of Fraudulent Conveyances.

By Stat. 13 Edw. 4 a like Stat. in Conn. all conveyances to bear glossy, judgements, executings (by 2652 Rob. 6 1790) to contemns made to be paid the creditors of grantee, are as against those only, whose interest is to be defrauded, their Representatives, successor or assigns, utterly void. Rob. 2. D. 29. 
St. Cro. 334. v. 2 Bac. ab. 790, 402 p. 6012.

Provided in the Engl. Stat. that it shall not extend to any conveyance to any more free purchaser, having no notice of the fraud. Rob. 4. 5. n. 2 Bac. ab. 790.

No such provide in our statute.

By Stat. 27 Edw. 4 all conveyances to make to defraud bona fide purchasers are also void, with a similar provision. Rob. 7. 8. v. 2 Bac. "Trini." 6. p. 6023.

No such Stat. in Conn.

Both these Stat. are said to be an affirmation of the C. L. Comp. 4.34. 2 Tho. 37. 9 2 Tho. 546. Rob. 2. 9. v. 4. Rob. 30. 112. 
526. 8. 373. that fraud must be known at the time to be present.

Formerly hot was to be in affirmation of the C. L. only as to prior creditors of prior purchasers. Rob. 9. Tho. 11. 24. 606. 

But it is now hot as otherwise (as supra.)

Such conveyances are good as between the parties.

Cro. 4. 45. 6 61. 33. 6 627. Tho. 1294. 484. 6 24. 30. 2. 222. 620. 
4. 7. 5. Rob. 6. 87. x. 3. 383.

As if fraudulent parties give their obligation for consideration of the conveyance, but it be so joined than errors. 634. 384.

Fraud Conveyances.

condition yet the first is not made good, having been once disputed by the Law. Col. 42. n. 2,קת. 33.

It was formerly supposed that if a conveyance was made to defraud one particular creditor of the grantor no other of his Creditor could avoid it. Col. 49. 7. Such a construction having been given to other States in their cases. Col. 45. 7 (Col. 47. 2dy. 175 to 186) & 55.

But it is now well settled that if a conveyance is made with intent to defraud any one of the grantees the day it is made by all of them - the law says it Conveyance is to defeat all. Col. 53. 88. 60. land. 17, Cala. 615. 258 on 605.

The grantees being estates at the time of the conveyance


According to many learned opinions the word a voluntary conveyance is only presumptive evidence of fraud. and in the St. 18 Eliz. 1F. 1st, 82. 59. fraud. Col. 60. 15. 15. 195. 58. 170. 258. 257. 193. 2 Lev. 105. 113. 119. 192. 485. 2 Tho. 68. 67. Con. 98. 96. 65.

But it has lately been decided that a voluntary conveyance, so called, is not within the St. 27 Eliz. 16. any conveyance that is found by an actual verdict; but in judgment of Court 59. 95. See Cita. 13. 325. 10. 238. 225. 2 175. 103. 609. Con. 185. 175. 195. 195. Cita. Cal. 23. 9. Col. 176. 248. 426. 628.

Dec. whether this last rule holds, as it conveyances upon the St. 13 Lev. Col. 16. 26. 51. 81. 46. 61. 46. 46. 266. 227. 2 Bac. 261. Col. 68. It seems that it does not. post as to subsequent Burden so Col. 555 & 355.

For it has been decided that reasonable familysettling.
Fraud, Consideration

Involvements to which, and to no great at this instance, where the
grantor was not interested, the time, otherwise as was agreed
previously, July 3d, 1758, C. 445, 462, 514. 18. 9. 2. & Ruins 388. 390, 394,
15th 49. July 440. 7. 18. 5. 2. & July 257. July 65. And this rule
has not been judicially applied. I believe.

But is not the case of family settlements, the only one
in which a voluntary conveyance is not for precedent
as to creditors, as well subsequent as prior? C. 395. 397.
4th, 16th Jan. 59. 2d 152. 1. See 395. 8th c. 2 d. 24th

Valuable Consideration.

Marriage is a Saw to valuable consideration.


Herein a conveyance in consideration of mar-
riage is good, as to subsequent but not prior purchases.
So C. 27. 300. 195. 19. 195. 4. 393. 4. 388. 390.

And such a conveyance is also entitled to the benefit
of that Stat. 3d of prior purchase: C. 105. 129. 387. 392. 2. 447.

