursed, and swearing profanely, to be curse by Jupiter, with the person swearing considered Jupiter as his god. If so, it has no business to take his name in vain.

Lect 7th April 17th 1813.

Of Homicide.

I do not think it possible to get a correct idea of Homicide, from any definition we have on use. For in the cases to be found in the books, ascertain the principle contained in them, to make some observations on those principles, apply them to our own criminal code in this particular. I think we may gather the general idea of Homicide.

Homicide is sometimes murder, sometimes manslaughter, sometimes justifiable
Public Wrongs. Of Homicide.

I shall make some general observations before I enter particularly upon the different branches of homicide.

To constitute murder, it is necessary that the killing be with malice. By malice something different is meant from a spirit of ill will merely. It is better explained by the Latin word malitia, which means nature, the abstract, than by the English word malice. Thus, there may be a total absence of a spirit of ill will, yet the person guilty of murder. So also there will be a presence of ill will tending to the same fatal result of murder. Now a man may be guilty of the murder of his infirm or dearest friends, without any sensible malice at that person. This happens when the act done evinces the inso-
cial heart, one bent on mischief, and when nothing, even the loss of a fellow creature, is sufficient to restrain him from carrying his design into execution. A man who inadvertently driven a cart over a child, the horse, in its start to get out of the road, kills it-in its natural movements-an in unsocial heart, are wholly disregard of the lives of his fellow creatures; and it is just this be out of society. There are some cases of ar-
bitrary murder, where the malice animus is not dis-
scoverable, but where the law, its motives of policy, has declared them to be murder. But when this ma-
lic animus does not exist, either in fact or in presumptuous of law, it is not murder.

Manslaughter differs from murder. it is of two kinds: voluntary or involuntary. voluntary manslaughter is when a person kills with an intent to kill or so
some great bodily harm. It must be attended to occasioned by some violent provocation. You will observe that if it is mere manslaughter, when there is evidence of revenge, as if after the provocation the just seems here had time to cool, now if the person kills it is murder, but the provocation is ever so great. It now shows the animus in dies the wicked heart. Whether he did kill at the moment of provocation, it is not apparent that he is so wicked that he ought to be cut off from society. And if the provocation is such, as it is in the opinions of the courts a slight one, the person takes advantage of this to occasion the death of another, it is murder. Whether the provocation is sufficient to warrant or not must be left to the determination of the jury. This voluntary manslaughter then, is where the person killing intends to kill or do some great bodily harm which occasions death upon violent provocation.

The other kind of manslaughter is involuntary, it is from the least very different. It is where one kills another while performing an unlawful act, or by performing a lawful act in an unlawful and improper manner. E.g. suppose one is about to fire his gun at the upper corner of the room. By accident some one hits his arm and the charge lodges in one of your heads. Now this is not murder, for there is no malice, it is not voluntary manslaughter in for there was no provocation. But it being a rash unlawful act, it is involuntary manslaughter.
Again suppose a workman is in a place where but few are passing should throw a brick from a house upon a person. Now it is his duty to look out to see if any one will be in danger; but if he does not, if he kills another, it is manslaughter of this second degree. He was about a lawful act, but it a careless manner.

Homicide is sometimes excusable, which of two kinds. Excusable homicide of one kind is this, that it is done for self preservation. This is called homicide "de defendendo," as of a quarrel or in self-defense. It is danger, he has done everything in his power to prevent the quarrel. He is excusable if he kills the assailant. But the great Dec. 18, did he do everything in his power to prevent the quarrel. Now it may be murder, manslaughter, or excusable homicide. If he had an old grudge on the person who assailed him, he takes this opportunity to revenge himself; it is murder; if he is violently attacked, he refuses to retreat as far as he can; it may be manslaughter for killing on the other, but if he has done all in his power to avoid the quarrel, it attempts to escape, being in danger of losing his life or sustaining great bodily injury, he is excusable if he kills the assailant.

There may be cases where you need not treat one brick, but are excused if you take the person on the spot. As if he attempts to break into or burn your house, or to commit a rape. The person in such case may defend himself and the aggressor may be killed.
Public Wrongs.

The other kind of excusable homicide is where the killing is not done in self-defence, but where it is done under stress by which death ensues. It is sometimes called chance meeting, but usually homicide by misadventure. Suppose a man is cutting wood at the door, and another person sitting near is killed by the branch of a tree falling off. Now this may be wholly excusable as if it had never come off before, but it may be manslaughter, as if the tree had been in the habit of coming off before.

Homicide is sometimes justifiable. As when it becomes the duty to escape the laws of the land by depriving a person convicted of a crime of life. So he is justified in killing escaping or persons who will not be taken, with one proviso he cannot other wise take them. So in case of riots mobs it he is justified in killing the rioters if he cannot otherwise quell them. But in all these cases there must be apparent necessity on the part of the officer of the officer has taken the person he has him in his power, he may beat or strike him, it is excusable.

There was a case where a child ran into a haymow, concealed himself under the hay. There in the pitching hay for his cattle ran the yoke into the child, the child being injured. Now this was not incursion, for there was no malice, it was not voluntary manslaughter for there was no intent to kill, nor is it involuntary manslaughter for he was pursuing a lawful act with ordinary care. What is it there wrong at all.
Public Wrongs.

It is homicide by misadventure. To do the case of the one flying off at killing a by his stander, it is treasonable homicide by misadventure. But suppose it was accidental. Fly off the head, as he knew it now this would be manslaughter of the 20 grade, he was pursuing a lawful act but in a unlawful manner.

The case was a shot at his neighbors sheep with an intent to steal them, but missed. The sheep was killed a man was it murder? No, for there was no malice - was it voluntary manslaughter? No, for there was no intent, no provocation but it was involuntary manslaughter, for he was pursuing an unlawful act. This is a distinction in Eq. 3 which says that if the person was acting on an act which if committed would be felony, done in doing this, this a man however unintentionally is murder. Now suppose this distinction does not hold in the country. The governing principle which determines when homicide is murder, (i.e. the animus malice) is entirely lost sight of, and the sign of the 20 grade is the subject very much murder. Suppose a man goes into neighbor's yard射杀 his horse, it is trespass for which he is amenable to the injured individual merely. But suppose he goes to thief, and shooting at him a man is killed. Now say they in the latter case he is guilty of murder. But the malus animus is certainly as much wanting to the thief steal, as to the horse killer, it perhaps more so, for he may be driven by pov

erty to steal this sheep, to feed a starving family who
PUBLIC WORSE.

In other cases there would have been less to consider in the case, but this consideration comes into play in cases where the persons who voluntarily partake of the poison, who voluntarily pay the price, killing his neighbour's horse. So I conceive the distinction to just be true in principle.

The case of a man shooting at a partridge, accidentally killing another person, it is not murder, for there was no malice animus. Was voluntarily manslaughter, for there was no intent to any provocation nor is it involuntary manslaughter, for he was pursuing a lawful act with ordinary care. But in Eng. if he had no right to shoot at a partridge it would be murder. But it is not so here. So too if one is killed in wrestling the game is conducted fairly. I.e., according to the rules of wrestling, it is permissible by law, it is no crime, it is homework, if by misadventure.

But suppose the amusement is unlawful, e.g., it is unlawful to play at cock fighting or to throw at cocks etc. Now if any person is killed in such amusement, it is involuntary manslaughter for the most that can be said about it is, that he persons were pursuing an unlawful act.

Suppose a man taught another to use a large knife. or has to do, he acts willfully. What is the crime? It certainly is not malicious homicide (whether is sufficient evidence that his intention was not to kill, but only to teach, it is not involuntary manslaughter, for there was in intention to cause great
Public Wrongs
Of Homicide.

Knowing, now, is it voluntary manslaughter, for he has no provocation. What then is it? The company was (in use) furnishes evidence of the unseemly heart, that he is regarded of the laws of his fellow creatures, that (now) son he may be to cut off from society as a murderer. So if one, on a slight provocation, as by having been made the butt of the company, to take up a large stone, a throw into the midst of them, then by a person was killed it to be known the unseemly heart is plainly discoverable. The case was a man put into another from another, to proceed to the death of this person. It was not the murder now voluntary manslaughter, but it was involuntary manslaughter for the act was unlawful.

Again, because was this. A did not think that he had killed it, as he intended it. He thought he would have done, but guilty of murder, now suppose it killed it, it is murder. The crime is malice is there as if he had a son for A. or B. takes it. Now he is guilty of the murder of B. - But suppose A in the last case, had been provided by B. that if he did kill him (as) it would have been only manslaughter and he accidently or unintentionally killed C. is it murder? It has been decided that it is only voluntary manslaughter, for the malice remains is no more apparent in his killing C. than it is to be, had he killed B. Take the schoolmaster case, e.g. a boy has stolen a sheep property, the master counts him very properly, one put a man, with a proper weapon, but one of the
Public Wrongs

Of Homicide.

Strokes is the occasion of his death. Now the master having provided proper utensils in all respects of having a descrip-
tion to use the rod, he is guilty of so doing? But suppose he took a weapon a little too large what is it? He is
nothing more nor less than involuntary manslaughter. He was pursuing a lawful act, but in an evil
manner. But suppose to all appearance, he was as calm as a clock, and struck the boy on the head with
a pair of longs—killed him it is murder. So
if the workman or a house gives notice to all below
he has a case, but unfortunately kills over, it is no
crime, it is homicide by misadventure. Suppose
he is at work with peoplesoldier caps, and does not
give notice, it is manslaughter of the 2nd grade.
If it were in a city where people were continually pop-
ing it should give the notice it may be murder. It
shows the unsocial heart.

Upon this principle it is, that it has been
handed to the murderer to turn out a mad bell, in
consequence of which some person is killed. The shows
himself the total disregard of the lives of men. So
when a man drew the charge from his gun before
person soon after Lord it is without his knowledge.
For showing the existence of his pride, to subject it.
Unfortunately killed his wife. It was not intended
to be murder, but was it manslaughter? If the prin-
ciples I have laid down are correct, it is no crime at
all; he was about a lawful act, but it is ordinarycase.
See this case in Forbes 32.
Public Things.

Of Homicide.

We are laid down in the Books as it regards homicide, that the absence of a Court of Justice, or officer, should operate a person, that he not have jurisdiction over the crime, that it is murder in the offiers. But I do not believe this will always hold true. The act is obvious to the eye, and presumably can be ascertained to direct. He had no malicious animus.

The Court, if it have misapplied this jurisdiction, are not guilty of murder, but only of manslaughter - it may be manslaughter, in the officers, for that is unanswerable. But suppose the Court knew they had no jurisdiction towards the man himself, before he had an opportunity of procuring a verdict, would you commit - the Court ought not act to be hanged?

To look it is said to be, murder in the officers execute a man, differently from the manner prescribed? but I do not believe it - there is no malicious animus - indeed this case has been contradicted of late.

***April 20th, 1873***

Yesterday mentioned a case, when one man shot his wife - there is another case, standing upon the same ground. The case was a man took up a pistol to pluck the ramrod into the barrel to see if it was loaded - he ram rod went down, but the fact was, it was too short - he shot the pistol, it was off the side a bye standers. It was not murder - nor voluntary manslaughter, but was it involuntary? it turns upon the Du. was there any case used, for he thinks it was excusable.
man of ordinary care could have been seized when he found the rod and drawn. I believe this a correct opinion and that there are few men who would have had it occur to them to put the rod out of their way.

With respect to an officer, who in taking a man, kills him, I have already observed that if the officer used violence after he had got the man into his power, the man's animus would be discovered. But there are cases where the officer is excused in killing his prisoner who is in his power, as if the prisoner attempts to escape. There is a distinction in this subject which I do not believe will be found. If it is admitted that if the prisoner is success in any way in escaping the officer may shoot at him, if he kills him, it is excusable homicide; but if he is accuse it is not. I see no reason in the distinction.

Homicide or defended rests upon the principles of self-defense or if it becomes necessary for one to kill another to save himself, if it is necessary. The person assaulted may be some cases killed with as much or without attempting to escape or retreating one fact in other cases it may be manslaughter or at least if he kills without attempting to get out of the way. The ought always to retreat, if by so doing he can avoid the danger. Those cases where he is not bound to retreat are 3. where a man attempts to rob him, to break into his house, to burn, or cut out a man's eye; in all such cases the person is excused by immediately giving the fatal blow. For in a
Public Wrongs.

Suppose the person first assaulting finds himself in the most danger, he turns to the person just afraid to pursue him, now he must retreat as far as he can before he may kill, and be in imminent danger. There have been cases where it has assaulted A knowing that, therefore, the provocations of B will be greater, and B turns upon A, but retreats before B kills B. Now if this was the intention of B, it is true, he made the assault, he is guilty of murder. He has the malice an imin...

To Manslaughter. I have divided them into two kinds of manslaughter. The first when A kills B, in a quarrel — with an intent to kill, but with great bodily harm, having a great provocation, it is when a person kills another while performing an unlawful act, or a lawful act, but in a careless manner. I observed to you that it was no matter how great the provocation was, if it has less time to cool. Now it is not because he was in a great passion that he is exonerated. Suppose or a trifling an man throws himself into a violent passion, he kills another, he is not exonerated, it is not an aggravation of the offence. It is a dismal state of frenzy, but if he has been greatly
Public Wrongs.

1. In the moment of heat or passion, given the fatal blow, the Eras is willing to cast a veil over the in
2. creptions of mankind, I say it is only manslaughter.
3. This provocation thus is a mitigation of the offence.
4. No words, nor gestures nor any other actions with
5. exception of contem, pm, will ever be a sufficient prov
6. ocation to allow one to kill another. Such killing will be murder. Here a man be so provoked with words
7. gestures that he may kill a child, it will be only
8. manslaughter but there are cases where there was no
9. intent to kill. If there was the intent, it is murder.

Eg, suppose I insult a proconsul by accusing him of crimes. If and B. take a stick, blade or hank, or
10. lure A's brains out it is murder but instead of doing this suppose he takes a whip or any other
11. weapon which in no probability is sufficient to
12. kill B. there without, any such intentions, it is
13. manslaughter the intent here is contained from the
14. nature of the weapon used.

I will now mention some cases. A boy had
15. been caught stealing wood at a Park. The Parker
16. took the boy to the noise beat, it broke off, and
17. killed him. It was held to be murder. It was
18. a spirit too diabolical to be sufficient to live in
19. Society. Another case, when two boys fought, one
20. of the boys came home with a bloody nose, the Fa-
21. ther was assassinated. The other boy got a worse
22. diage, so did the boys, in retuming home the boy was
23. killed. It was held to be manslaughter only. But
Public Wrong.

But this decision has been condemned by almost every subsequent writer. The case is reported in different books; in one book I have seen it stated that the Father pursued the boy with "a little whip." Now in this case, it is not likely to intend to kill, and I am inclined to believe this was the ground upon which the decision was made. But in this case, there may be said to have been malice, for his anger led him to take time to cool in going the distance he did go.

What then are the cases? The most common cases are these, where a man is violently attacked. So far as it should join another whipping his wife or children, it would be a sufficient provocation. So if a man should find another to live with his wife, and immediatly take his life, it would be manslaughter by, but if after giving his passions time to cool, but grow more angry at this time and to see another he offended the malice animus.

There are likewise some cases of artificial murder, where these notions of policy, the principle of malice is lost sight of, laid out of view. As by the use of duel. Few men frequently are compelled to engage in duels by the fashion of the country, their situation in life, or a greater notion of honor. They go in the field without their opponents without the least malice or ill will. They engage in the act with great reluctance, but when it is clear policy made murder, in order to prevent men from exposing their lives in this ridiculous manner. So too the case of prisoners killing...
Public Wrongs.

A crime in attempting to escape, the without the

least intention, is by the policy of the law, a mur-

der, on the ground that it will operate as a prevent-

ative to persons to resist the laws. This appears

plausible on a distinct principle; it may be consid-

ered as an exception to the general rule.

The punishment of murder is death. The pun-

ishment of manslaughter is fine, imprisonment, or

hanging in the hand with the letter M. In most coun-

tries the punishment of both grades of manslaughter

is alike—i.e. they may be fined, imprisoned, or hung,

it will be more severely inflicted in one case than

in the other, according to the circumstances of

each of the Punishments in the same. Our Statute

inflits a fine for involuntary manslaughter.

On a trial for murder, the jury can find

the Criminal not Guilty of Murder, but guilty of

Manslaughter. A curious question has arisen under

our Statutes. Suppose a man is indicted for mur-

der, and the jury find him guilty of manslaughter.

Which is meant, manslaughter of the first or second

grade? If it is to be considered that voluntary

manslaughter is meant the punishment will be

fine, or, and branding, and if involuntary it will

only fine. How are the J. to determine which pun-

ishment to inflict? As a Court they cannot judge

from the facts testified to as private men they

may know which he is guilty of. Does it appear that

he is which it is—The punishment for involuntary
Public Strongs

Of Rome.

The scenes are only to the one. If they inflict upon others, for voluntary manslaughter, they do not know, but they inflict too much. This has been, however, a long course of decisions the other way. The law was re-established till a few years ago, when this to attend the precedents so numerous that they that it seemed persons to respect them. This consideration it has no influence upon me, for however important the matter of stare decisis may be, I would not hesitate to decide according to principles of law, however numerous the decisions might be to the contrary.

When I mentioned that it was murder for prisoners to kill officers in attempting to escape I forgot to tell you, that if any private persons were killed in this way, it was manslaughter merely, unless such persons are Commanders by the officer to avert, that they are acting under authority of the killing of them is murder, the done without malice or design. In this subject generally you may see R. J. N. Role R.C. and the late Crown Laws.

There is a provision in the name of a case, which is never by a person in certain cases. When the magistrate is one, if he the object, which is to compel another person to obey into laws that have been made. This is now different from long to go for Robberies. It is also proved it is that the person in connection shall give notice of being in danger.
Table-Manners

do also by the principles of the Covenants may be drawn for his good behavior when the punishment is given. This is evident to all parts. None have reason to doubt. There are other cases where the person may be required to deliver certain goods to the person who is the owner. This relates to cases of violence when the peace has been broken. In such cases, the person who has committed the violence has been required to deliver certain goods or property. There are other cases where a magistrate acts with as high authority as a Justice of the Peace, may exceed his power and order the person to keep the peace, to deliver certain goods to the person who has been wronged, he may issue a warrant to have such persons brought before him. If there is no evidence that the person has committed the violence, shall not be brought into distress. In such cases, the warrant must be issued to the magistrate, who takes the person and delivers the goods. The word 'the' means 'the', and the words 'the magistrate may take such' are inserted in the view. There are other cases, where the person may be bound to keep the peace, the magistrate may take such. In this case the person must be a warrant and he, the person to deliver to the peace, if proof of the fact is introduced. The more than at the scene. But the person is his bond to keep the peace. The proof is not enough for a general of the person or in the first place brought.
Public Writs.

before Conspicuous authority, the person can be punished according to his deserts. It is usually the case when a person is in fear of his life, limb or some bodily harm. The person alleging such injury has a right to get a warrant bringing the person before Conspicuous authority. A warrant must be founded on a complaint in the name of a person, which complaint must be made under oath that he is in fear of such injury. Now the bench, which is the person shall be put under bonds, and, does not always depend upon whether the complaint actually does fear. There must be the opinion of the magistrate be cause for fear. A man of weak nerves may have great alarm of fear of injury, the authority of ordinary persons to have so apprehensions. Now this bench must not bear the fears in con

ment with his other infirmities and the injustice that put the person under bonds. These complaints most usually come either from husband or wife (Commonly the latter) who either fear their lives or danger from the other. In this case the wife or husband has a right to swear to the husband (or wife) in ordinary cases they cannot be accused other than for what each other, that on what ground the person fears that the other will injure him. And the reason why in this case they are allowed to be witness is be

cause, the person of consistent, which thus in imitation to injure, is generally known to themselves only. The story of the wife is always that she is this D.
in the presence of witnesses, she declare her very positively that when they were above her relations to take him by the hair, to pull it out of his head. "Woe, woe, to the woman under bond!" He added, a peculiar husband to be put under bond. It is true, there may be some hazard in committing this oath, as a woman may be seduced to consent a peculiar husband to be put under bond. But the character of this wife is fine for observation.

The authority to bind for good behavior has its foundation in an ancient statute. The previous to this there was no such thing as binding for good behavior, but only to keep the peace, which was a C.I.S. principle. Since this statute it has been continued to all punishable cases. It is certain that a man may be bound for his good behavior, whereas he has been guilty of a breach of the law. In the Peace, it is only to the commission of a certain outrage, because it Twelve, for good behavior, all breaches of the Peace are comprehended. So that both for his good behavior is vastly more extensive than one to keep the Peace:

Some of the words make a difference, but are very significant. It is said thus: The C.I.S. may be bound to behavior, all persons of bad fame, that is, those who keep ill houses, all vagabonds, all sleepers in all such, who keep unwashable, filthy, filthy, in bad circumstances.
Public Warrants.

and other common granadine who shared their means
with one another on the strength. From the generality of
the town this定制 was in effect to subscribe to all their
loans. The $500 as bringing out these black marks
was considered to be within the meaning of the Colactins,
which is not as rigorous was early into words in the right.

of which persons may be bound to keep peace,
so under laws that it was from determined, they may
be bound for their good behavior. It Case. A person
was tried before a Court to give bonds for his good be-
havior because he was a vagabond. The law was
who was a vagabond? The judge gave this definition
of his character: "He is a person who no man know a
with the public coming, no whether he goeth. He was
a fit person to be bound for his good behavior. For
on the terms if strait observation is a tassels of the
many persons who were attached to his cause came
out this state for the purpose of an insurrection
and was at that time statesably aid suppressed
had a many of them as vagabonds. They had been.
guilty of no specific crime, while it be proved that
but their object was generally well known. The
St. compelled them to give bonds for their good behavior.

The judgment of the C is, that the person pro-
cures bonds for a certain sum conditioned that if he be
have himself according to the usual law and alone, that
the bonds are to be void, but if he commits any breach
in violation of them, they are to be perfected, and these
bonds are of that narration that they cannot be
Public Wonds.

character that is not paid into the hands of his bondsman
who has the same power over him, that bondsman
has it also over us and their principal. If he does
not give bonds his bondsman commits the chit to
incomplete well. How long is this to last? This is
as long as is fixed in the bond, and from form of it, it may appear that the imprisonment
is to be perpetual, and he bonds are procured. But
this is not always for the next 90 of Captains, or what is,
with us, this same thing, County court have power
to discharge the person. The magistrate taking the
bond or before where the bond is, is bound to certify
up all cases of this kind which have been done during
the vacation, or since the last sitting of the court,
The person must stand for and until the bond is set
of bonds are given, they must be in force till then.

When the Court sits, they examine the case, and if they
think fit they will discharge the bondsman, or the
person from prison, but if they think that is that other
grounds for years or the person procuring the bonds
they will continue the same from Court to Court.

If application is made to a Justice of the Peace by
the D. of necessity to enforce bonds upon him, the
he refuses to act, the Supreme Court will issue a new
date ordering him to do his duty in this particular.

This bond is discharged by the death of either of
the parties, or by the release of the person procuring it,
so wherever the cause for which it was subscribed was
completing no breach of it, his bond being then void in this
Public Wrongs.

always for any breach of the peace whatever. The old form of the bond was to keep the Peace towards the but it is now towards all good citizens of the State, especially A.B. A bond for good behaviour is forfeit for any breach of the peace. Suppose it is made for shall be cut down a Tree, if the person bonds himself to pay penalty of the bond forfeited. No, it does not stand to this. But if the person bonds himself that if he cut trees, the bond is forfeited. It has been held that "to break his words" is not occasion a forfeiture of the bond. The reason is, that such words are not punishable by parole.

It is not necessary that a man shall fight to occasion a forfeiture. "To break his words" is not occasion a forfeiture... but if the person bonds that he will not fight, or raises any great tumult whereby the peace is in danger of being broken, the bond is forfeited. This is a case of this kind. a man was under bonds to keep the peace, he got a libel on the bond, but said, I will not fight; for if I do my bond will be forfeited, nor can I challenge a fight for this reason, but said, here if you dare knock this ship off my shoulder, I was holden to be a challenge to fight, and the bond forfeited.

There is another process by which persons may be committed to prison... 1st. If a person, insult to A.B. to refuse to obey their orders for either of these, he may be committed to prison. This power is incident to every A.B. The first is to preserve the peace, dignity,
Public Wrongs

of the Court. But it is a commitment, in that strict

purpose, merely, it lasts only while that Court sits. If

a justice is insulted by a disturber, which happens

because he may commit the person till the Court is

eliminates in a few hours of the County or Supreme

Court. Commit it lasts till the regent

the Court which may be two or three weeks.

A commitment for refusing to obey the order of the

Court is a very different thing. It will last

forever unless the person obeys sooner. If he can't

comply because the time for the performance has

passed, e.g., and has otherwise become impossible,

they commit him for a limited time. Suppose e.g.,

a Town Clerk refuses to record a deed, and the Officer

of the Court issues a peremptory mandamus ordering him to

record it. If he still refuses they will commit him.

Such commitment lasts the person to comply

with. But if he has been ordered to do a thing the

performance of which has become impossible, or if some

performance would be of no use, they will issue an

temporary stay of him, and make it conditional as long as

some specific. So that the person is entitled to an

Suit. Therefore if parties may be liable to an attach-

ment, when other citizens would not be liable. This is

the ground of their being others in the Court, and make

themselves liable as a contempt of the Court, as e.g., if

Justice should abuse a prisoner, or the suffrages of

punishment. Commit a man to pay debt, or they are not only liable to the party who sues first, but
Public Wrongs.

[Text continues discussing the nature of public wrongs, the consequences for individuals involved in legal proceedings, and the role of the court and its officers in ensuring justice. The text highlights cases of misconduct and the court's authority to punish such behavior, emphasizing the importance of maintaining order and the integrity of the legal process.]

[Further discussion on the enforceability of court orders, the responsibilities of officers in a legal context, and the necessity of遵循法律程序 to ensure justice.]
to abide the act, or information of that fact, will com-
mit him, and he complies with the award, and is
a contemnor, as he engages before the act, to abide
the award.

The mode of proceeding upon these things is
evry summary. The act, by word of mouth is,
the judge to carry that party who has advanced the
fact, to have him held to the act, and is
no mind of any warrant, unless it is pro-
ded that the officers who serve a person to jail
shall have a millimes, as evidence to the jail
or that he is bound to receive and keep such pris-
ons. In some States, it is contrary to law:
the jailor to confine a prisoner, unless the officer
proves his authority by a millimes from some
magistrate. But the order to commit is perfect
by word of mouth, if the millimes is only evidence
of the order.

Suppose a complaint is made to the court,
stating certain facts, by which the act ascertains
that has been a contempts. Now the act issue as
summons ordering the person to appear to answer
the complaint. Suppose he is not before its
appearance, the act will not obey the summons
that the Court issue a warrant to commanding the
officer to commit him to jail. But suppose he
does appear without a reason why he did not abide
the award of - as that it was obtained by com-
plain - - jury is then summoned by this fact. How

Public Wrongs

Now if the party finds them to be Corrupt, the
charge them, if the party finds the action was good,
they commit him to. He performs the same, as if
he appears in Court, he is in their custody must
not go from them until he gets bail. To also he is
bound to answer all interrogatories put to him.

Now at C.P. he cannot be compelled to do this. The
principles are established on the ground that he has
obligated himself to pay the & to abide the award.

So it was formerly, that if on being called up,
he could swear himself clear, the & must stop.
The proceedings he could not use it evidence that
his oath untrue, e.g. Suppose the & put a
peremptory mandamus to a Clerk to record a deed.
Now if he would come into Court & swear to any
fact which he is to enforce him, as if the award were that
the deed was never delivered to him, then could not
re-discharge him, as the it might be a notorious false
hood; but he could not be liable to the pain of
virtues of Burgage. By the Stat. 2 Anne however,
this defense to the mandamus may be put in defense.

It is a principle of C.P. that in all cases what
your 1. 2. depends upon the oath of the adverse par-
by, who is called upon to testify, that oath is conclu-
dive, the false. But under the Stat. of Anne it is dissentient.

Some States have fixed this point, others have adopted
the practice which has grown up under it. But when it is
not adopted, the C.P. principles obtains. Than 142. 135.
185. 12th. 89. 13. 44. 34. 61. 27. 73.
Public Wrongs.

Of Bail in Criminal Cases.

With respect to Bail in Civil Cases we have nothing to do in this place. It is considered under another Title.

There are some Offences which are not bailable; the most of these are of such a nature that they may be bail'd. What is meant by Bail? It is by entering into by another person, Conditioned that the person for whose it is given, shall appear at the next Court to answer the Charges. If he does not appear, the Bond is forfeited; he is in the power of the bondsman. The forfeiture of the bond however, is not acquittal; the person may be taken against bond hereafter. It does not come to conclusion with the offence nor does it prevent him from testifying if called upon the prosecution of the crime for which he is bailed, he would not, under any circumstances.

The bondsman can at any time relate the principal, to the Justice, deliver him up, and discharge himself from his liability. In the latter the Justice will know and will tantamount to evidence or procures another Bail. To do the principal bailing, has a right to relake him in another State. It may become to you, that there is a difficulty in taking the principal in another State, because the warrants of one State are not valid in another. But this is no difficulty about it, if man has a right to relake his property abroad.
Public wrongs.

By the ancient S. P. Q. R. all offenses were bailable except homicide, this exception was supposed to be introduced by Stat. 4, 11 c. 207. as by: Dec. what are: what are not bailable offenses, you must refer to the Statutes or the several Bills of Indictments. P. 37. Lev. 207. After conviction there is no offense bailable.

Notwithstanding homicide was not bailable at all: at the trial was treason after conviction, yet it is true that the Supreme Court may bail in any case. They may bail for these offenses when the authority committing them (e.g. the justice) has no liberty to give bail: Nall s. 38, 12. Botet 325.

By the Statutes, treason, arson, and all offenses which the prisoners before the 6th. Eng., cases to have committed, are not bailable. Neither in any case can the person be admitted to bail, after verdict or before judgment rendered. Breach of prison, theft, etc.
Public Wrongs

openly known at notorious ease is in any regular, every
will not be admitted to bail. B. 321. While all
these are copied in 2 American Stat. I do not know,

I observe no person after conviction to be bail.

In this rule is this general exception of the pris-

son or committed by a crime, as, in the opinion of physicians,

in danger of dying or consequence of his confinement,

"he may be allowed, to be returned to prison on the in-

sufficiency of health. It has been said that if the pris-

oner be the cause of his ill health by his own wicked

conduct (as when he stabbed himself, that he did not

be bailed. But the principles of humanity are equally

as strong here as in other cases. It ought to be

bailed. The Supreme Ct. has great caution in bailing

when the person is on trial for murder. There is a case

where by evident misadventure, one occasioned death

of another, he was tried before the justice, he com-

mitted to him for murder. In a case of this sort the Sup. Ct

will grant Bail. 13 B. 32, 33 Met. 425.

The proceedings on an indictment by informa-

tion are proved according to the practice in se-

ceral States, and can be looked at any other practice of Courts.
Public Wrongs

Of the nature of crimes. That branch of the municipal law
which treats of crimes is sometimes called criminal law sometimes
alias the crime and misdemeanor public Wrongs; it is known by these
several denominations, because Crimes are the subject of which it treats.
In Gen. T. 5, the prosecutor for offences against it and the
public law those rights are thereby violated.

The term Public Wrongs includes all crimes and
misdemeanours against the Municipal Law and under the terms
crime or misdemeanor are included all offences against that law. A
crime or misdemeanor is the commission of an act in violation of
the Public Law prohibiting that act; or the commission of an act in violation of a Public Law commanding that act. In. Bk. 3.

Crimes, Misdemeanors are nearly synonymous but inco-
herent, as they are defined. Offences of a higher and more o-
rious nature than are signified by misdemeanors. 2o.

A crime or misdemeanor is an infraction of a public
right inherent in the whole community, in its social and collective
Capacity. A private Wrong or civil Injury is the infraction of the
right of an individual in his individual Capacity. It is the loss of
that almost every public Wrong includes a civil injury. e.g.
Kidnapping, Battery and Public Wrongs each of which includes
a civil injury. A Bk. 5-6.

But more positive sciences, offences metaphors or
only do not necessarily include a private Wrong, e.g. a common
nuisance may include no civil injury, a Larceny of a trespasser
can include no civil injury.

As it is a principle of law that every injury shall
have a remedy; it is therefore the object of the law to only punish
offence that includes a civil injury to give a remedy, remedy;
first - to vindicate the infringement of public rights; secondly - the civil injury against the individual. 4, 1st.

Doctrine of Mergency: It is not always the case however that the individual can give his action to overstep the civil injury occasioned by a public offence, for it is regularly true at common law, that where the offence amounts to felony that the civil injury is merged therein. 4, 1856, 6, 1856, 16th, 1856, 2nd, 1876, 1st.

The doctrine of Mergency has been said by some to be founded on the policy of the law, to prevent, as much as possible, crime from escaping punishment. 3, 1856, 1st.

The only true ground of this doctrine is, that the claim of the public, absorbs all the claims of satisfaction to the individual, by the requisition of both, the person & property of the criminal, and these being the only funds out of which any injury can be re-supplied, that to the individual mind of course in such case be without remedy; as the rights of the public are by Law always preferred to those of an individual. Hence, as in felony, it is generally true, that both the property & the person of the felon are necessary to satisfy the public claims, the civil injury is without remedy; or, as it is expressed in the books, is merged in the public offense. 4, 186, 6, 1873, 1873.

Where a felon was sentenced to transportation, Persons in favor of the injured individual was allowed to sue against the forfeited property of the criminal; conditioned however, that it should be appropriated with, as not to prevent the infliction of the sentence of the law, upon the offender. 21, 1856, 1872.

Whenever the crime does not cause a forfeiture of both the person & property of the offender, there, in all cases, C.J. supposed that civil injury may be redressed by action. 20.
Public Wrongs

In short the doctrine of Merger seems never to have been regarded. An action has been sustained to redress the private wrong endured in the crime of Arson in the crime of Burglary; in this state where either the person or property of the criminal is lost free from the claim of the public, it is liable to redress the injury of the individual. No crime has ever a forfeiture of Estate but Maiming, which subjects a forfeiture to Goods & Chattels. And the burning or destroying in time of peace, any Magazine of public Powder, military or Naval stores, or any public Ordnance, or Ships of War, which subjects the offender to a forfeiture of the whole of his Estate. Act. 1927. c. 288.

Of the rights of Punishment.

The right of punishing crimes, is founded on the Law of nature. This law is revealed to man partially in the Holy Scriptures: All to know this law we must depend principally on the great volume of reason, which is contributed to all, and the permanently of which none can disprove. This Law of Nature, constituted of the revealed and un revealed Law of God, as it gives a right of punishing for crimes, must in a state of Nature have vested every individual with the right of punishment: For in a state of Nature all men being equal, this right of Punishment or Penal Sanction of the Law, which in every man, could be vested nowhere. To deny then, that by the Law of Nature, every man in a state of Nature who had it in his power might punish an offender against that Law, is denying the very existence of that Sanction, and amounts to a virtual declaration that Deity, theinvisible that man needed Laws for his government & protection, yet lacked wisdom to attach to those Laws which he had enacted for this purpose, any efficacious principle or binding force. For the Law of Nature is an eternal Penal Law, without a penal sanction is neither efficacious nor obligatory.
In a state of nature the right of punishment is vested in the Supreme Being. Every person in the community is said by some to be founded on the social compact, that is an express or implied assent of the members of the community to submit to the laws and punishments enacted & inflicted by that community.

This ground is sufficiently broad to authorize all punishments for offences made in or against the Law of Nature: because as individuals in a state of Nature had a right to punish such offences, they could, when society was formed, transfer that right.