But there is a difference to be observed in respect
between marriage and other valuable considerations. A convey-
ance is good, but not in a marriage consideration, unless if
only they are protected by the valuable consideration. The con-
side is, if marrying a conveyance is made to A. to party to the
Marriage, it is then not to a collateral, whether the con-
sideration is as valuable in consideration, which the party
is paid, or as valuable as, with party to whom there is nothing,
without it. It remains, in this part, what the party to the
Marriage, and to his own, and to collateral, relations, the consid-
ervation, and as valuable as, with party to whom there is nothing,
without it. It remains, in this part, what the party to the
Marriage, and to his own, and to collateral, relations, the consid-
ervation, and as valuable as, with party to whom there is nothing,
It is said (Compo 74) that the limitations of the estate
and relation in the last cases are good as to creditors. 2 Pet. 175. 2 Em. 123. 5 2 Pl. 175. 2 Em. 175. [But if so, are they
2 Ath. 150. 2 Ath. 148. 665. 2 Ath. 123. 5 142. 147. 150. 162. 2 Ath. 105]

These latter limitations are, however, good without bulk
1 Mod. 80. 2 Ath. 594. 3 Ath. 119. 1 when executors may be decreed
in Equation.

But a settlement made after marriage, will be pursued
inc by agreement before marriage, or after a reasonable consideration, considered as voluntary. 2 Pet. 187. 2 37. 2 Ath. 148

Such settlements (the settler being uninvolved
at the time) have been actually supported in creditors. 2 Pet.
175. 175. 15. 2. 3 Ath. 2. 2 Ath. 147. 4 Ath. 525; in subsequent creditors, 2 Ath. 665

But such settlements are preferred as to subsequent to
the line purchasers. 2 Pet. 175. 2 Ath. 150. 2 Ath. 160. 2 Ath.
105. 2 Ath. 148. 2 Ath. 624. 2 Ath. 647. 2 Ath. 148. 4 Ath. 223.
1 Ath. 294. 2 Ath. 272. 4 East 59

Purchases are more favored by the construction of the
Stat. 23. 2. 4. than creditors are by that of 19 Ath. 2 Pet. 194.
100. 495. 2. 2 Ath. 327

For any advance their money in the property itself
and to the personal credit of the grantees or owners, as creditors.
2 Pet. 239. 1 Ath. 492. 2 Ath. 194. 2 Ath. 194. 2 Ath. 504.

Now a voluntary settlement by fire or recovery 2 Pet. 194.
2 Ath. 194. 2 Ath. 194. 2 Pet. 194. 2 Ath. 175. 2 Ath. 175. 2 Ath. 175.
But a settlement made after marriage, or person one of a covenant or agreement made before marriage, is not regarded as voluntary; it is then, for supports of Cts. the purchaser. Sec. of the settlement to be sustained by part or the prior agreement. Rob. 295, ch. 283, 2 Lea. 192, Rob. 215, 243, 1 Eq. Rob. 350, 7 Rob. 16th, 472, 2 Rob. 700, 4 Lea. 237.-

But the agreement may be good, so far as it contains Eq. property, and agree. or found. as to the residue. Rob. 267, 10th, 235.

For in such cases the original agreement is a covenant of marriage (which is a valuable consideration) to the settlor, being in execution of the agreement as supported by the same consideration.

The suit of the party, even if the agreement before marriage, long by parole. Rob. 270, 27th, 470, 2 Lea. 245, 10th, 468, 2 Rob. 309, 2 Rob. 308, 3rd, 462. 2 Lea. 236, 701, 6th, 20th, 637, 5th, 370.

But if the settlement is not made after marriage, but rests in certain only, recourse is had to a Ct. of equity, to compel a specific performance, that Ct. will enforce it only as a contract; but not only to purchase or to purchase without notice. Rob. 207, 3rd, 236, 3rd, 241. 2 Rob. 308, 3rd, 262, 2 Rob. 308, 3rd, 3rd.

For the conclusion of the Ct. being discretionary, the equity being vague, that Ct. will not deprive a purchaser of property, without notice, of their legal title. See 1st. page.

And a settlement after marriage, without any agreement before marriage, is without any other consideration. But prov. for children, is supported both at law and Eq. 40th 4th, except bastard children, provided it is reasonable & unaccompanied with any burden of future. Rob. 270, 27th, 470, 4th, 20th, 201.