But on this principle, mere private offences, offences made prohibitory only cannot be punished, because individuals, when they formed themselves into society, supposed no right to punish such offences for they could not then exist as they arose out of society: and not having the power themselves, they clearly could not invest the Community with it: for none can give more than he possesses.

But the true principle which authorizes such punishments, for the right is not denied, is necessity. Necessity is the Law of nature; which law in its application to natural & artificial persons is vested as the several subjects of that Law are varied: it is not necessary that a natural person, one in a state of nature, should suppose the right to punish offences merely a prohibition; because he cannot do it. But for persons, which is a more artificial person, it may be necessary to punish acts which are not offences against the Law of Nature, but injuries to the society only; to the extent of this necessity, society has a right to forbid & punish commission of such acts, art. 178, 179, 181, 182, 183, 184, 185, 186, 187, 188.

The end of all human punishments is the preservation of society. This is to be obtained either by retiring the offender by the decision of the whole society; or by corporal punishments not affecting life, by temporary imprisonment, fine
Persons incapable of committing crimes

It is generally true that all persons in society are liable to be punished for disobedience to the law except such as are expressly exempted therefrom. 4 B. 20.

All the cases which protect the committee from the punishment assigned to the commission of the forbidden act may be reduced to this single point (Hants v. Althorpe): doth constitute a crime there must always occur an intent to do an unlawful act, together with an actual commission of the act forbidden. 20

When a forbidden act is committed, then, the only question is whether the will accompanies the commission of the act.

This want of a will obtains in those classes of cases viz. 1st. When there is a want of understanding. 2nd. Though there be a mental incapacity, the understanding is not called into operation. 3rd. When the act is committed by compulsion.

Firstly, a want of understanding, which implies a defect or want of deliberation. Infants under the age of discretion come under this class: these are generally punishable for no act being presumed to be done capriciously. 4 Flas. 1-2, 4 B. 20-1.

When the offence consists in an act of commission, infants are not generally punishable though of the age of discretion, the reason assigned is that they have not the control of their property and cannot
not see, trial, but under the control of Parents or Guardians: But where it is an act of commission, the law is otherwise.

The age of discretion is settled at 14. Under that, the presumption is against the infant's discretion. Under the age of 7, he is not liable to be punished for any crime; for under that age, the presumption of his want of discretion cannot be rebutted. Post, the age of 7 or older at any age an infant is liable criminally for his treachery. Between the ages of seven

4 and fourteen, the infant is presumed to be still incapable, and is therefore not punishable unless the Public prove his discretion that prevails. The maxim, ut contra legem spectet, abducted.

It has lately been decided in King's Bench, that the presumption of the mental incapacity of an infant cannot be rebutted till he is fourteen, except in capital trials. Pray, doubts the correctness of this decision.

The rule that an infant under the age of seven is incapable of a crime is applied by Doctor in the subject, only to felonies, but it is unjust to extend it to all offences.

It has been laid down in some books that, between the ages of seven and ten, if the infant is presumed to be still incapable, that the presumption is against his discretion only from the age of seven to ten and above. This distinction is not well taken; the law is laid down correctly in the previous rule.

Suits and Lunatics also fall within the description of this class, and are punishable for all acts committed while under the operation of their respective incapacities. Lunatic therefore, is never punishable for he is one who is supposed never to be reasonable with reason. But a Lunatic, in a lucid interval, may commit a crime, and if, for that reason, he be nottrial, he may be tried and punished. [Section 1665, in 43, 1 Stat. 2, 3, 1 Stat. 6, 1 Stat. 30.

If the Commission of a crime be committed before the appearance, he cannot be prosecuted: if after appearance, before Trial, he can-
cannot be tried, if after trial of conviction but before judgment, sentence shall not be pronounced against him: And if after judgment but before execution, he shall not be executed. [II. 3. 2.] 1. St. 3. 1. 1545. 16. 34. 356. 46B. 23. 346.

As the criminal’s insanity be not obviously certain, the fact must be tried by a jury of his peers. 4 B. 23. 23.

Although a madman is not himself liable for any act, yet one who voluntarily incites him to the commission of a forbidden act is equally guilty of the crime, as immediate agent or committer of the act; the madman being considered merely an instrument with which the crime was perpetuated. [II. 3. 1746. 67. 67. 396. 353.

There is an exception to the rule that the want of understanding will excuse the committer of a forbidden act from punishment. This is when one commits a crime in a voluntary fit of intoxication; this in the books, instead of being an excuse, is said to be an aggravation of the offence. C. Litt. 1874. 1. St. 3. 1746. 32. St. 2. 6. 3. 123.

It is presumable however that a mental debility, caused by a long course of habitual intoxication, would form as good an excuse as a want of understanding arising from any other source whatever.

Secondly, when the object of the act arises not from the want of ordinary mental powers, but because the want of understanding is not brought into operation, or in other words does not accompany the commission of the forbidden act. This happens when the act is committed by mistake or chance. [II. 3. 3. 1752. 3. 1723. 124. 134. 1546. 37.]

Excuses on this ground are considered to exist when the party was in the commission of a lawful act, for if the act intended to have been committed were unlawful, the excuse is taken
Public Wrongs

...taken away; but the degree of guilt is still to be measured, by the magnitude of the offense intended to have been committed. If the act intended would have amounted to felony; or homicide by chance; or, it is murder if it be treason only; and the person in the commission of it should accidentally kill another, it would be manslaughter. 1. Stat. 39. 426. 31.

Secondly. A mistake or mistake in point of fact is also a good excuse under this head. But a mistake in point of Law is no excuse; no man being allowed to shelter himself upon punishment under an averment that he is ignorant of the Law, (c. 6 Ch. 58. Corp. 349. Tit. 1463.) 45 Eliz. 2d. 1. Tit. 81. 1. Stat. 343. 1. Stat. 122. 1. Stat. 545. 46 Eliz. 2d.

Thirdly. A mistake of will arising from Compunction. Where one is compelled to do an act, the law that his will accompanied the commission is necessarily excluded; or where one in obedience to the municipal law does an act in direct opposition to the Law of Nature, he is excused on the ground of Compunction. 4 Eliz. 28.

Under this head a woman bound is in many instances excused, who commits a forbidden act in the company of her husband, and if she commit the act in the presence of her husband, it is presumed to evidence that she did it by his command. And this is the true ground why a woman can commit theft or burglary in the company of her husband is excused, and not as asserted by some writers that she cannot tell but the propriety is her husbands. Tit. 35. 1. Tit. 63. 1. Sec. 71. 1. Sec. 279.

But it is not universally true that the location of the husband will excuse the wife. In treason, burglary, if robbery it seems no excuse for his guilt, is a matter attended with some skill, through as it robbery it has been questioned. Tit. 2 Eliz. 279. Tit. 1. Sec. 4. Tit. 29.

It is also stated in a note contained in a late Edition of Blackstone, that...
Public Wrongs

that the husband's cessation does not excuse in the commission of dungsandalia. § 21.

In another civil or domestic relation or subjection is exercise a privation of excuse. If a son commit a theft by the command or exception of his father, or a servant of his master, excused is liable.

1 Shall. 24. 3 Shall. 24. 4 Shall. 113. — 818. 1848 S.

Another species of caspitation which will excuse the commission of a forbidden act is burns, rich threats or threats and menaces, which induce a rational and well-grounded fear of life or limb.

This species generally applies as to private crimes only and not to those which are made as the principle of man may be justified in doing many things in time of war to save his own life, which but for the commutation occasioned by the strong desire of self-preservation, which is implanted in every breast, would amount to treason. — Treason being sometimes mere private offence. But unless there is a right to kill an individual person to save his own life. 1 Shall. S. 4 Bl. 31.

Legal Caspations will also under this head not only excuse but justify the commission of an act, foul or otherwise to punishable, as where an officer is bound to arrest a fellow to effects which be in under the necessity of either killing or defending him. 1 Shall. 35. It has been a main point, among the sects on the Law of Nature, whether a person to relieve extreme wants would be excusable in killing. the principles of Natural Law the thief it must be convicted would be without blood. But at home, either in Rome or in such provisions are made to relieve and prevent such that no excuse for theft arising from hunger, thirst or weakness could
In the commission of crimes persons may legally be divided into two classes: the principals, who are the actual perpetirators of the crimes; and the accessories, who aid and abet in the commission of the crime but are not the actual perpetirators. Hawkins admits no distinction but makes them principal in all cases. The distinction however seems rational and is supported by the books. 1 Bl. 34. 12 M. 613. 4 Bl. 77. 2 Pas. 411. 258-259.

The presence necessary to make a principal in the second degree need not be an actual presence. A constructive presence is sufficient. If one hold at a distance to help guard the principal in the first degree, he is guilty as principal in the first degree of the crime. 4 Bl. 351. 7 Bl. 67.

And from the nature of some crimes and the manner of commission, no presence, not even a constructive one, is necessary to make him a principal in the first degree. As if one lay poison, set a trap, dig a hole, or at least a poisonous animal to harm another, he is guilty of murder as principal in the first degree of the same crime. 4 Bl. 76. 8 Bl. 1. 2 Pas. 43. 3 Bl. 135. 1 Pas. 617.

An accessory is one who is not the chief actor in the commission of a crime, nor either actually or constructively present at its perpetration, but who is in some way concerned in its execution either before or after its commission. 4 Bl. 33.

In High Treason there can be no accessory because of the severity of the crime. 3 Bl. 158. 12 Bl. 21-2. 13 Bl. 678. 20 Bl. 139. 9 Bl. 417. 8 Bl. 51.
occupy in felony will make him in treason a principal. This rule was formerly questioned as it applies to those who in felony would be accessory upon the fact, but it is now settled that there is no distinction. 1 Ser. 58. 2 S. 73. 1 II 126-31. Lyon 296.

In petit treason, murder, and all other felonies these may be accessory but in those felonies where in presumption of Law the crime is unpunished, there can be none before though there may be after.

In the case of Involuntary Manslaughter, 1 Lass. 115. 1 Il. 1815. 2 Il. 2045. 12 Il. 352. 4 L. 36. 191.

By petit treason one and all the Evils of that crime can be in accessory; for the law will not condone the distinction between the different degrees of guilt of the persons concerned in these petty offenses, but considers them all as principals. 1 Lass. 115. 2 Il. 489-90. 6 L. 40. 51.

Duc. 622. 1528. 312. 20 Il. 752. 126-87.

From these observations of an accessory it appears that his guilt is altogether of a natural nature, being wholly determined by that of his principal. And the general rule that an accessory cannot be guilty of a higher offense than his principal. Therefore if a servant be accessory to the crime of killing his master by a stranger or Wife of his husband they are guilty only as accessories to the murder. Accessories sequitur voluntas iniuriprincipis is the Legal maxim which governs this subject. 1 Ser. 58. 2 S. 73. 126-31. Lyon. 91. 11 Il. 132 593-95.

Accessories are of two sorts, accessories before the fact & accessory after the fact. An accessory before the fact is the only person, counsel or commandeer another to commit the felony being absent at the time of commission, for if he was an accessory it would have been principal in the second degree. 1 Il. 615. 675. 12 Il. 445. 13 Il. 473.

If the person procureing committing committing govt. treason & countermands the commission of the act, he is not accessory.
through the crime he afterwards actually committed. 2 St. 440, 441. 3 St. 385.

It is a general rule that he who abets another to commit an unlawful act is accessory to all that directly and naturally ensues from the commission of that act; but where the same accident to the commission of the unlawful act proximities a distinct crime which is no direct or natural consequence of that which he has counselled to commit, the accessory is not accessory to the crime. For instance, if A commands B to kill C, if he both bein so that he die A becomes accessory to the murder. But if the command had been to burn the house of C, and B had not only burned the house of C but had also robbed him, A would have been accessory to the burning only. Yet if the burning had caused the death of C, as that would have been a direct and natural consequence of the commission of the crime commanded, A would have been accessory both to the burning and the murder. 1 St. 617. 2 St. 440, 441. 3 St. 475.

Where one counsels another to commit a crime in a particular manner and it is done in a different manner, he is accessory to the crime committed. As if A commands B to shoot C, and C kill him by poison. 2 St. 440-1. 3 St. 617. 4 St. 682. 3 St. 470-6.

The mere concealment of an intended felony does not make one accessory thereto: such concealment however amounts to complicity of felony; mere concealment of the act constitutes concealment only. 2 St. 440-1. 3 St. 470-6. 3 St. 475.

Persons who are accidentally present at the commission of a felony are not accessory to it, nor is it any of his acts; though not accessory, one guilty of a high misdemeanor.

This rule does not extend to the present, they being accused, where the offence consists of complicity only. 2 St. 442-115, 116. 3 St. 56.

An accessory after the fact is one who advises, relieves comforts or
Public Wrongs

exist a man knowing him to be such. But the assistance given to the
wrong must have been with an intent to prevent his being brought
1 Stat. 69.

A common law saying or receiving
from a fellow debtor goods, knowing them to be such did not make
or an accessory to the theft, but guilty of a high misdemeanor. See by
Stat. 5, 12, 18. 4 Stat. 5 such persons is made accessory. 1 Stat. 630. 4 Stat. 33. Co. 835. 1 Stat. 67. 2 Stat. 54.

By Stat. 5, 12, 18. Theft such receiver is made a principal as such punishable without his by way of his own family. 33. 44.
To make one accessory after the fact, the felony must be complete.
before the assistance given. 1 Stat. 209. 18. 622. 276. 276a. 287.

If a woman assist or receive her husband knowing him to have committed a felony, it does not make her an accessory, the being opened from all
punishment on the presumption that she acted by his consent, so that her
Well of course did not accompanying the act; but this rule will not
hold a consanguine or in any other domestic relation. 1 Stat. 4. 22-451.
1 Stat. 621. 3 Stat. 113.

It is a general rule of law that accessories are liable to the
same punishment as their principals; but by Stat. in all cases of Accessories
after the fact, Benefit of clergy is allowed. 4 Bk. 39. 3 Stat. 128-133.

It was formerly held that an accessory could not be arraigned
or made to answer till his principal was attainted. 9 Bk. 17. A. 117.

But it is now settled that he may be arraigned, is punishable:
and answer though he cannot be tried but by his own consent, before his
principal's attainted. 4 Bk. 39. 40.

But principal's complicity may be tried at the same time when
however the story must find the principal guilty, then they can decide
on the guilt of the accessory & so should the judge inform the jury in
his
his Charge. 2 Stan. 483. 406. 41. 525. 622. 324.

In England by the Statute 1 Ann., the accessory in certain specified cases where it is inexpedient the principal should be tried may himself notwithstanding be subjected to trial. 2 Stan. 483. 406. 41. 525. 622. 324.

If the principal is acquitted the accessory cannot be convicted, but if a prosecution have commenced and the principal must be entered. 1 Phil. 123. 46. 47. 2 Stan. 382.

If the principal and accessory have both been attainted and the attainted of the principal is reversed by Unit of Error it ipso facto reverses that of the accessory. 2 Stan. 482. 396. 117. 146. 417.

But the accessory may be prosecuted, attainted and executed notwithstanding the attainted of the principal is manifestly erroneous on the face of it if it have not been reversed, for such attainted is not real but only virtual and that by Unit of Error.

2 Stan. 482.

But the death or pardon of the principal after attainted does not thus avail the accessory. Sir Ch. 541. Salk. 472. 120. 2 Stan. 483.

But the death or pardon of the principal before the attainted would at Ben. Law discharge the accessory even though it were after conviction of the principal, because complete evidence of his guilt does not exist till the attainted. But the law is now by Stat. 1 Ann, varied in this respect. vid. 483. 486. 423. 146.

If one be acquitted as accessory before or after the fact the man afterwards be indicted & tried as principal. And as if one be acquitted as principal it is clear he may afterwards be indicted as accessory and tried after the fact. But it seems to be doubted whether he can be indicted as accessory before the fact, but without reason. It could suppose, for he thinks that no such objection is in the way of
His prosecution is according to the fact. Mat. 23:6. Int. 2236. 2 Pac. 329 31. 4 36 76.

The indictment of an accessory need not state that the principal committed the offence; it is sufficient that his connection be stated, this being considered as great suspicion, giving legal evidence of his guilt. 2 S.R. 488.

Yet the accessory on his trial may contest his principal's guilt; the connection is merely a starting point. Evidence of the principal's guilt and places the onus probandi on the accessory to show that the principal is not guilty. 2 Hae. 486.

And whether the principal has been attainted, the accessory can contest his guilt is not settled; or, on the ground that the attaint is full evidence of his guilt it would seem he could not.

But on the ground that a record of a trial is not admissible evidence, but between the parties to that record it would seem that he might contest his principal's guilt. An accessory is neither passively nor virtually to the record of his principal's guilt. Errors having no peculiarly this being in their nature distinct.
Felony — is any offence which at common law occasions a forfeiture of goods or of lands, or of both.

Felony is therefore a general term, designating not a particular crime only but a whole genus of offences. 1 Bl. 96. 96.

The word Felony did not originally denote any crime but merely the consequence of an offence. Felony signifying the forfeiture of a feud or fee by an easy mutation of Language it soon became the usage to apply the term not to this forfeiture which was a consequence of the crime, but to the crime itself, which caused the forfeiture. By a still further deflection from the original import of the word it was made to designate not only such crimes as caused a forfeiture of a feud or fee but any crime which caused a forfeiture whether of lands or of goods and chattels. This by degrees bringing the word to that meaning which it now bears according to the above definition. 1 Bl. 96. 96.

By the definition of Felony, Treason is included as it causes a forfeiture, and this crime was consequently designated a Felony, but now by common consent, it is adjudged as a distinct species of crime. For its a treachery standing by itself when the word Felony is now used, Treason is not considered as included. 1 Bl. 96. 3 Bl. 13.

Capital punishment not being of the original offence, is not the necessary consequence of Felony. Yet it is generallly superadded, theft, Self Murder, excusable homicide & Joint Larceny all of which in strictness are felonies. Capital punishment was never at common law annexed to the crime of Treason standing alone, nor punishable with them though they are now so. 1 Bl. 154. 146. 3 Bl. 13. 2 Bl. 476.