But when application is made to a Ct. of Eq. to verify
Fraud, Conveyances.

Settlements made after marriage, for pursuance of such agreements, that the wife shall not be bound to relieve so far as to defeat a purchaser for valuable consideration, with notice (Cob. 227. p. Am. 6. 288. Tr. 17. 322. - Because, says Robt. - he is not expected to be consequent of the rules of Equity.)

Thus, when articles made after marriage, in pursuance of an agreement before, require the consideration, and cases arise, will enforce the articles of a purchaser for value, without notice. Here he had notice of the real Equity, and so is the last case. (Cob. 233. 4. 2 Ed. 24. 246.)

On the other hand, if a purchaser takes articles the for valuable Consideration without notice of a prior real settlement, applies to Eq. for a specific execution, his bill will be dismissed. So, for he has not the legal title, he has no Equity. (Cob. 234. 507. p. 167. Ed. 23. 257. Donat, Law, when he has a conveyance executed, 3. Rev. 1. 2.)

Recital in an agreement, after marriage, of its being made in pursuance of one made before, is with very slight concurrent facts, sufficient evidence of the prior agreement. (Cob. 240. Ed. 101. 3. 26. 186. 2 Ed. 32. 46. 9th. 188.)

Of settlement made after marriage, upon a new valuable Consideration, is not considered a voluntary act of the husband or purchaser, e.g., in Consideration of the settlement, with free probate. (Cob. 260. 2 Ed. 112. 262. 113. 262. 270. 24th. 109. Ed. 25. 62. 2 Ed. 146. 18th.)

So is made to Consideration of a position given by the friends of the wife, (Cob. 132. T. 2 Ed. 21. 11t. 138. T. 19. 188. Ed. 41. 2 Ed. 109.)

Nor is it agreed to a position to the settlement in such a case, that the stipulated portion has not been paid. It appears
Fraud: Conveyances.

It is true that it is a valuable Consent. (p. 85) 165, 329.

The husband being obliged to give it to the wife to obtain his wife's consent, or necessity, by the Act, makes a settlement on her, the settlor, the same after marriage is set.

considered as voluntary. (p. 85) 165, 329, 314, 332, 333. 334.

The settlor in such case is the person by which he is obliged to purchase the enjoyment of the conjugal rights.

E.g., it is voluntary, the after marriage.

But of the trustee of the wife's fortune requires an estate, settlement on her, as a condition: giving it to the husband.

The rule is the same, the three is productive, 285 for that purpose, so 285 have prescribed the same consent. (p. 85) 226, 227. 228, 229.

But if the trustee voluntarily, without condition, assigns the wife's fortune to the husband, the latter is considered to be the settlor, on the wife, during continuance. It is voluntary. (p. 85) 226, 227. 228, 229. 230, 231, 232, 233, 234, 235, 236, 237, 238, 239.

In such case, the settlement is 285 as to purchase for value. Or, is it so, as to consider only the husband was conserving at the time? (p. 85) 285 as to Subs. Sect. 3, it seems not clearly.

But if the Settlement, required by the trustee, contains what a leg. of 285 as to, then reasonable, it seems that as to the wife, it is to be with, even as to consider. (p. 85) 285. 286, 287.

But if of an or more, in whose hands there is a legacy belonging to the wife, requires a reasonable settlement on her, by condition.
Fraud: Conveyances.

If paying it to the husband, the tenant, is not voluntary. Rob. 285. 3 U.S. 239. 2 Brev. 15. 2 Pet. 42. 2 Co. 548. 9 Co. 746. It is good us considering her husband Rob. 298. 45 U.S. 154.

If the wife has an equitable title to a chattel real, she may dispose of it, free from any charge, even of her joint tenant or tenant in common, upon her. Rob. 299. Wood 128. 10 Co. 51. 1 Chit. 640. 2 Dyer 240. 2 F. & 4 W. 222. 4 Ves. 350. True equity strictly follows the law.

It is, then, thus, that a settlement on the wife, during coverture, is consistent with a chattel interest, to be voluntarily held in joint use as at law. Rob. 299. 5th.

Conveyances precedential as to Husband.

In some cases a disposition of property by a woman, to a 3rd person, or to her own use, 2 the use of marriage, if it is not paid to the 3rd, Rob. 348. 358. 28 U.S. 357. "Husband and wife"

Distinction: 1. If a woman, before any treaty of marriage, receives an exclusive dominion over her property, with a general right to future possi. coverture, the husband having made no settlement upon her, cannot set it at the marriage (Rob. 348. 6th. 357.) that she has no right of it at the time of marriage Rob. 354. 2 Brevley 342. 1 Ves. 4. 21. 99. 494. There must be paid Rob. 360. 28 U.S. 357. 28 U.S. 357.

Secs (some) of done pending a treaty of marriage, or contemplation of the particular marriage afterwards Rob. 354. 2 Brevley 342. 2 Cr. 41. 2 Ves. 305. 2 Ves. 293. 3 Ves. 259. Fraud in such cases.

But if he has made a proper settlement upon her (of which a lot of 60. is to judge,) he may be relieved upon presentation. 6th.
Fraud: Conveyances.

upon the ground of justice, defensible, from his want of notice. 
[Note: illegible text]

3. A woman, in contemplation of pending a treaty of marriage, makes a settlement, for the support of her children, by a prior marriage, the settlement will be void. 
[Note: illegible text]

4. If a woman, in contemplation of pending a treaty of marriage, makes a settlement, for the support of her children, by a prior marriage, the settlement will be void. 
[Note: illegible text]

So, the he had made a settlement on the wife. 
[Note: illegible text]

4. But if appears the husband had made a settlement, which was induced by an intentional concealment of the provision for the wife's children, by false appearances, and by a settlement for the children may be set aside as void upon the husband. 
[Note: illegible text]

5. If a woman, on the eve of marriage, makes a conveyance contrary to her husband, it is void. 
[Note: illegible text]

So, a wife has been, in some cases, relieved on equity as saving agreements of her husband to testament, with persons preying to the marriage, or jeopardy of her expectation. 
[Note: illegible text]
Who can take advantage of, by Stat. 37, 63.


But marriage is a valuable consideration under Stat. 5, 367, 103, 105, 123, 601, 333, 93, 398, 16, 6, 49.

Can a trustee, when a bona fide conveyance is made for payment of grants or debts, take advantage of the Stat.? His to be his own case. Rob. 369, sec. 106, 16, 35, 21, 29, 2, 107, 459, 247, 377, 106, 16, 91, 3, 106, 19.

A purchaser under a family settlement made in consist of real and personal cannot set aside a prior well conveyance to a mere stranger. Rob. 37, 56, 5, 368, 2, 452, 233. The former, not being a purchaser for a valuable interest, conveys as good as the grantor, his wife, and beneficiaries. Rob. 33, 6, 16, 4, 6, 116, 485, E. 445.

Some rule as to a woman claiming a jointure, made after marriage. She cannot take advantage of the Stat. Rob. 374, E. 455.

But if one purchaser for valuable consider, more inadequacy of price is an objection to his taking advantage of the Stat. Rob. 374, 166, 456.

But inadequacy of price, accompanied with collusion, shall create an objection between the parties to void the prior well conveyance, may be a safe objection. Rob. 374, 685, Conv. 705, 712, 16, 91, 166.

Otherwise a purchaser liable for might take advantage of that, and pleading value of prior well conveyance, a person grantor himself, might be liable.
Fraud. Conveyances.

But gross inadequacy of price amounting to only a colourable consist, is itself a sufficing objection, for the reason expressed, Rob. 372, 2 Ch. 11, 515, Co. 11, 190.

So, if a subsequent purchaser for an inadequate consist, appears to have over reached the grantee, he cannot avoid a prior voluntary conveyance. This is not a bona fide purchase. Rob. 372, 6 Co. 83, 5 Co. 1493.

A "Mortgage is a purchase" within the Stat. 5 and 6 will therefore take advantage of it, if the mortgage is bona fide for valuable Consideration. Rob. 372, Sheen, 423, Hold 477, 4 Co. 172, Co. 712, 1 E. 2, 223, Am. 229.

So of the Commissary of a Land, a recognizance, Rob. 392, 682.

But a mortgage being by itself a purchase only for the purpose of security, to the extent of his debt, the voluntary purchase, whether prior or subsequent, is void only pro tanto, to the extent that the voluntary purchase will hold the title, Rob. 397, 683, 684, 5 Co. 1493, "Mortgage".