It is a general rule that all felonies which are punished,
capitally work a total forfeiture of both Lands and Goods and this
which are not Capital of Goods & Chattels only. 4thb. 381-72 & 4thb. 381.
The signification of Felony was not formerly the same as
Capital Crime: but now according to common Usage Felony and
theoric Felony imports all capital Crimes besides treason. 4thb. 43.
And according to this modern usage of the term now
constructed when found in a Statute the term Felony &
criminal in criminal terms then the commission of an act not
capital in England & connecticut would deserve the offender to death,
but in those States as in Eng. would be respected of of course. A Stat.
annexes the punishment of death to the commission of an act the
commission of that act would of course be esteemed felony and
forfeiture of Goods & Lands would ensue. 6thb. 391, 6thb. 627-641.
10thb. 273, 11thb. 165.

All of a Statute makes just cause an act under a forfeiture of
the offender "Goods & Estate," or if all be had the commission of this
act would amount to a misdemeanour only: For the word all his-
"Goods & Estate," or all be had given the intention of the Legislature, an-
other, when that is the case a construction must favorable to life must
always be given. 6thb. 391, 6thb. 627, 641, 11thb. 24. 4thb. 644.

All those offences which in Eng. cause a forfeiture are called Fel-
yndes in bum, though here we seems cause a forfeiture, but Man-
-slaughter, which works a forfeiture of Goods & Chattels only: or burning or
leasing in time of peace public Magazines or Deflend which works a
that forfeiture of all the offender's Estate.

Benefit of clergy.

Everybody offended on these in which
the benefit of the clergy is allowed the offender.
The benefits of clergy arose from the suspension of ancient times and the reverence that was paid to the Holy See. The pope, taking advantage of the folly and ignorance of mankind, used to give his clergy the privilege of committing crimes without a liability to punishment. This privilege exempted the offender after conviction of a crime from death, which he would otherwise be punished. 4 Bl. 363. 363. 373. 21 Bac. 254.

But the benefits did not protect the offender from execution of the laws of his country. The clergy, being vested in the Crown by the commission and having obtained a royal title, Royalty is not to be considered by the laws of the land. 4 Bl. 387.

Benefit of clergy is a species of pardon, it is granted after conviction and does not prevent a forfeiture of goods and chattels. As if those respects it is similar to other pardons.

This benefit was allowed at common law in most cases of capital offenses. High Treason, however, was never blaspheable at common law. Yet, in both cases it was never allowed. 38 Bl. 366. 368. 372. 22 Bac. 411.

And originally when this benefit was indulged, it was not against Till the statute 23 of Edward 3, when its omission a parliamentary sanction in its application to most capital offenses.

By this statute, as it was extended to high treason. 28 Bac. 477.

Originally this benefit was only allowed to males in offices but it was extended to all who could make the act of religion. Being going to the Church of England and as it was allowed to those who could not the principle that they were forced to be taken in these words thereby it was not of course at common law ever extended to females. 38 Bl. 374.
Public Wongs

relieving the otherwise irrevocable evidence of his guilt, which arises from
conviction. 2 Hale 24 s. 2 Hale 372. 466. 562. 466. 762. 362. 362.

Now known by several different names, this benefit is extended to
clergy and justices of the peace. Act 26 Geo. 3. 353. To all offenders, whether
male or female, or whether they can read or not. 462. 362. 362.

Still hower, lay persons are not wholly exempted from punish-
ment but as a sort of Compensation for life, they are subjected to some
inferior punishment, as transportation, whipping, burning in the hand,
imprisonment, or the like: but clergymen, Parson's, clergymen, or
the allowance of this benefit, are wholly exempted. 484. 362. 373. 4.

Clergy are entitled to this benefit as soon as they commit
clergyable offenses: Lay persons but once in their lives. 2 Hale. 373.

By the allowance of this benefit, a clergy to any particular
offense the offender is excused not only for the commission of that, but
of all others antecedently committed. (582. 372) clergyable offenses.

The allowance of clergy has now become so general, that it
is an allowance of all offenses, whether of born or new, or created
by statute, unless it be expressly taken away by act of Parliament.
Of course all new offenses are clergyable unless the Act that creates
them, or some subsequent one, expressly take the benefit away. 2 Hale. 382.

It was formerly this custom to place this benefit in law, and
it was called a dominating plea: but it is now customary to claim
it after conviction by way of arresting judgment, and this is the
better way, because an assignment may result from trial and may
be saved as a shield from penalties in some future conviction.
2 Hale. 286. 466. 339.

This Clerical Privilege or holy shield for iniquity
is unknown in Connecticut.
Homicide.

Homicide is the killing of any human creature, whoever kills another commits homicide.

Homicide is not necessarily criminal, it being of three kinds: 1st Justifiable, 2nd Excusable, and 3rd Felonious. 

Justifiable Homicide, as might be inferred from its denomination is wholly free from guilt. Excusable is slightly tinged with guilt, the offender is subjected to nominal punishment. But Felonious Homicide is the greatest of all offenses against the law and nature, 

First, Homicide is justifiable when occasioned by some unavoidable necessity, as if one pursue a fugitive, sentence of death, executes the criminal. 

But the Law must require the act to be done that prevents homicide, and it must be done by the person aggrieved, by the Law to do the act, or by the appointed Deputy, or it will be felonious homicide, because legal or unavoidable necessity did not occur the commission. 

Insofar as he executes the criminal, must pursue the very form of the sentence to avoid it would make him guilty of murder. So if he inflicts any other punishment than that directed by the statute or inflicted in any other way, he acts without authority and the execution is not sentence, but crime. 

The sentence in pursuance of which homicide is committed must be ratified by a court of competent jurisdiction, in order to constitute a justification for the officer who executes it. It otherwise not only be, 
Public Wrongs

but the court also are guilty of Murder: the whole proceeding in such case being done non jurore.

If the court have information of the guilty person continuing to be at large, then that is not the punishment by law assigned, but the judge will be guilty of murder, or the officer executing but the court not be guilty, because the proceeding in this case being done non jurore, therefore only onable the officer is sure on acting under that.

Sedemur Suicide is justifiable in certain cases when committed for the advancement of Public Justice. As if an officier in attempting to arrest a felon is negociated to kill him, because of his resistance or endeavor to escape, or in attempting to suppress a riot, or quell the insurrection of killing some one of them, that he may disperse the rest.

This last rule is said to apply to private persons who conserve the peace may justifiably commit Suicide where the riot cannot otherwise be suppressed. 1802-116-7. 189. 4.3. 63. 1810-197. 554. 463-494. 178.

If an ancient felon resist or fly from his pursuers they may if it be necessary to his apprehension justifiably kill him: but if he be only suspected a felon the Law is otherwise. 1802-116.

If an innominate person is inst人格or for a Felony and an officer who has a legal warrant to arrest here is absolutely obliged to kill him to effect the arrest he will be justiffed. 1802-187. 1810-197. 354-56. 1810-1197.

Third: Suicide is justifiable when committed to prevent any public or notorious crime. To prevent a battery or burglary homicide would be justifiable: also in prevent a crime not accompanied by force would not be justifiable: As to prevent slandering or the breaking of one's pocket: 1802-185-8. 1810-135-8. 219. 271-5. 1810-456-7. 498-394.

It is though the killing is to prevent the commission of a felony as it is not justifiable unless it would have amounted to felony or an

abnormal
atrocious crime: as if one should kill another to prevent his breaking into a house in the daytime it would not be justifiable unless there was an intent also to commit a robbery or some other atrocious crime. — 1152. 1154. 1156. 1158. 1161. 1165. 1169. 1173. 1177.

Homicide is not justifiable when committed in defense of one's house, goods, or person from a bare treachery. Such homicide, however, may be excusable. And if something more than bare treachery is intended, it may be justifiable. Est. 275.

See Est. 386. 1132. 1134. 1136. 1138. 1140.

Where the merely treacherous act is to ones property, homicide is committed, it is at least manslaughter: as if an officer in attempting to break a debtor's windows for the purpose of arresting him, and is killed by the window, it would be manslaughter. Est. 1123. 1125. 1127. 1129. 1131.

It is a general principle, that where a crime or itself capital is attempted with force, that force may be lawfully applied by the death of the party attempting such crime. Est. 131.

It does not seem that the justification of homicide is confined to those cases only, where the crime attempted is capital: but to what other cases it extends is not well settled in the books. — Best a female to preserve her chastity. A husband that of his wife, or a parent that of his daughter, may kill another, if she can charge him a stranger, to prevent the probable violation of rape would be justifiable in committing homicide. — 1152. 1154. 1156. 1158.

According to the old opinions found in the books, a justification of homicide may be taken in Bar. But the late opinions are that it must be given in evidence under the general issue. The ancient opinions, however, seem best founded in reason and are —
are analogous to the rule respecting justifications in civil actions. 1 Stat. 113. 2 Stat. 478.

But a mere excuse must be given, it has always been agreed, in evidence under the general issues and not specially pleaded, because an excuse does not amount to a justification. 1 Stat. 113.

Excusable Homicide

Excusable Homicide is not strictly lawful: it is however so slight: by fault, that the slayer is excused with only a nominal punishment. 4 Stat. 132. Of Excusable homicide there are two kinds: 1st Homicide per际teritum or by misadventure: and 2nd Homicide in defendant or self defence. The first kind is excusable: the second is voluntary, but committed from such motives and under such circumstances as in Law constitute an excuse. 1 Stat. 113. 3 Stat. 393. 472.

Homicide per际teritum happens when an inexcusably kills another. In short, the head of an act, with which one volat: work flies off and killed a by: stooded The slayer under this head must be pursuing a lawful act without intention of harm, or the homicide will not be excusable. For instance if one in riding has his horse wantonly whipped by another so that he ran with the rider shall a third person the rider will be excused, but he who whipped the horse is guilty of Manslaughter. 1 Stat. 113. 2 Stat. 472.

If a parent is moderately correcting his child, a master his servant, a guardian his ward, a father his minor, or an officer his Criminal, accidentally kill him it is excusable homicide only. But if the correction had been unreasonable or out- guard, it would have been Manslaughter at least, and if a slan-
Public Wrongs

Weapon had been used. Murder. Rul. 6 S. May 11, 26 2. 3 B. 2 237.

If death accidentally ensue upon the commission of an unlawful act, it is murder. If the unlawful act were only a trespass, it would be manslaughter, but if it amounted to felony, then the accidental homicide is murder. 3 B. 6 26 7. 26 26 112 13 136 7. 8 26 237 8 3 26 117 46. 139. 411

Though the unlawful act be but a mere trespass, yet if it were committed in pursuance of a deliberate and malicious intention to do another a personal injury or death—accidentally ensue, it is murder. 3 B. 117 156 112. 116 39. 413

If homicide accidentally ensue upon the commission of an unlawful act, which has a natural tendency to death, it is

MURDER. 116 6 26. 139. 413

If one do an act, manifestly endangering another's life, and death ensue, it is manslaughter; but if it were in conveyance of any lawful sport, as fell, fall or wrestling, it would be excusable homicide. 3 B. 417. 26 26 26 1. 112. 13 26 36. 1

Homicide se defendendo.

This happens where one in a sudden affray with his antagonist in his own defence. This species of homicide is distinct from justifiable homicide to prevent a capital crime; from the right of killing in the right of the public; and is therefore sufficient to justify but here it is merely a privilege of the individual, and will only serve as an excuse. 213 3 3

It is exactly said in Bacon, that it is immaterial which of the two combatants gives the first blow; provided he who fills the other is actually obliged to do it in self defence. 3 B. 6 77

But to excuse homicide in self defence it must appear to have been—
been done when there was no other possible or at least probable means of sav-
ing the slayer's own life, or escaping without great bodily harm. S. 128., 328. 428., 128. 328. 318.

It seems indeed, that where homicide is committed to save one's own life, that it is nearly always justifiable homicide, committed to prevent the perpetration of a capital crime, or the guilt of this resemblance, it being in fact to prevent a capital crime, it might on principle, be considered justifiable, were it not that the necessity, exception, & culpability, as it is expressed by Huene, of killing, in circumstances of those arising in some cases from the slayer's own fault, 456. 173. 174.

It is a general rule that if both parties are fighting, that is, using for injury, then the mortal blow is given, the slayer is guilty of manslaughter. But if one of the parties have not begun to fight, or been discovered, and has the combat, and then in extreme necessity kills the other, such an act or escape from great bodily harm, it is excusable homicide. S. 128., 328. 428. 328. 128. 128.

According to some opinions the aggressor himself, or he that incites the combat, or the person that attacks, is excusable in committing homicide seditionale, if having insulted from the combat, and being urged by extreme necessity at the time. The contrary, however, especially late opinions, is the other way. S. 128, 328. 428. 328. 128. 128. 128.

And the latter and better opinion, go still further to say, that if one who is the aggressor, strikes another, with deadly force, or inhibitors himself to walk in his opponent, flee from him, and then in extreme necessity kill him in self defence, it is murder. S. 128, 128, 128. 328. 328. 328. 328.

If two persons agree before hand to fight a duel, and one of them to preserve his own life kill the other, he is guilty of murder, because the previous engagement to fight expiates murder. S. 128, 128, 128, 128, 128.
Public Wrongs

As to the second of those who kill another for a duel, guilty of murder, as principal in the second degree, and according to some opinions, the second of him who is killed is also guilty of murder. But the better opinion is the other way, and the reason assigned is, that he could have no malice against the party slain. 1 Thes 128. 1 Thes 483. 1 Thes 314. 466. 171.

The excuse of self-defense extends to the civil & natural relations of the principal. A wife, therefore, who kills another in defense of her husband, is excusable. A husband, in defense of his wife. A parent of his child, or a child of parents, of master of his servant, or a servant in defense of his master: are all excusable in committing homicide. 1 Thes 493. 3 Bar 628.

As a stranger may commit homicide even justifiably to prevent felony, or other heinous and atrocious crime, the above rule confers no privilege on the relations of the principal unless it may be that they will be excused in committing homicide to prevent a great bodily harm to their relation, where a stranger would not.

The excuse of self-defense in whatever matter that will render the killing, for which one is indicted, excusable, must be given in evidence under the general issue: because that which excuses does not justify, and will not support a plea in Bar. 4 Thes 36. 3 Thes 276. 170. 168. 111.

Both kinds of excusable homicide are said by book to have been formerly punished with death; later writers probably or good grounds deny the assertion. 3 Thes. 146. 315. 3 Thes 292. 1 Thes 114. 1 Thes 423. 4 Thes 133. 178.

The punishment then of Excusable Homicide seems anciently to have been a partial or total forfeiture of Goods & Chattels: it was therefore called a Penalty: though for a long time it has not been so shaped; it not being a Capital Crime. 3 Thes 95-96. 1 Thes 114-115. 2 Thes 44-45.

As far back as the English Records extend, Excusable homicide has subjected the offender to a fine; but for the same length of time he has been
been entitled of course & of common right to a pardon and to a writ of restitution of his goods. Indeed the judges will more often than not grant a general bond of acquittal. Uter. 113. Int. 2 33 2482-338 2. 483. 185.

It is settled that there can be no Accepionis to execuable homicide, as it is not now deemed a Felony. 2. Has. 47. Uter. 615. 616.

**Felonious Homicide.**

Felonious Homicide is the killing of any human being, without satisfac-
tion or excuse, it may be committed either by killing one self or another.

*First.* By killing one self. The crime of self murder is the term im-
ploied, arises from the commission of homicide by one upon himself, and-
such person is distinguished in the law by the appellation of "Felle de se."

A few of this description therefore is one who deliberately puts an end
on his own existence or who commits an unlawful or malicious act—

If he request another to kill him, & in pursuance of that request
the other does kill him it is murder on the homicide, but the person
killed is not a felle de se for his licence was valid. Uter. 734. 1442. 112. 114.

To constitute a felle de se the suicide must have been a year
or at least a year of discretion since Componis Mentis. 1 Has. 411. 2. 1442. 102. 3 558. 575.

This crime admits of absconds before the fact, but if none—
after the fact. Abscondes to the crime of suicide are called Accep-
Dienses to the crime of murder, they might more properly be denom-
inates Accepionis to felonious homicide. 1682. 139. 2

At common Law the committence of self murder is punishible;
or rather the consequence of the crime are the subjection of the
suicide's body, for it is not in strictness a subject of punishment;
but an inhumane burial on the high ways to embalmement.

and
and his Goods and Chattels are forfeited; but as he cannot be attainted his Lands are not forfeited; neither is the Public Capital. 11 Edw. 3. 403. 24 Edw. 3. 253. 26 Edw. 3. 333. 3 Edw. 7. 42. 216.

In Connecticut the body of the suicide is not impaled nor ignominiously buried. His Goods and Chattels are not forfeited and there is no probability the the question has never been judicially settled, that here the consequence of this crime will ever be attached to the犯人.

Second, by killing another person. Felonious homicide by killing another person consists in taking the life of another person without justification or excuse.

This kind of homicide is subdivided into such as is unattended with malice which is called Manslaughter, and such as is accompanied with malice which is called Murder. 11 Edw. 3. 466. 46 Edw. 4. 466.

The word "malice" which has become so important signifies in legal acceptance, any unlawful or wicked motive which may actuate the heart, and is not confined to a particular malignity towards an individual. It is well defined by Judge Blackstone, to be any evil design in general, the dictate of a wicked depraved or malignant heart. 1 Bl. 199.

It will not be proper to proceed to consider in their order those two kinds of Felonious Homicide by killing another.

Manslaughter.

Manslaughter is the unlawful killing of another without malice and may be either intentional or unintentional. Voluntary or involuntary. 1 Hal. 466. 4 Bl. 199.

As Manslaughter is committed without malice there can be no
Public Wrongs

be no accuracies before the fact, though there may be after the fact. 1
Haw. 115; 4 C.B. 117.

First. Voluntary Manslaughter. If, upon a sudden quarrel, two
persons fight and one kills the other, it is Voluntary Manslaughter.

For, also, if on a sudden quarrel, the parties go out into a field and
fight, and one is killed, it is Voluntary Manslaughter only; for the
law in its leniency considers the whole transaction as one continua-
ted act of passion. If, however, a sufficient length of time has inter-
vened between the quarrel and the combat, to the passions to sub-
side, the homicide will amount to Murder. 1 Rob. 112; 356; 277.

If, on an attempt to separate two combatants, and it killed by
one of them, it is Murder, provided the•player knows that the
intention of the deceased was to part them, or that it is mansla-
ughter only. 1 Rob. 127; 8, 215; 316. 2 Rob. 67; 114, 3.

If one greatly provoked, as by having his name called, or by
other great indignity, and, immediately kill the aggressor, it is
Liberty of slaughter for the showing of a sudden quarrel in the
act of passion. But if a sufficient time elapses between the indignity
offered and the killing, for the passions to subside, it is murder. 4
Rob. 135; 6. 1 No. 171; 125; 257; 3, 5, 5.

And Homicide is immediately killed upon such prov-
ocation, but if such a manner as those are intention of taking vengeance,
or of doing great bodily harm, it is Murder. 3 Rob. 45; 33, 33; 127; 126.

So if a parent on a sudden provocation extraordinarily correct or act the
child in such a manner that homicide ensues, it is Murder. The rule is
the same as it is for guardians. 3 Rob. 314; 2, 215; 127; 125.

If a husband slays a man in bed with his wife, or in the act of
Public Wrecks

acting with his & immediately kill him it is voluntary—Manslaughter only, and that of the lowest degree. 486. 487. 486. 
St. 212. 486. 712. 3. 486.

But our Wrecks, perverting Gestures, a breach of an engagement, any act of dishonesty or meanness, or a trespass on one's land, is never sufficient to reduce a sudden killing to manslaughter only, unless it ensued upon a reasonably intimate chastisement; then it would be voluntary Manslaughter. 486. 200. St. 55. 60. 63. 130. 131. 186. 124—S. 316. 241.

It is laid down generally in 2dlying that if A, who is the Funder of B, enter into in a sudden affair between B & C and kill the latter it is Manslaughter only. The rule is laid down in the 1st term, for the undertaking so such a manner show an intention to kill or to do other great bodily injury, it is clearly Murder. The rule however may be true in its application to many cases. 486. 681. 62. 6-91. 318.

Manslaughter upon a sudden provocation differs from homicide sc. defendendo, in this: that the latter is committed for some one's life; the former to gratify passion & effect revenge. 486. 184. 1913.

Secondly. Involuntary Manslaughter: This species of homicide as the term imports, is always unintentional & accidentally ensues upon the commission of some unlawful act. Capi. 831. For. 263. 264. 681. 192.

It differs from homicide pro infratum, in this, invol-
untary manslaughter ensues upon the commission of an unlawful act. Homicide pro infratum upon the commission of an act that is lawful. 486. 192. 136. 133. 356. 101. 186. 172. 261. 292.

So if an act in itself lawful is done in an unlawful
manner, and death accidentally ensue it is manslaughter of this kind: As if one throws a piece of timber from a building into the street without giving notice, kills a man, this in the city would be manslaughter. If this were done in a populous city with many people in the habit of passing it would be murder if it occasioned death. Manslaughter the local varying very great. But in the Country in such case it be execusable homicide per sepultum. Strange. 377. 6 Feb. 37. 1762, 376, 375, 374, 370, 362. 192.

If one accidentally kill another while engaged in any lawful or dangerous sport which is not directly lawful he is guilty of manslaughter. 376, 377, 376, 375, 374, 370, 362. 192. Though involuntary manslaughter always ensues upon the commission of an unlawful act yet it is not in all cases manslaughter merely. If the unlawful act intended amounts to a felony, or has a natural tendency to bloodshed, it is murder. 376, 377, 376, 375, 374, 370, 362. 192.

Manslaughter is a bailable felony therefore not punishable with death, but with burning in the hand and forfeiture of Goods & chattels. 376, 377, 376, 375, 374, 370, 362. 192.

In Connecticut we have a statute that annexes to the commission of Voluntary Manslaughter, the punishment of a forfeiture of all the offender's Goods & chattels, burning in the hand, whipping on the naked body is disability of ever after giving evidence or testifying in any court in this state.

Involuntary Manslaughter has been decided not to be within our law now subject to the punishments annexed to the plea at Common Law it being considered a mere misdemeanor punishable with fine & imprisonment only.


MURDER.

Murder is a felonious homicide of the highest and most atrocious crime. The term murder is usually applied to secret killing only; for this crime the Bible, or if that were too great, the whole hundred, where the murder was committed, provided they did not exact the felons were liable to amendments. 366. 717. 8. 9. N. 7. T. S. 21. T. 21. 2. 1. 4. 4. 7.

We have no legal definition of murder, but by Sir Edw. Coke, it is described to be "when a person of sound memory and discretion, unlawfully kills any reasonable creature in being or under the kings peace, with malice aforethought, either express or implied." 36. 47. 1. H. 13. 2. 36. 195.

However, exact and comprehensive this description may have been considered yet it certainly carried with it an excess of words and included several superfluous ideas; these will be shown in the analytical examination, which will be given to this description before the subject of murder is dismissed.

The following is a succinct and precise definition of murder: "Murder is the unlawful killing of a reasonable creature with malice aforethought, either express or implied." 36. 47. 1. H. 13. 2. 36. 195.

But as Sir Edw. Coke's description of this offence has been generally adopted, it may be obtained in an accurate and thorough knowledge of the subject, by expressing distinctly to examine all its several branches, in their separate order. Therefore,

First: When a person of sound memory and discretion. This branch of the definition the strictly true it altogether superfluous; for even without present knowledge of the very essence of crimes that Without sound memory and discretion, it is a legal presumption that such nature cannot exist; this quali-

ification
Public Wrong

Therefore necessarily arises by complication out of the definition going over time and never need to be supposed.

Without sound reason and discretion, he who kills a fellow creature is guilty of as offence much, as he of murder. 1 Thes 2:16.

Secondly, "Malignantly slay". By any unlawful killing is meant a killing without justification or excuse: and it must be actual killing of extinction. Luke 17:12. 1 Sam 28:6.

Not only the quantity and directly taking away the life another, but any act which is the cause of another's death is a killing; if it is committed malignantly or maliciously, it is manslaughter. Therefore, if a lion, malignantly exposed his sick sheep to the wolf, and consequent which ensued, it was held to be murder. So where a mother malignantly, left her infant in a field, where it was devoured by a rattle, so that it died, the case was accounted guilty of murder; and the same decision was not where a father committed his prisoner in the same room, with another who had an infectious disease and thereby caused his death. 1 Tim 5:18. 4 Kgs 19:16.


If a man throwing a stone, that is mean to a madman, turn him loose for the purpose of frightening or injuring another, if any one is killed thereby, it is murder. But it seems that if the death were caused merely, it would be manslaughter only. 1 Thes 4:1. 1 Sam 2:16-19. 1 Thes 5:7. 1 Tim 5:7. 1 Sam 19:26.


So when the actual killing is by the hand of another, as when one invites a madman to the homicide of by dupe, punishment, none one to swear falsely, by means of which, a third person life is sacrificed, it is in both cases murder. The murderer being guilty of a killing within this rule. 1 Tim 5:18. 11:1. 1 Thes 3:12. 4:2. 46:1. 89:1. 176:1. 1 Thes 5:18.


So it seems to be a question in England whether death ensue.
from false witness done with intent to take away another's life, it is
killing within the rule. But whatever doubts there may be at Law
as to this Crime, it is settled in Connecticut by Statute that he shall be
punished with death. But the Stat. does not determine that the false-
Witness is guilty of this Crime; for it only enacts that if any person commit-
perjury with intent to take away another's life he shall be punished with
death. Hence it may be a question under the Stat., whether the
hearing false witness with the intent to take away another's life shall not
be punished with death, though no life be such false testimony is sacrificed.


If a Physician administers a poison, or a Surgeon perform an
operation whereby his patient is killed, it is homicide in all
matters of the person offending was not a regular Physician or Surgeon, the
homicide would be manslaughter at least; and as the one might be minor.
The reason of this rule seems with propriety to be doubted. 1 How. 131.
1 How. 431. 3 Bea. 664. 4 Bea. 1971. 2 Ste. 281.

No person can be judged to have killed another within the rule
unless the death ensue within a year and a day from the commis-
sion of the act, or rather of the stroke given, or cause of death ad-
ministered, in the computation of this time both the day on which
the injury was given, and the day on which the person died are reckoned
exclusively. 1 How. 179. 2 How. 179. 3 Bea. 64. 66.

But it is no excuse for the Slayer, should the death happen
within this period, that the party might have recovered if proper care
had been taken or skill used. Yet if the blow, wound, or hurt given
is not mortal, but the person dies of the medicine administered,
he who gave the Wound or hurt is not guilty of a killing within the
definition. 1 How. 26—30. 2 How. 428. 1 How. 113. 3 Bea. 47. 3 Bea. 663. 3 Bea. 88.

A person indicted for killing in a particular manner as
by drowning, cannot be convicted of killing in a totally different manner as by poisoning; but he may be convicted where the difference is only circumstantial, as where the killing is stated in the indictment to have been done with an axe, proof of a killing with a sword is sufficient. 2 Tail. 241. 21 Ed. 7. 4 Ed. 12. 32 H. 6. 32 H. St. 319.

But if the two offenders of Murder are as principal in the first degree and the other as principal in the second degree: it is immaterial which is known to have perpetrated the crime; for there is no difference in their guilt. 26 Ed. 44. 1 Le. 110. 4 Ed. 16. 4 Ed. 24. 21 Ed. 292.

Maj. 78. 22 Tail. 532.

It is laid down in Leach, that an indictment for murder must state that the deceased received a from the prisoner a mortal bruise or wound, joint that without this it is bad. Yet where the means were not violent, as where poison is administered, the law must be otherwise. Leach. 6 Ed. 93.

Third. "Any reasonable creature in being is under the King's peace." Adam, outlows all other persons except alien enemies, in time of War, are as much under the King's peace as natural born subjects. Who are not under sentences of outlawry nor conviction of any crime.

26 Ed. 147. 8. 1 Hoo. 121. 4 Ed. 16. 352. 36. 50.

A child in Venter or mare is not sufficiently an being within this definition to the subject of Murder; but the killing of such child is a great misdemeanor or misdemean of Burglary. 3 Ed. 66. 1 Hoo. 121. 4 Ed. 195.

36 Ed. 11.

But if one inflict a wound or hurt upon a child while in Venter or mare which child is born alive, but afterwards dies within a year and a day, from the time of such wound or hurt, as is proved in consequence thereof, it is murder. 3 Ed. 52. 1 Hoo. 121. 4 Ed. 195. 1 Hoo. 533.

By the words "reasonable creature" in the definition must be
Public Wrong

means human creation, reasonable, being used in contradistinction to the specific terms of it, to the term unreasonable.

It follows therefore that a counsel or act of a part is as much the subject of moral as the most wise and considerate of the human species. 1 Hume 118; 1 Hert. 431, 463, 1 Harris 127. N. Y. 127. 1 Hale 422, F. 433.

If a counsel or act another to kill an unborn child and it is done after the birth, pursuant to such advice, the counsellor or actator is guilty in every way before the fact, to the crime of Murder. In England by 21 Jac. I, by a similar act in favor, it is provided, that if the mother of a bastard child, endeavors to conceal its birth or death by a secret burial or by any other concealment, she shall be deemed guilty of Murder unless she can prove by one witness at least, that the child was born dead. 4 H. 655, 659, 1 Hume 127, 2 Dugl. 619, N. Y. 32, 4 Str. 175.

The provisions of this law, contrary to the common practice of the laws in England, it has always been the custom to acquit the mother, unless there appeared sufficient evidence at least that the child was born alive. 4 Bl. 197. 2 Blunt 383, 4.

In Connecticut, this statute was repealed several years ago by a new one enacted, subjecting the mother, who conceals the birth and death of a bastard child, unless she can prove that it was still born or died a natural death, to milder penalties, but having such concealment to raise in special presumption against her, that she murdered the child.

Fourthly. With malice aforethought, either express or implied, malice aforethought is the very essence of Murder and is the ground of that material, which distinguishes this from every species of homicide.

Malice is already defined, is not restrict in its denomination to any particular malice or type, to an individual, but comprehends any unlawful or indirect motive any evil design in general.
which indicates a vicious depraved and malignant heart. 2 Bl. 196. 4 Bl. 198. 9 July 20.

The specific difference between Murder and manslaughter is this. Manslaughter is the effect of insulting or injuring when it is voluntary. While murder arises from the deliberate arching of an evil heart. 4 Bl. 196.

It is the province of the law not of the jury to judge of the malice entertained by the prisoner, but whether the facts exist which constitute the malice is to be decided by the jury. The latter being a more question of fact the former of Law. The law is frequently confounded with the fact that the jury decide both. 1 Bl. 249. 2 Bl. 193. 1 Bl. 377. 2 Bl. 374. 2 Bl. 374.

Malice, or as it is termed Malice prepense is of two kinds. 1. Express or implied. (The distinction is not well defined in the books.)

**I. Express Malice.** Malice is said to be express where one with a deliberate and formal design to kill, in pursuance of that design, does actually kill another. This design in fact is evinced from variety of external circumstances, as by lying in wait a许久—

It is also said to be express where an act is done which indicates malice against all mankind, as by discharging a musket into the midst of a multitude where by one is killed. 2 Bl. 199. 200. 4 Bl. 129. 129. 129. 127. 1 Bl. 127. 129. 129.

So if one kill another in a duel, the malice is express; for there was a deliberate design to kill, and it is an excuse for the slayer that he was first attacked; that he accepted the challenge with reluctance, or that he attempted to disarm his antagonist only. And one who guilty of murder by express malice as found guilty in the second degree. 4 Bl. 36. 2 Bl. 129. 129. 129. 129.
Public Wrongs

The genus of a challenge is of boundless quality of such a nature as to extend to a breach of the peace or to the commission of felony. 34 Edw. I. 331.

If a person without any but a slight provocation suddenly attacks and kills another he is guilty of murder by express malice. 1 H.6. 124.

It should the provocation were great, if the slayer beat the other in a cruel and dangerous unusual manner: to death ensue, the maxim is express. 1 H.8. 126. July 1272. 1 H.8. 494. 473.

Some on a sudden quarrel kill another, which he appear to have the command of his passions, he is guilty of murder by express malice. In such case if the act had been done without the influence of passion, it would have been manslaughter only, 36 H.3. 128.

11. Simulated Malice. While the killing is in consequence of an act which has some other object in view than the homicide committed, the malice is simulated. As if person be exposed to one and treat another. 4 Edw. I. 260. 9 Edw. I. 128. 2 H.2. 438. 441. 464.

If one kill an officer in a struggle to escape or to prevent an arrest, he is guilty of murder by implied malice because the principal object was not to kill but to escape from the officer. 1 Edw. II. 24. 4 Edw. II. 135. 363.

It is no excuse for the party that the arrest was erroneous—such act is not avoidable. Neither is it excusable that the officer made known the cause for which the arrest was made, but there is a difference between a known and a public officer, the latter being bound to make a particular arrest the latter being bound to make known his warrant and make known the cause of the arrest while the former is not. 1 Edw. II. 129. 7 Edw. II. 165. 6 Edw. II. 66. 8 Edw. II. 157. 311. 312. 313.

The precaution is not bound to prove that the person attempting the
Public Wrengs

As an act of war, it is necessary that no act be done as such as tending upon the public good as by the law of nations. 35

The question is, whether the act of breaking open a house, is an act of war. In the case of breaking open a house, it is incumbent on the party to show that the act was an act done with malice. In the case of murder, we shall be deemed guilty of murder. 60

A crime may be justified either by showing that the defendant has been justified in the act, or by proving the act by another. In the case of murder, or theft, or forgery, or uttering false instruments, the circumstances of the act and the state of the mind of the party, may be shown to the jury, and the jury may return a verdict of not guilty.

The punishment of murder is death, and the only justifiable thing is to take away the life of the party. The punishment in all cases of murder is death. The act of the court is that the prisoner "be hanged by the neck till dead." 60

As the punishment of the court is the prisoner to hang by the neck till dead, it must be executed if he is not hanged before the sentence can be executed. The prisoner must be hanged until the sentence is carried into execution. 60

It is a rule of common law, that in murder, the prisoner is hanged by the neck till dead. 60

91 2 Thes. 4:12, 2 Thes. 4:13, 1 Thes. 4:13.
Petit Treason

In certain cases the killing, with malice aforethought, from its particular atrocity is called Petit Treason, but whatever be its aggravations it is essentially the same as murder. See 117.107.324.336.

Many things are formerly called Petit Treason, that are not at this time considered. As murder, suicide, parricide, homicide, by a Grand Jury, or an attempt to kill another, &c.

By 28 Edw. 3, Petit Treason, can happen in three cases only:—1. Where a servant, killeth his Master; 2. Where his husband, and 3. An Ecclesiastic's parricide. This last species cannot exist in this country. 1 Edw. 14. 2 Edw. 36. Stat. 10. & 11. 117. 324. 336.

The killing of one's master or husband, is called Petit Treason, because in addition to the crime of murder there is a breach of private allegiance. 117. 107. 324. 336.

The killing of one's husband or master, is not Petit Treason, only the killing of strangers under like circumstances would have been murder.

If a woman divorced a man she then, from her husband's blood, it is Petit Treason, but if the divorce had been a vincula matrimonii, it would have been murder only, for by such divorce the marriage relation is entirely dissolved.

If the wife or servant, procures or abets, a stranger to kill the husband or master, they are accessory to murder only, but if a stranger counsel or abets, a wife to kill her husband, or a servant to kill his master, and the crime is perpetuated, the stranger is accessory to Petit Treason for defection or cajolery, &c. Stat. 139. 117. 132. 133. 138. &c. 324. 332. 332. 132. 324. 336.