It seems, however, that eg. it will never upon a foreclosure, in favor of a subagent, voluntary purchaser, be ordered to the favor. Rob. 372, 1 E. 2, 247, 508, v. 3, 31b. 38.

It seems also that a tenant is when a lease is made for his indemnification, is a "purchase" within the Stat. Rob. 374, 2 R. 305, 2 Law, 70, as he has not paid the rent, 1 De. 56, 29b. 36, Rob. 405, 6, 6, 2 De. 499.

But this rule is said to be questioned, Rob. 374, 620, 2 Rob. 305, 158, 31b. 32.

An, is the rule questionable, if the lease is made by way of mortgage?

If it is an absolute lease, it seems to be void as principle.
Fraud Conveyances.

Not only because it holds out a false appearance, but also because it is an absolute transfer of property, when the payment of any consid. for it is altogether contingent. In
deed it is a plain secret trust between the parties, on which grounds our S.J. C.. the express has arrested con
veyance to be justiciable as at bastard. Be. at all events. Let.

To constitute a purchaser within the Stat. the pur
chase must be of the identical thing or subject which
was the subject of the grant. Convey or deduct, he cannot take

Thus where A having a lease for 60 years in cont.
forged an absolute lease of the same land for 99 years for value
sold to the forged lessee (receiving it) of all his interest in the
land to B, it was resolved that B was not a purchaser
within the Stat.; for he did not contract for the true in
terest of A, and the true interest passes just between
the parties by the general words, yet the valuable consid.
did not extend to it.

Out of a valuable consid. it pays it is immaterial
what species of interest is purchased. Whether the subject
purchased is an actual positive interest, or the mere
extinguishment of an interest, e.g. lease makes a part.
sale, other, for value surrenders to the assignee. The
latter may void the sale., Ceb. 376.

A lease for years, for valuable consid. is a pur
chase within the Stat. The reservation of rent is a sufficient

It has been said, that to void a conveyance fraud
Fraud: Conveyances.

Within this Stat.  he who makes it, must be the same person who afterwards sells to the bona fide purchaser. Act 379, 311. 322, 332. 343. What if it be otherwise, the latter cannot take advantage of the Stat.

This seems to be true of those cases, only where person making the latter conveyance has not the estate in himself at the time of Act 382, or rather where he is a stranger to the estate at the time. Act 379. E.g. Grand-father, father, son, grand-father, father, son, have made a voluntary conveyance to his grandson. At the times of the Act's 379, 382, 383. E.g. Grand-father, father, son, have made a voluntary conveyance to his grandson. 

BUT if the person making the subsequent conveyance, had the estate in him at the time the subsequent purchaser may take advantage of the Stat. Act 379, 382, 383. E.g. Grand-father, father, son, have made a voluntary conveyance to his grandson. Act 379. 382, 383. E.g. the lease or assign. ment, both void as to a purchaser (6367, Act 37, 383). For here the father had the property by descent at the time, not a stranger) Act 383.

But if the makes a fraud: Conveyance, the other makes a voluntary conveyance to C, D. E. sells to D for valuable consideration, D cannot avoid the implied conveyance for C, but is entitled, even as between A and himself, to have the act of a stranger to a Estate. Act 379, 382. 383. 384, 385, 386, 387. 388, 389. 390, 391. 392. 393. 394. 395. 396. 397. 398. 399. In this case, it is not material whether A, or D. 383, 384, 385. 386, 387. 388, 389. 390.
Plead Conveyances.

A trustee upon a void settle cannot become a bona fide purchaser, within the Act, so as to defeat the settlor in Equity. Caveat 39, 16 th. Vezin v. de Perdrix 11, 3927. 36th. 502.

For he cannot acquire a right in Equity by a breach of trust. He does not act bona fide.

And if a trustee, by direction of a covenant, or trust, make a void conveyance, he cannot, without the direction of the covenant or trust, defeat it by a sale by a vendor to a purchaser, even without notice. Caveat 38, 600. Vezin v. de Perdrix 11, 3927. 36th. 502.

Memo. 757.

For the first conveyance is void. 38th, a sale by the covenant or trust, or the latter being a breach of trust, is discretionary with it. If thus disposed of 39th, made by a stranger to the trust. Caveat 390.