Though the Stat. 28 Edw. 3, provides that no murder shall be accounted
Public Wrongs

accounded. That treason but that of a husband by his wife of a master by his
servant, or poison by his verminators, from whom he is entitled to restitution.
Yet if a servant having no master murders his master, it is construed to be
petit treason within the Equity of the Statute. 1 Bl. 141. 124, 5 S. 3, 142.

The murder of one who has formerly been a master, in execution
of a malicious design formed while a servant, is petit treason. 1 Bl. 141-3,
5 S. 3, 142.

The murder of a parent by his son is not petit treason, unless the
son or child is by reasonable construction the consent of his parent. 1 Bl. 138.
5 S. 3. 142.

Pet. treason, is a capital felony, it was formerlybeggarly, but was
caused by the benefit of Stat. 12, 5 P. 3, which took it away from both
principal and accessory. 1 Bl. 138. 3. 5 S. 3, 142. 1 Will. 63, 64. 21.

The punishment of petit treason of the offenders be a male is to be
drawn to the place of Execution and there hanged till dead. If a
female to be drawn to the place of Execution she to be burned to death.
1 Will. 63, 64. 21.

Άrson, is to common law, the wilful or
unlawful burning of the house, or other house of another. 4 Bl. 221. 1 Bl. 55, 56, 156.

Under the definition not only the dwelling house, but all the
real houses, within the curtilage or homestead may be the subject of arson.
1 Co. 21. 1 Bl. 138, 162. 4 Bl. 231.

Yet it seems that, at common law, a barn filled with corn
thrown not within the homestead, may be the subject of arson and
formally the burning of a stack of corn was deemed arson, but this was
in the case not lost its for a long time been so accounted. 1 Bl. 165, 156.
4 Bl. 231. 3 S. 67.

Burning the frame of an unoccupied house is not arson, it
not having been a crime within the act. 1 Hen. 6. 3 Eliz. 284.

A common prisoner in county jail is subject of known law, this is a
lease or dwelling of the prisoner, in this case, the indictment
must state the burning to be of the house of the county. 1 Hen. 6.

It is said in the English Book, that slaves may be committed
by the burning of one own house. But this rule as expressed is not true.
for according to the definition it must be the burning of the house of another.
If this happens consequentially, by reason of the burning of one's own house,
were not legally posited as to effect, that consequence, then can be...

It is on these words that if one stocks under suspicion for any
only of a house even in a state fit for it to be with intent thereby to burn the
house of another, he is not guilty of burning unless the other house is actually
burned. 1 Hen. 6. 3 Eliz. 284. 2 Hen. 3 Eliz. 377. 3 Eliz. 291. 4 Eliz. 277. 312. 314.

And modern cases go still further in favor of the occupier of a house
It has been determined that if one in possession of a house without a lease,
and upon a true agreement of from a tenant to give one or two tenants, that
one, initially and innocently burn it, he is not guilty of burning. 2 Hen. 3 Eliz.

Yet the burning of one own house is a bility with intent to burn another.
Thereby is a high misdemeanor punishable by fine and imprisonment,较好,
Hunting of the burning of woods for life. 1 Hen. 6. 3 Eliz. 277. 4 Eliz. 314.

But the person burning his own house is not, sense of the word, guilty
a arson and the indictment of it were prosecuted for that reason, until
network. 2 Hen. 3 Eliz.

On the other hand, if the landlord, or he in receivership from the
cause of the tenant, he is guilty of arson. 3 Eliz. 2 Hen. 221.

In Connecticut the offense of arson is in a great degree remedied
by law, but is substantially the same as at Common Law, the burning
If any out-house or house be burnt, though the out-house be not within the
inclosure, the Law prescribes the same punishment for the burning any
thing or reluct, as for the burning of a house, so it would seem hardly impor-
tant to call the burning of ships also rebels angry. Act. 6 Geo. 3. 155.

That must be an actual burning to constitute the crime of arson.
the short intent, or an unsuccessful attempt to burn not amounting to
the offence, but if the fire be extinguished after a partial or even small
burning as George of itself it is not withstanding arson. 1 Will. 4 Geo. 3.
6 Geo. 3. 222.

The burning must be malicious or it is only a trespass, as where
it happens there negligence or want of care, then the party liable
only civilly. 5 Will. 4 Geo. 3. 164, 376, 384.

If however one intending to burn the house of A. burn the house of
B, it is arson, because of the felonious intent. 1 Will. 4 Geo. 3.

Arson is at Common Law a felony punishable with death, but
that law has never been abol. 5 Will. 4 Geo. 3. as the origin of Edw. 3. the offen-
sor was burned to death. But the Lex Iudicis was abolished in the
2 3 Edw. 3. (166 222. 374.)

When it was enacted by Stat. that the offender should be entitled
to a clergyman, however he was deprived of this benefit by Stat. 21 Will. 4,
which was again confirmed in the 1 Wil. 4 Geo. 3. by the repeal of the same act.
And it was finally enacted by Stat. as it related to the principal
offender by deduction from Stat. 4 3 Will. 4 Geo. 3. which expressly states it
a common thief. The fact, 2 will. 4 Geo. 3. 375. 384. 222. 3.

In Connecticut, the crime of arson is committed by the burning of
the age of sixteen years, and is by Stat. punishable with death, provided any
one be found delinquent, or presumed: if the person committing the
crime be under the age of sixteen, 2 Will. 4 Geo. 3. suppose he would be liable to
a misdemeanour only and not as at Common Law, because our Stat. makes
offenders
offenders who are of this age punishable only as at common Law.

By a second Act upon the same subject it is enacted that if any male person of the age of sixteen years shall wilfully & feloniously

been or attempt to burn, by setting on fire any dwelling house, barn, or

out house &c. &c. or any horse, sheep, or any other beast or property or hazards

happen to the life of any person thereby he shall be sentenced to Newgate

at the discretion of the superior court for a term not exceeding 7 years. Act 182

And for a second offence of the same kind he

may be continued to Newgate for any limited period or for the term of his

natural Life. But in such case the second offence must have been committed

subsequent to the committing of the first. 2 Xd. & S. 1760-61. 1 H. 3 324.

By this second Act respecting crime it is provided that if the gender

of the person is not maintained but it is supposed to be female,

she shall be sentenced to confinement in some common Gaol or

Workhouse for the same length of time as a male he would be subjected to

confinement in Newgate. The age of the female is not mentioned but it is supposed to be 18 or 21.
PUBLIC WILLS

Burglary

Burglary is the offence of breaking and entering into the mansion house of another in the night season, with intent to commit a felony. This, though, the usual view was opposed to be a perfect definition for the breaking and entering into the Walls of a Town or into a building as much as the breaking of entering a mansion house. Some the definition may now properly this exirefect 3 Bl. & 2 Bl. 3 Bl. 322.

Burglary is the offence of breaking and entering into the mansion house of another. 3 Bl. 221. 3 Bl. 322. 3 Bl. 333.

As to the subject of Burglary: it is not necessary that the breaking should be with a mansion house, although it has been said that the insertion of these words in the indictment for this offence are absolutely necessary, but this can be only when the breaking of a private house. Though, which has generally said of a church that, in the "mansion house of God" is that therefor it cannot strictly within the definition. 3 Bl. 333. 3 Bl. 142.

Under the term "mansion house" is included all the out houses Buildings within the buildings or House. 3 Bl. 223. 3 Bl. 273. 22.

The building or House is that piece of ground which is enclosed with the mansion house by one common fence or directly connected with it by a fence. All buildings not so connected or enclosed are not subject to Burglary. 3 Bl. 326. 3 Bl. 346. 3 Bl. 347. 3 Bl. 42. 1 Bl. 102. 3 Bl. 173.

Steers and Lodging in a private house in the mansion house. The Lodger, those that the owner of the house does not lodge in it, or he does but enters on a different door from that of the Lodger. 1 Bl. 163. 3 Bl. 35. 1 Bl. 29. 3 Bl. 236. 273. 364. 3 Bl. 346. 3 Bl. 532.

The mansion house is the house when one dwells in building the latter being the essential qualification. For no house is a mansion house if no one lives in it. Hence it is that an uninhabited house is not the subject of Burglary. 3 Bl. 76.
Public Record

If a person leaves a ship or building, which is within the building of his mansion house, it is thereby secured, if not the subject of burglary, until the lease make it a mansion house by lodging in it. 1 Hals. 333. 1 Hold. 162. 4 Bl. C. 225.

It is not necessary that a house be actually lodged in at the time the offence is committed, to make it a subject of burglary: for it may be left by the lessee for a short time, during a short and little time, then returned his mansion or dwelling house. 46-46. 42-73. 1 Hold. 366. 1 Hold. 36.

The house of a corporation, preceded any of the members or their agents, lodge in it, is within the definition of burglary, not as the mansion house of the officers or agents, but of the corporation. 2 Hold. 37, 135. 7 Hold. 333.

It has been decided, where one has hired a house for the purpose of residing in it, & has moved his goods to it by those only, that he has obtained such possession for the purpose of residing in it as well from the time of such possession make it a subject of burglary. 2 Hold. 46.

The subject of burglary must be a permanent structure. Same a tent or booth, by being broken and entered, will not render the property liable to the commissioners of burglary. 1 Hold. 66. 4 Bl. C. 226.

It seems that whatever is burglary at MOTZ is in consunder our statute. If by the State, it is provided further that the offence may be committed upon any ship or vessel containing goods or merchandise, though not within the building or houses, and though no person boarder might have, and it has been decided by our courts that the cabin of a ship containing merchandise may be the subject of burglary that is.

The definition requires the burglary be committed upon the mansion house or another, and if it is alleged to have been done.
Public Wil~

came on the house of A; proof that it was done on the house of B will not
support the indictment. See 6 Ed. 2. 243.

(Q. The crime of commission.)

According to the definition, burglary can be committed only
on the night hours. This was formerly considered as comprehending all
that piece of time between sunset and sunrise. But now it means only
that time which intervenes between evening and morning. Twilight
is when there is not enough light to distinguish a person's counter-
parade. Moonlight will not suffice for committing burglary. 7 Ed. 6.

(Dee. White. 330. 2 Ed. 100 1. 3 Bl. 260 1. 223. 3 Ed. 334.

(A. manner of commission.)

From the definition it was shown that there must be both a bro-
king and entering to constitute the crime of burglary; hence if one does
not, the other the crime is not complete. But the breaking and entry
must not immediately succeed each other; so if the breaking is at one
and the entry at another it is still burglary. 1 Ed. 6. 2 Ed. 331.

The breaking may be effected not only by demolishing a part of
the house or breaking through a window, but by
breaking any door or window, or by breaking a lock, or by
breaking out a window, breaking a bolt or strap, or any similar
act, which will amount to a breaking within the rule. 7 Ed. 6.

(No. 26.) 1 Ed. 8. 2 Ed. 331. 2. 333. 3 Ed. 342. 4 Ed. 224.

In actual breaking is not required; a constructive one is sufficient.
If it has been determined that an entry by a chimney, or the like, is a
breaking in burglary. For a chimney is as much closed as it is nature will
admit. (Sadler.)

And to enter through an open door or window is not burglary:
there being in such case neither an actual or constructive breaking. How-
ever, after such entry, an iron door or part of the house be broken it is

sufficient.
Public Things

...such to constitute this offence. 1 Will. 16. 13d. 67. 22d. 31. 12. 601. 2. 45. 683. 98. 226.

Yet the breaking of a plaster, or of a chisel, is not a breaking, that will constitute burglary. 2 Will. 168. 1. 171. 5. 31.

According to the Weight of Authority, it seems to be settled, that it is not a breaking, that is made on a house, unless the house is entered by a door which is opened by the owner, or by an agent authorized by him. 1 Will. 168. 1. 171. 5. 31.

Whether the breaking out of a house, upon an entry, is deemed with intent to commit a felony, or an accomplice with a breaking, is at law as burglary. There are contradictory Opinions, but by the

Act 12. 17. 5. 17. it is declared that the breaking out is as much with

in the definition of a breaking, as 1 Will. 168. 1. 171. 5. 31. 226.

It would think that a breaking out, in this respect, would not be a sufficient breaking, to constitute a burglary:

Of the Entry

If an entry is found, by force, a felony is committed; or if it is found, as it is burglary, as the thievery be first. Thus if one gain an entry into a house, under a pretense of searching for stolen goods, merely to cause a theft, and steal the house, he is guilty of burglary.

Wh. 12. 21. 171. 33. 171. 35. 2.

From the definition it is clear that the entry must be lawful, for, that is implied, from the word breaking.

If the consent is an induced with a false and intent, break and enter, the room of a house, it is burglary; and must be described as in the mansion house of the person, and not of the house of the person.

If no person within the house consents, let a person enter without.
Public Wrongs

For the purpose of committing a felony, both are guilty of burglary, if the entry is effected. 20th May, 45th, 1802. 22nd April, 38th. 1821. 18th, 186.

It is agreed that the least entry with the whole or part of the booby with an instrument for the purpose of committing a felony, as with a foot to come within, or with a weapon to intimidate, their within to hand for their property, as within the law a burglary. 31st Oct. 1804. 16th Nov. 12th, 37th.

But, our instruments with which the entry is made, must be introduced for the purpose of perpetrating the felony, not for that of obtaining admission into the house, as where a boy was inserted into the bottom of a book on the inside, turned, or a gimlet bored so that the chips fell within the door, it was held not to amount to an entry, because the instrument was not introduced for the purpose of perpetrating the felony therein with such

If an instrument for breaking, entering and stealing the accused is guilty of the burglary, he may still be convicted of the stealing. 32nd 1803. 16th Nov. 186.

The breaking, entering must be with intent to commit a felony, in order to constitute burglary, if there be not a serious intent that person so entering is guilty, of a burglary only. As where a tenant having been away from his master, returned on the night, broke into his master house, and took from thence his master clothes and money only. But the intent shall always be presumed to be felonious unless the contrary is shown. 17th 186. 12th July, 36th 186. 18th 16th, 48th 227.

In point of intent, it is sufficient, if the act intended amount to a theft. Felony only if not so at law, for an act made a felony by law has so many incidents. All the incidents of a common law felony attached to it. 46th 186. 41st 186. 827. 18th 336. 17th 186. 18th 16th.

Neither is it necessary that the felonious intent be executed, the bare intent is sufficient, though not accomplished, and the existence of such intent is to be determined by the jury. 16th. 18th 159. 17th 84.
After one has been acquitted in bathing a murder, or the like, he cannot afterwards be indicted for the same breaking or stealing the money of B. For the breaking and entering are of the same

of Burglary, & the stealing only a circumstance attending it, which goes to prove the felonious intent. Vol. 30, 222. Am. 522.

A law concerning the offence of Burglary is a blunder to taking.

Burglary, however, remaining away from the person of the theft, 1260, 264. 16 Edw. 2. And so, in an act concerning this point by 30 Geo. 1, 1736. 51 Geo. 1, 1739.

In general it is provided by Stat. that for the first, if the offender is a male, he shall be confined in Newgate for a term not exceeding three years; for the second, for a term not exceeding six years—

for the third, offence, he shall be confined during life. Stat. 1763.

And as to what shall be deemed the first offence while the offence which shall be committed before the first conviction, shall be considered as constituting but one offence, and shall be punished as such, 1566, 264.

The same distinction between male and female offenders is made by Stat. on this subject as is made in the case of larceny; the latter, instead of confinements in Newgate, is to be imprisoned in some

place in the county where the crime was perpetrated, if the same crime, or male offenders are liable to confinement in Newgate.

But for the first offence of the burglar, or burglarize, the

same shall be guilty of any personal abuse, force or violence, or have abed himself by dangerous weapons, as clearly to indicate intention of violence: he shall be punished by confinement in Newgate for life.
Larceny.

Larceny or theft is commonly punished with a fine or imprisonment. Simple larceny, as plain theft, is accompanied by any legal aggravation. Misdemeanors or compound larceny include in it the aggravation. Stealing larceny house or person. 188. 189. 190. 191.

Simple Larceny.

Simple larceny is the felonious taking or carrying away of the property of another. It is divided into two kinds, 1st. Grand Larceny, if the value of the goods stolen is more than fifty dollars, the offense is at common law, termed Grand Larceny. If under the value of fifty dollars, Petit Larceny is that. The difference between Grand and Petit Larceny consists in the difference of value in the goods stolen, both kinds being with equal severity, compensated for in the general definition. 186. 187. 188. 189. 190. 191. 192.

The difference of the punishments of these two kinds of larceny is however material. 188. 189.

If several persons in conjunction take goods exceeding the value of fifty dollars, it is Grand Larceny in all of them. But if the same persons, at different times, take goods, which in the aggregate exceed the value of fifty dollars, guilty of Petit Larceny only. 188. 189. 189. 190. 191. 192. 193.

According to the definition of Simple Larceny, the larceny must be from the possession of the owner, but that possession may be either actual or constructive. 190. 233.

It is said that every larceny is a trespass, hence one can be guilty of larceny in taking and carrying away goods until he has thereby committed a trespass. But this rule seems to have been infringed upon by late decisions in other states since it was laid down, the law on the subject of larceny has undergone great change.
An actual *professio* is defined by the very words in which it is expressed; but a constructive *professio* or *professio mensae* is meant a right of *professio mensae* 1741. 539. 471 and 439. 731. 9.

There are unexpectedly many cases that fall within the above rule; many that will not under it, as the *professio* of Godby. If unperceived, he is not guilty of *larceny*, as where a carrier or *taylor* delivers the *book* without it to them. But the *carrier* or *taylor* cases, according to the late decisions, cannot be laid. In one it has been stated at the P.C. Bailey as a general rule. That when goods are delivered to another by the owner, for a special purpose, the owner having a right to control them, the delivery of the *professio* does not vest in him. Therefore if the *taylor* consents them to his own use, around *tumidem* he is guilty of *larceny*. The *taylor* could, as a *tally*, or the stolen with whom it was left, be cleared. Others by *acknowledging* the *master* or the person with whom they were deposited. 1151. 135. 115. 135. 122. 5. 165. 2. 184. 3. 184. 3. 414. 7. 424. But it has always been agreed that if one obtain possession, of goods amongst persons, with intent to embezzle and steal them, if actually done, steal them, that he is guilty of *larceny*, though the owner consented to that *professio*. But for such conduct, such *professio* can be obtained is using the law will prevent it. To practice a fraud upon the 1151. 135. 5. 415. 2. 31. 6. 555. 6.

So as, if in another under pretence of purchasing goods, but with intent to covertly deliver to his own use without paying for them, he cannot be embezzled guilty of *larceny* for such purpose, object from a *bailment* in the. That the owner by a *sale* abdicates all right and claim to both the *professio* and property of the goods sold, but in case of a *bailment* the *bailor* retains the right of property, even according to the terms of the contract. 26. 358. 36.
Public Wrongs

If me obtains by authority of law with a fraudulent intent, it will in some cases be Larceny. If A under a pretext of selling property with intent to convert it to his own use, B being the personally entitled to the property, he was punished by A. 3 Bl. 79. 3 Bl. 185. New 43. R. 276.

So if goods are taken by Execution, the judge, having been obtained by fraud, inspection practices in the conveyance of the goods, it is stolen. As when a right is commenced against B by A, impressions C in apparent possession B to pay for a default, so that A may obtain judgment and Execution, the judge, obtained B by his property. The duty, means of Execution, in such case are those cheeks A, for obtaining property by means of them is guilty of Larceny. 3 Bl. 276. 3 Bl. 79. New 436.

When goods or property of any kind is carried on the special order of being carried to a particular place, and the Bailer conveys them to another, then conveys them, assuming fervor, he is guilty of Larceny. 3 Bl. 48. 5 Bl. 253. New 256. L. 355.

When one holds a house to another by a particular terms, he has no right to commence that bailment till the time expired if the Bailer would, that time sell or convey them, he is not guilty Larceny. 3 Bl. 211. 3 Bl. 48. 6 Bl. 314. 75 Lep. 4. 2 2. R. 156. 312. 316. 241.

On a view of the whole subject of Larceny as connected with the subject of Bailments, it may be observed that: First, when according to the terms of the bailment, the Bailer has no right to commence the delivery at the time of the conveyance the Bailer is not guilty of Larceny until he originally obtained them, assuming fervor. Second, if the bailment were such that the Bailer might at his pleasure, commence the delivery, a conversion, assuming fervor, amounts to Larceny. Third, when the Bailor was originally obtained with intent to have a conversion is Larceny, though for there was a right of commencing the bailment in the Bailor.

The bare non-deliverance of goods to the Bailer is not Larceny.
consequence even when by the terms of the tenement the tenant is bound to receive it would not be so considered even in the civil action of trespass.

Further, is it evidence of a felonious intent. But a refusal to restore the property on request would be evidence of conversion, and is the same as possession. It is a rule of the common law that if a servant remaining with and using the goods of his master, with which he has been entrusted, fails to pay the debts incurred, and then by the age of 18 he is not even, then under the value of the goods, 40 shillings 11/2. A. H. 116. 1. 1410. 156.

At common law a servant not having the possession, but the care of his master's goods and taking them anime foraneo, he is guilty of larceny. If a tenant should take plate or a servant's household furniture. 12 Hen. 818. 6. 1410. 156.

And upon the general principles of constructive possession of real goods and the stealing them from him, the latter is guilty of a taking from the former the goods being considered as all the while having remained under possession. 12 Hen. 818. 6. 1410. 156. 2. 12 Hen. 818. 6. 1410. 156. 2. 1 Hen. 818. 6. 1410. 156.

If one steal in the country of A and carry them into the country of B, is guilty of larceny in both countries, every continuance of concealing away being also deemed a new taking. The felon may therefore be indicted in either county but not in both. 2 Hen. 818. 6. 1410. 156. 2. 1 Hen. 818. 6. 1410. 156.

But this rule cannot hold where goods are conveyed from one foreign country to another, or in the two countries the punishment for the same offense may be materially different. In one state, the offense of larceny may be punished differently in the other with temporary imprisonment, rather than being strictly local. 2 Hen. 818. 6. 1410. 156. 2. 1 Hen. 818. 6. 1410. 156.

If the wife of a tenant takes the goods of her husband, B, the latter is not guilty of larceny, but he may be liable to her, but there is no such crime in domestic relations, which will excuse the receiver of goods.
Public Wrongs

Carrying away

From the definition of the offence of larceny it appears that there must be not only a taking but also a carrying away, or the crime is not committed. 1 Pet. 1:24. 2 Tim. 2:18. Tit. 1:10. 5 Jude 5. Luke 17:12.

And it is settled that the best removal of the goods from the place where they were found is a carrying away within the rule. As to carry from a Chamber drawer, etc., or to take the goods from the chest, & lay them by the side of it, but the raising a trunk of goods from its side, and placing it on one end, and rolling one to be a sufficient carrying away; yet the removing of a table from one end of a carriage to another was deemed a carrying away. (same authority) 5 Leav. 119:7.

Felonioue

There must be not only a taking & carrying away but that taking & carrying away must be feloniously or concerning fraudulently; if the taking is not with a felonious intent, it is a mere tuppap. Whether the taking is felonious will always depend upon the attending circumstances of the case & by those the jury who are to decide the question will generally be enabled to do it without difficulty. (same authority) 5 Leav. 118:256.

The taking & carrying away in a clandestine manner generally evinces the amiss intention, so it is not by any means conclusive; but when the taking is without the knowledge and against the will of the owner, it is presumptive evidence of a felonious intent, which, however, may be rebutted, but if not rebutted, will become conclusive. (same authority)

"Of the personal Goods of Another"

It further appears from the definition of larceny that the taking
and carrying away must be of the personal Goods of another. Hence
things deal or favoring of the realty cannot be the subjects of theft.
Land cannot be removed & Goods' bear built or unmoved from the
171. 185. 80. 129. 129. 512.

But of those other things serving of the realty are just leaved,
and afterwards takes of such taking is not a comminence of the original
out of reverence it is hiring and the reverence should be on one right
& the taking on the next. 126. 354. 464. 463. 171. 184. 283.

It has been questioned above whether enjoying and just to the
from a Sheep's back. & Landings it has been settled in the ap

The difference in the law as it relates to such things as either to
the Grable & such as are merely personal is found in the circum
cumstances of the case; for articles adhering to the Grable are so bulky
in proportion to their worth such difficulty that that they really
sufficiently prevent, by subtracting the things or in damages. 463. 462.

Frequently it was held that the things of death & things of Land
found on a Grable, because they were to the nature & use of
the personal goods. So in the case, I think, the Dyes, 463. 464. 383. 382.
Said case being such in action mostly evidencing against
nepathy, but being of no considerable value they ought on that point
be considered as not within the Land. But by 384. 384. 382. 337. 336. 463.

Therefore, the said subjects of Landings it have a certain influence in con


Property must not only be contained therein, but also belong to
someone and cannot be the subject of Landings. Hence the estate pertain
all free value unreclaimed cannot be Landings. The rule of the same
As all personal Goods may be the subject of Larceny, so also may money or Credit. 19 Visc. 26. 234. 145.

It has been observed that property without an owner is not the subject of theft. Transactions, Wills & Estates fall within this rule. 1 Hare. 145. 1 Hale 372. 1235. 2 Bk. 238. 7.

But though there must be a property in some one at the time of taking, yet it is said that the owner need not be known, that the goods must not be known. 2 Hale 372. 1235. 2 Bk. 238. 7.

It is said in Hale & Serjeant, in modern that unless the Goods are proved on trial to belong to a stranger, they shall be presumed to belong.
Public Works

To the prisoner. 2 Tim. 27. 3. Acts. 247. 2 Tim. Holy. 353. 46. 352. Acts 145. 347. 31. 112.

The taking and carrying away of goods, without warrant, from a poor
Chamber, is lawful, if they may be desired in the indictment, as the pro-
perly of the description. So a horse, from a dead body, is lawful, & may
be described in the proper part of his who put it on. The stealing of a
dead person is a high murder, of which as such punishable. 2 Thes. 20.
(1 Cor. last printed) 1 Thess. 173. 2 Thes. 733. 124. 114. 1 Tim. 173. 33. 1 Th. 11.

It is said that a man may commit larceny, by taking his own
goods, where they are delivered to a keeper, and clandestinely returned
in such a manner, but the rule is not reconcilable to principle, the in-
laction of the goods in such case being a mere act of constraining. 3 Es.
385. 51. 31. 111. 141. 143.

It has been a question, Whether one indicts by larceny, by
special verdict, found guilty of that which amounts to a theft, only can
be subjected in Trespass on that indictment, but it is settled, that he
cannot.

Punishment.

It is simple larceny, which extends, and first is at common law, fel-
ony, & the former capital, but I have not been able to find the same
points. (Citing, in case of larceny found with 1122, 121 in 12. 52, 25.) 35, 55.

But larceny is not at common law, capital, but is punished by
strictures of goods, & also by whipping & some other corporal punishments.
(Acts. 106. 38. 23. 27. x. 1 the same statute.)

It is said by Blackstone under the head of larceny, that that
larceny is punished by fine and whipping only, yet he says in another
place, that it is a felony because it worth a forfeiture which is trace
to 24. 30. 27.

Under the book law no distinction is made between Goods & Body
Larceny.
Larceny. All falling under the general appellation of theft.

The cases that arise are divided into those by fine not exceeding a pound, if the value of the property amounts to three shillings, so as to be punished by a fine not exceeding ten shillings. If it exceeds three shillings, whipping not exceeding ten stripes. If the value of the goods does not exceed 84 pence, the prisoner is to be punished by fine only. If between 84 pence and 3s. 4d., he is to pay the fine imposed or to be whipped not exceeding ten stripes.

The peace, promise, may commence an action in the nature of

felonies and recover for himself the damages.

When the value of the goods stolen is less than 3s. 10d., the offence is cognizable by a single minister of the law with a right of appeal from him to the courts of chancery. This has original and sole jurisdiction.

Mixed Larceny.

Mixed larceny has all the properties of simple larceny but is accompanied with the aggravation of taking the goods from one house or farm or from both. It is of two kinds, larceny from the house and larceny from the farm. First, Larceny from one person. This kind of mixed larceny may be committed by private stealing from the person of another or by open violation of the law, usually denominated robbery. 88. 232. Larceny by privately stealing from one person as by pulling his pocket, is alighting at common law, distinguished into different grades according to the value of the property taken, where it exceeds 12s. 5d., stealing it is capital, but entitled to burglary, of which, however, it has been stated by Act 8 Eliz. If the value of the goods do not exceed 12s. 5d. stealing the offence is not capital but stands on the same footing as simple larceny.

Larceny, 1727, 483. 27th. Act, 329. 2d. Ditch. 379. 2d. It is not necessary to edit this.
Robbery.

Robbery, or taking, by open & actual force, may be defined to be the taking or carrying away, from the peace or another, goods of any value, by violence or putting in fear, 1 Bl. 232. 1 Thw. 137.

In order to constitute robbery there must be taking, from the person of another, that is, actual; for an unsuccessful attempt to rob, without a taking, is not robbery, 1 Bl. 232. 1 Thw. 137. 6 Bl. 322. 32 Bl. 264.

But though an attempt to rob is not at common law robbery, yet it is a high misdemeanor, as by Act 4 Geo. 2. it is made a felony punishable with transportation, 14 Geo. 3. c. 22. 223. 38 Eliz. 3.

The definition requires the taking to be from the person, but by this it is not meant that the taking must be from the actual person possessing the person robbed, for if it is taken from his presence by violence, or putting in fear, it is sufficient. Thus, if through the instrumentality of a false the robbers take goods from a servant in the presence of the master, it would be a taking from the possession of a person in the possession of the master.

The possession of the servant is considered as the possession of the master.

2 Bl. 333. 3 Bl. 485. 2 Bl. 145. 6 Bl. 147. 6 Bl. 673.

Neither is it necessary that the taking be instant, possible put otherwise if it be against the will of the owner, 5 Bl. 158.

If by putting in fear one effect in order from another to deliver him goods or money, at a future period, which is consequently done, it is a constructive taking, from the person, 5 Bl. 158. 6 Bl. 147.

But a taking that is not certain proceeds from the owner or from his presence. By putting in fear to get a taking within the rule, as if one through fear of an attack, abandons his property, which another seizes, he was in fact lying without the owner, it is not a

Robbery, 6 Bl. 373. 10 Bl. 600. 295.

And, says that if several combine together for the purpose of
Public Words

... Arthur and attempt to steal $A$ but do not succeed. Then one of them, without the knowledge of the other, robs $A$ of his companion, they are not guilty of robbing because of the previous intent. On principle however, it would clearly from the fornication of the intent in committing larceny, when he could be guilty only as accomplice before the fact, give the intent in which they failed was only to rob a particular person, they could not be guilty even as such.

The offense of robbing is committed by the act of taking and depriving... 

The act of taking and depriving the goods or money by the robber does no injury to just to there is no such thing as taking the done perpetrator; after the crime is any complete... 124.37. 63 63.

Thus, we see no robbing without violence or putting in fear, which would occur from some of the facts that there must be both. If violence are putting in fear, but one is sufficient without the other... 124.37. 63 63.

The word violence in the definition imports some thing more than is implied in the mere act of taking, which if it will be deemed violence in law. It imports a violence of such kind offered to the person robbed, as does it is calculated to enable a. 124.37.

The violence or putting in fear must be previous to or instead of the taking, unless accompanied with one of the kind can never by any subsequent violence or putting in fear be made robbery. After the crime of putting in fear must be perpetrated for the purpose of obtaining the money or goods taken, or it will not constitute robbing. 124.37. 63 63.

With regard to putting in fear, it is sufficient, if as much force is used to avoid or prevent, as is naturally calculated to excite fear, as in fact it is not produced. The rule is the same as the threat of violence...
Public Wrong

Finally to extort money or goods, or to steal, or in any other threatening or alarming manner, under pretense of begging or payment, is robbery. 17 Geo. I, 5 Edw. II, 533, 3.

According to some opinions, the compelling of a Market Man, or Chapman, to sell his Goods at their usual price is robbery, but, according to others, it is not, because no felonious intent can be shown. If, however, the denial be not a mere denial, it is still doubtful whether it would not be robbery. 17 Geo. I, 5 Edw. II, 533, 3.

It seems that in many instances, for Robbery, it is not necessary to state that it was committed by putting in fear, it is sufficient to state that it was done by violence, and to prove that it actually existed, the allegation is sufficient, the proof of such force or threatening as would naturally produce fear. 1 Edw. III, 5.

If one, without colour of right, takes a man's goods, and claims the same to his own use, or Goods from another by violence or threats, or by being inquieted, are cases of Robbery, a mere protest being no excuse. 1 Edw. III, 5.

It is supposed, in casual taking from one person, or taking at his will, without previous violence or putting in fear, or threat, it can not be felony, because the taking is from the person; and as it is done secretly, it cannot be felony by preserving, taking from the person, nor can it be Robbery, because it wants the requisite of violence or putting in fear. 1 Edw. III, 5, 7 Geo. I, 5 Edw. II, 533, 3, 1 Edw. III, 5.

Punishment of Robbery

Robbery at common law is a capital, but a punishable felony, but of this it is said, by Statute, 23 & 24 Geo. II, c. 36, that which has taken or robbed before the statute 20 Geo. II, 533, 3, and 50, 150, 151.

It has been said, the offense of Burglary, in Burglary, and punishment by Act, provision in the same statute Burglary.
Public Wrongs

The word "free evidence" is personal abuse here. We shall relate to the offense given a greater degree of free evidence of personal abuse than is ordinarily used, or there is necessity to accomplish the mockery.

Second: Learning from ones House. Though the offense of learning from ones house is always to at least regarded as more aggravable than simple learning, yet it is considered as it is not distinguished from the time in its general nature or punishment of the degree of punishment however the it on the nature might deserve, Now 184. 480. 232.

By certain English that was the benefit by learning is in most cases taken from the place in Connecticut, and it is no. But it is not stealing, it is stealing a person learning. In 19. Sec 31. 1768 585.

Though learning from the house is not distinguished from, Simple learning yes, where are in the night. Seams breaks with the house of another and diminish the time we have already shown that he is worthy of a different offense aggravate offense called Beggars.

Forger

Forgery is the common law, the fraudulent making or altering of a writing to the prejudice of another person. (Now 335. 214. 255. 260. 412. 232)

This offense by way of emphasis is in the books frequently called the "crime of fraud" but is known only as a species of that crime.

What may be the subject of forgery?

It is agreed that there are other authentic writings a public matter. Indeed is it said wills but this is questioned may be the subjects of forgery. In common law, it is settled by Mat. 2 242 that wills may be the subjects of forgery. In Connecticut, also a statute on this subject enumerates wills, among other instruments that may be燃气 concludes with the saying clause of all other Writings. Now 111. 310.
Public Wongs

According to a great number of opinions, inasmuch as the writing of any private writing, profit of which could not be foreseen at an early stage, may be considered as such a writing, and according to some opinions, everything at all. But little opinion is that, although not forgery, it is an offence punishable at common law. 1 Rob. 3 St. 2, 248. 1562. 135. 454 1st Ex. 235.

Still it is held in Bacon, that the document making or altering any writing, the prejudice of another's right, is doing a like act. 4 St. Tr. 136. 232. 18 Hen. 11.

However the rule may have been at common law, by various English statutes, almost every species of writing is made the subject of forgery. Since the enacting of those statutes, it has been held in England, that the fraudulent making of a bill of exchange is forgery, the bill being only voidable. 1 Rob. 3 St. 248. 249. 238. 1 Hen. 666.

Nor that is supposed to be more comprehensive than all others, English laws, on many occasions, enacting many such species of forgery, it is added in a sweeping clause that the making, writing, or altering any writing, the prejudice of another's right, is doing a like act. 4 St. Tr. 136. 232. 18 Hen. 11.

General Nature of Forgery.

Not only the actual making, but the writing of another's name, or a similar writing in the documentality, tending to the prejudice of another right, of an instrument already executed, is injurious, but many other things. As if foreseen intent to be beguiled with a fraudulent intent, but an opinion it would not be forgery, in such case unless the bill were entirely executed. 4 Rob. 3 St. 248. 29 Hen. 136. 238. 172. 233. 258. 368.

So no finding the name of another in Bank of England at the bottom,
of a letter, with a false and fraudulent instrument was to the injury of injury. More 612, 626, 636, 642, 652, 662, 672, 682, 692, 702, 712.

If a fraudulently set in a deed or a material part, he is guilty of injury. This is a thing by itself not in Trinity because the action is not made in the name of any other than the true signature with the false name is counterfeited. The same principle of false is evidently applicable with equal force to the false and fraudulent alteration of any other instrument, these matters of course were counterfeited.

More 612, 626, 636, 642.

If a receipt is fraudulently written, when the back of a Bill of Exchange is written, it is forgery, even at law. S. R. May 602, 210, 220, 230.

But man is guilty of forgery by making & executing a deed in his own name or when he alters or a deed to B with the fraudulent intent to cheat a person to B. More 655, 154, 175, 177, 195, 225, 227, 230, 247.

When one writes and delivers a deed or other instrument in the name of another in his presence by his direction, or even out of his presence, and possesses no previous authority, he is not guilty of forgery, if being with fraudulent intent to the injury of any person, such instrument being valid name, are valid, but not for the purpose 115, 235, 335.

It is of the essence of forgery that the making or alteration of the instrument be fraudulent, therefore for an obligor to at his hands with some is not forgery; unless or fraudulent instrument can be shown. More 635, 675, 735, 112, 113.

But such alteration like all other immaterial alterations by the obligor avoids the instrument. More 26, 297.

Yet as it is not an immaterial alteration, be fraudulently made with a view to gain a benefit or to injure another, it is forgery, and then the term of a signed note is so as to make it void & having contracted to sell and offer at value, or make an easement, it is necessary that it be not
in the hands of the defrauded. 1 Will. 332 3 & 4 Will. 364.

It is equally true that an instrument which is forged, for

If it is not necessary that in order to constitute forgery any tho-

For, or the refusal to impose

It is not necessary to render the

the refusal to impose

This refusal to impose

Punishment of Forgery.

Forgery is punished at Common Law by fine imprisonment or penal

dealt with as a felon. But for a

In some cases, if the offender be a male, he is punished by imprisonment in Newgate; if he be a female, he is punished by imprison-

Under our Statute nothing is forgery, unless done to prevent

Equity's Justice. This expedient however it is done, not only our Law but the Common Law, says:

He who is not within our law, but the majority of it is not

The word false is not used in our Rule, but the majority of it is

-prompted by the term false writing.
The mode of charging the offence is by alleging, that the party made a false writing. Indict.

In an indictment for forgery it is necessary to set forth the false writing unlawful, where to which it is made the least variation in the words is said to be fatal. The rule of this extent is in Gooch, 3 T. R. 154, 155, and 2 H. 9. 239, 240, 241. 3d Ed. 631. 650. 6th Ed. 153. 154.

The indictment must always set forth that the false instrument was given to be the particular notice, which it was intended fraudulently to represent, if the contrary were intended, if the instrument to be a different one or to the instrument will not be supported. 1st Ed. 150. 2d Ed. 251. 3d Ed. 379. 412.

It is sufficient to aver, to allege fraudulently written, which is of the same or the same general kind, the particular manner in which it fraud is to be adopted, may be shown in the jury, 1st Ed. 150.

These offenses in the name of the common law, in which much pretension has been alleged to be forgery. 1st Ed. 150. 2d Ed. 251. 3d Ed. 379. 412.


For Perjury

Perjury is the offence of speaking willfully and falsely in a matter material to the issue or point in question, under an oath judicially administered in some judicial proceeding. 1st Ed. 155. 2d Ed. 251. 3d Ed. 379.

It is required according to the definition that the speaking be willful, that is intentional, and attended with some deliberation. 1st Ed. 155. 2d Ed. 251. 3d Ed. 379. 412.

It is immaterial whether the court in which the false testimony is given is a court of trial or not. In England all courts of common law and equity, as well as courts of common law in Canada, are courts of common law in Canada. 1st Ed. 155. 2d Ed. 251. 3d Ed. 379. 412.
The question must have some factual foundation under an extralong
maintenance of any false oath, under which threat, any voluntary extra-
ordinary oath cannot be within the law of Perjury (Crisis 1679; 361). But
there is no compulsion that the crime be committed in absence of facts
during a judicial investigation, for it may arise from false preparation
in a deposition as follows: [text cut off]

Perjury is strictly confined to such public oaths as concern a law.

Some matter of fact, even from any oath, is not included in the law of Perjury, but the breaking of these being a misdemeanor
only. [text cut off]

The jurisdiction of any false oath, relating to any question
of fact, arising before the court, the not immediately connected with this
main question, as in the case that I S., is good evidence. But knowing
him to be a bankrupt. [text cut off]

The solution of any other oath, than one engaging to speak actually
the truth is not perjury, and is, of course, a prior, not sufficiently found a
crime against law and Evidence is not liable to be perjury. [text cut off]

Any party is a fact, when allowed his oath, and if any one
sworn perjury as well as a discretion, the hearsing is taking both the, if skill
England a case in person, by giving a false oath is perjury. So
consider however he does not make oath, to the truth of such answer, if not
a party in a suit, of course, makes affidavit, in any collateral matter.

As far as the purpose of obtaining a confession, he is liable for Perjury. [text cut off]

If a witness testify falsely and consents himself during the trial, or
rather during the hearing, of his testimony, he is not guilty of perjury, this
is a rule of law and not merely a rule of evidence. When the witness is
an answer, which is supplementary, the rule is the same of where the false
Public Wines

It is said not to be all material whether the circumstances amounted to a true or not in point of fact or not if the one who swears does not actually know it to be a fact suppose, identifying false by R. 223. 222. 1832. 522. 82 pg 02.

It would seem from the definition that the fact must be shown to positively constitute the crime of perjury, but it has been decided that if a witness in an instance and under circumstances upon which he knew not to be true, he is guilty of perjury. From this it appears that the word absolutely in the definition ought to be omitted, but that the ancient idea was that it must have been established positively or it did not subject the witness. 1832. 523. 822. 878. 524. 1832. 721.

Agreeable to the definition the false testimony must be material, from, therefore, any false or impertinent testimony cannot be the subject. Being, yet if the false testimony, though circumstantial and not strict

ly speaking to the issue tends to mislead or exculpate the accused it is permitted and the rule is the same where the false testimony is thought circumstantial, tends to convince the jury of the truth of that which is material. 1832. 524. 1835. l. May 238. 222. 524. 1832. 528. 721. 1832. 878. 222. 878. 524. 1832. 721.

It need not appear on the trial in order to subject the witness, how far or in what degree the false evidence was material, it is sufficient that it is proved to have been in some degree material, or that it in some measure convinced the conclusion the fact in issue, and it was circumstance absolutely relevant only, and whether it need not appear that it was decisive of the fact in question. L. May-238. 878. 1832. 222.

Note. 830.
The cause presented, and prosecuted for persons is always with this

provide to find the materiality of the false testimony: & indeed to make out

some points in the case. It must always be shown, that there was a local at

time the prisoner is alleged to have committed the crime. This can be

done only by the second. But as it is not necessary to go into the particular

ments of the former case or trial the party is sufficient. The cause in

which the perjury or conspiracy was committed must be set forth in the indictment,

the nature of the action the name of the parties the court the phrase,

the time when it was filed must all be stated. Tho. 13. 18. 28.


It is not enough that the false testimony should have been believed

by the jury or have done any person an injury. The crime must involve

its unpunctuate from the injury the individual, but from the state of pub.

lic justice and confidence. 2 Lard. 211. 36. 36. 25. 36. 36. 525. 873-879.

It has been declared in England that the word "wilfully" need not

be used in the indictment although it is included in the definition,

but that a substitution of other words will supply its place as the intent

seem perfectly and manifestly clear. 60.

As is a rule that to sustain a conviction of perjury there must be

at least two witnesses otherwise there will be no oath against both.

P. 125. 1. 11. 11. 2. 11. 633. 11. 325.

It is generally true, that information to the court circumstances,

evidence will be sufficient to produce a conviction: but in perjury circumstances

evidence must be exhaustive: testimony will not prove if there is nothing

2 McIlh. 471.

Perjury from its nature is an offense that cannot be committed

solely by two or more persons: both or more cannot be joined in a

perjury. 16. 6. 34. 1. 314. 1. 1. 374.

But all acts committed in the course of violence in some that are not
may be committed jointly. In or more may join the information of Part.

As h. The common law is not void in England, and the

persons injured by the prisoner, must be let in the issue on the fact of the offen-

sure. It is only necessary on the question of whether the trial in the ordinary

place was lawful. It has been decided in Sibb. 92. that an interest in the question should go with

the conviction to the same extent as in the case of habeas corpus in the Supreme Court of

the United States in the case of Van V. v. Corv. 3 Den. 391. 566. 20. 368. 20. 228. 22.

Sibb. 29. 20. 596. 20. 598.

Interrogation of Party.

In the case of pursuance as to which a person has

informed, there are the prisoner must have been actually convicted, but

through not convicted, the information is void in part of all other cases. 258.

356. 23. 20. 23.

Pursuant for determination of party, as formerly at Common Law, the

court or inferior. But now by Stat. 3 Geo. 4. 20. 27. 365. 20.

20.

Negligent or in the exercise of a negligence of the conditions of

either of these actions, also or some other person infringing the party com-

mon other than or touching on any court of justice, it may be brought as

a person. 315. 365.

When a person is convicted in a court of competent jurisdiction, it must

be tried in the same court, unless it is that court. The facts

named will be taken with the evidence, as in cases of a mis-prision, 37.

327. 3 Den. 29. 20. 20. 20.

Punishment

This crime is punished in the court, and it consists of paying or re-

sponding a fine of 500. 20. 567. 20. provided the same is not

paid.
gate, or the term of six months, if a female on some common bail or recognizance, in case of failure of payment of the same, the debtor is to be examined in the usual manner, &c. &c. &c.

The law also provides for the prosecution of such as are committed for trial in open court, and it is supposed that no persons are within the State but those who are within the common law of felony at common law punishable.

It has been supposed that a person accused of felony in New York cannot be imprisoned in New York, until convicted in New York, but in many of the cases mentioned, when the conviction was at some other place, the person is subject to all the penalties of being in New York. Act 5th, 13th.

Bail in Criminal Cases.

When any one is arrested on the charge of a crime, brought and arraigned before the court of the place where the offense was committed as a court of record, it is his duty to examine into the facts charged and determine whether the prisoner ought to be held to answer. But for this purpose he has no right of being held to examine the prisoner; but if it appear to the court that the prisoner is probably guilty, he may be committed for trial. Act 5th, 13th.

Bail is properly a delivery of a person bail, and in this case, security,
security that he shall appear at the time specified or answer to the charges.

The judgment of the high court of justice is final, and no appeal is allowed. In case the accused is absent at the time specified or fails to answer to the charges, the judgment is final.

According to the principles already laid down in Connecticut, it becomes clear that according to the grant, the fines and damages were assessed. [Further text not legible]

But by the 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, and 17th of the act of January 3, 1823, the militia is to be increased or reduced to a number in proportion to the number of the inhabitants. The militia is to be called out in case of an emergency, but only as an auxiliary force.

If a person is charged with theft or murder in an account of the death of the victim, he is not to be admitted to bail, whether he is present or not. But this rule is not to extend to the punishment of the court or seven judges. In that case, the court may, in its discretion, admit the defendant and the facts can be proved without it.

* But in cases where some bail is prohibited by law, the court may admit it except for special reasons, as arising from confinement for an account of a long delay in trial by the public or adverse existence of guilt or where the defendant is unable to answer to the charges. [Further text not legible]

It is to be observed in England that, after conviction, the prosecution must not be admitted to bail until the prosecutor consents thereto. But in Connecticut
Public Funds

Connecticut the rule is often dispensed with. But it is the rule.

In Connecticut all offenses are bailable except such as are capital, or contempt in open court. Stat. Const. 2.

It is a general rule that the court which has final cognizance of the offense may admit the person charged with the commission to bail, in accordance to the rule in K.B. Act, it is supposed that the superior court in cases may admit to bail even in capital cases. But the court in the exercise of that power would be governed by the same principles as kings Bench, 11 Hare 175, 21 Hare 420, 423, Stat. Const. 64.

The officer who makes the arrest commits in any case that is minor, but still a public officers. The sheriff acts as a bailing officer in the Abercromby v. The Plaintiff is bound to appear at the time and place in the name of the plaintiff, or county, in the name of the plaintiff, or county, or in the name of the plaintiff. 12 H. 422, 423, 424.

It is a rule of common law that if the bail ing officer takes insufficient bail or the person charged fails to appear, he is liable to be held at the

It is the common practice in Eng. to require four witnesses in all cases. 21 T. 216, 217, 218, 219, 220, 221.

The rendering of bond by a magistrate when it ought to be allowed—of the admission to bail on oaths not available, &c. 12 Am. 259, 260, 261, 262, 263, 264.

In the former case the person injured is entitled to this suit action in

274
It has been decided by our Superior Court, that if a person in an
legal action here, the action cannot be given but the cause is brought to that
place, that if the party can be punished in no other way, then by
law, it is perfectly immaterial whether the sentence is given or not at
the returning of the verdict or rendering a judgment: but the question is next
whether the punishment is corporal, and in that case in some instances the ac-
cused is not bound to plead in person, but may appear by attorney, note-

Wm. Blackwood.

Whenever the evidence in a criminal prosecution does not sus-
pose the indictment, but shows that the is guilty of an inferior offense to that
whereby he may be deprived after his acquittal, fill an indictment to pro-
cede for him in the place of which he is guilty, at an Indictment
in Shapter, if the testimony, being that only he may be acquitted of
the Shapter, & obtained till a prosecution is preferred to him on the ground
of the Shapter, 3rd, 323-335.

Costs in Criminal Cases.

In England costs are allowed on either side when the Crown prosecutes except in certain
specified cases. 3d, 323. 7th, 34. th, 32, 34. 3d, 32, 122.

The Court take on us never take in favor of the prosecution—when found
guilty, he is to pay the cost of prosecution, but on the other hand he is not only
to pay costs in conviction, but according to the law, if it appear that he
was the principal cause of the prosecution, else an acquittal. But the super-
ior courts have lately established it as a rule of practice, that when the
indictment is acquit, they will in no case be costs to him. When
it appears that the accused is unable to pay costs, they are to be
paid if the trial was in the Superior Court, or any Court of Common Pleas
from the State Treasurers. Of these a single remittance of the first only

...
Public Prints

of the Town Treasurers where the trial was held.

When a tax is assessed against a person they go to the same Town meeting at which the Town was held; paid by the person assessed. The court assess the amount of the tax and if the person assessed is able to pay he may be bound out to serve a term in any habitant in the State or go to the State until his wages are sufficient to pay them. Such person is to be bound to one inhabitant of another State.

But the trial of such persons may be held by a person qualified to reside only at those courts which can convict the offender not in another state of being bound to one inhabitant of another state.

Criminal Jurisdiction of Courts in Connecticut

The highest court is original as well as bare jurisdiction in point of the inferior court. This court has exclusive original jurisdiction of all cases of crime punishable with death, loss of life and imprisonment. It has also exclusive jurisdiction of all cases of criminality over all cases of Deacons.

The Superior Court has exclusive jurisdiction of the Superior Court in all cases punishable with loss of land, but it seems that there are cases that may be decided where the Superior is liable to be tried, may be concluded within the state.

As to punishment there is not a single instance in which it can be imposed other than by way of alternative, this is in case of debt, imprisonment or fine, and may be said to be a sentence of the court of Common Pleas, and in cases of manslaughter, fine, death, etc., the sentence of the court is conclusive.
To summarise, it was the practice of boards to bring in charges.

The jurisdiction of the Superior Court extends to high crimes and felonies, and to all crimes and misdemeanors committed within the jurisdiction of the Inferior Court. The Inferior Court has concurrent jurisdiction over the crimes of burglary and all the high crimes against the person.

The Superior Court, on the other hand, has exclusive jurisdiction over all crimes that do not fall within the jurisdiction of the Inferior Court, and it is the proper court to settle matters of law, etc. Notice of Appeal.

However, the superior court may require the fees to be paid to the Inferior Court on criminal causes of action, being $269.

1. An act concerning the law of judgments of the same force, of course of record of all crimes. No other court can exercise jurisdiction over the same, except by appeal from the Inferior Court.

2. The value in question of the theft, where the property stolen was valued at $50.00 or less, is an offence.

3. The value in question of the theft, where the property stolen was valued at $50.00 or less, is an offence.

4. The value in question of the theft, where the property stolen was valued at $50.00 or less, is an offence.

5. The value in question of the theft, where the property stolen was valued at $50.00 or less, is an offence.

6. The value in question of the theft, where the property stolen was valued at $50.00 or less, is an offence.

7. The value in question of the theft, where the property stolen was valued at $50.00 or less, is an offence.

8. The value in question of the theft, where the property stolen was valued at $50.00 or less, is an offence.

9. The value in question of the theft, where the property stolen was valued at $50.00 or less, is an offence.

10. The value in question of the theft, where the property stolen was valued at $50.00 or less, is an offence.

11. The value in question of the theft, where the property stolen was valued at $50.00 or less, is an offence.

12. The value in question of the theft, where the property stolen was valued at $50.00 or less, is an offence.

13. The value in question of the theft, where the property stolen was valued at $50.00 or less, is an offence.

14. The value in question of the theft, where the property stolen was valued at $50.00 or less, is an offence.

15. The value in question of the theft, where the property stolen was valued at $50.00 or less, is an offence.
Public Business.

In Connecticut, if a person is convicted of an offense, the trial must be held in the town in which the offense was committed. Where the offense is committed in one town, and the trial is held in another, the trial must be held in a town at least one mile from the place of the offense. July 15, 20, August 30.

But in the case of a person who has committed an offense in a town in which he resides, the trial must be held in that town.