But a person who makes a purchase in his own name with the money for the use of another, is a purchaser within the Act. Caveat 341. 35th 105.

For he acts in pursuance of the trust, taking no advantage of the Act for the benefit of the cestui que trustor.

A person purchasing any rent or profit out of land may be a purchaser within the Act. Caveat 392. 35th. Purchase of lands growing. Caveat 392. 46th. 30th. 7th. 23rd. 50th.

Same rule in favor of all encumbrances. Caveat 392. 46th. 30th. 7th. 23rd. 50th. 30th. Caveat 392. 46th. 30th. 7th. 23rd. 50th. Caveat 392. 46th. 30th. 7th. 23rd. 50th.
Voluntary gifts of money, under Stat. 1822, 2. Eg.

When there is a voluntary gift of money, a specific promise that it be used in a particular way or for a particular purpose, has been rendered, it cannot be recovered. The remedy is under Stat. 1822, 2. Eg.

In case the creditor may secure a lien upon it, by an attachment or by seizure, it may be recovered. But if it is consumed or gone before attachment, the remedy here is given. For all that damage is to be done by the gift, it was being given away. Rob. 223, 224. 1824, 227.

And debt. Eg. Cannot be such a case. Supply a remedy. Rob. 224.

In case the creditor may secure a lien upon it, by an attachment or by seizure, the remedy here is given. For all that damage is to be done by the gift, it is being given away. Rob. 223, 224. 1824, 227.

And in case it seems by some pleading, that a voluntary gift of money (for the reason before stated) is not within the Stat. 1822, 2. Eg.

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In case it seems by some pleading, that a voluntary gift of money (for the reason before stated) is not within the Stat. 1822, 2. Eg.

Consid. Premiums. In case of demand, it is the tender by way of estoppel, under Stat. 1822, 2. Eg.

And hence it is seen, that a conveyance upon such a contract is void at law, under the Stat. 1822, 2. Eg. 428.
Consider payment of debts.

A conveyance to trustees for payment of debts (no creditor being a party to it) is void to be void as to definite creditors of bona fide purchasers. Rob. 429, 527. 1 Sam. 192.

Rob. 465, 2 Ynn. 512. (24.)

It is decreed by C.C. (Comp.) Rob. 429, 526) because the trustee is a stranger to the valuable estate. Do we not the creditor presume to act what the contrary appertains?

But if a creditor is party to such conveyance to trustees, it is supposed by a valuable consideration (Rob. 636, 3 Civ. 57. 420, 4) to be good as to creditors not included in the conveyance 438, 5 Y. R. 426, 426. Smith v. Huntington, 58. 611. Granger v. Frederick, 67. 2 Jno. 1811. Center 3 Moj. 340, 2 Johns. 226.

1 P. 156. 5 F. R. 413. (1) Rob. 429, 5 Y. R. 521. 5 Y. R. 235. 6 W. 17. 107. 10.

ny. 502. 1 Comp. 148, 2 Moj. 1 P. R. 42. Doug. 671. 2.

Now is this conveyance good, except as to the creditor who is a party to it, if the former rule is correct, see 382, 501, 530. 6 East. 1.

A conveyance to trustees for payment of debts, made in a neighboring State, by the laws of which it is good, it is deemed good in this State. This by loci positorum. Smith v. Huntington, 58. 611. 2 Dall. 272. 2 Moj. 777. 18. 1 Bost. 189. 1 Mr. B. 66. 4 Y. R. 137. 2 Ynn. 956. 10 S. & C. 182. 2 Ynn. 698, 358. Comp. 178, 342. 187. 5 Y. R. 402. 2 Ynn. 540. 3 Brandon 73.

6 Enr. 258. 8 East. 128.

And such a conveyance for payment of debts as is void according to the foregoing rules, is so at least, so the debts are barred by the Stat. of Limitations. Rob. 432, 8.

For this remedy only is taken away by the Stat. Comp. 615, 5 T. R. 2632. Slay. 382, 420, 79. 601. 100. 108. 366. 3 Ynn. 187.
Fraud: Conveyance.

And (second) the conveyance gives the remedy

And if after a conveyance to trustees, without priori-
by of any creditor, the conveyance included in the trust, being
a devise or gift to the trustees for performance of the trust (that
in general may be granted of course), P. W. 222, the donee
validates the conveyance "at indica" (v. 2. vid. 1.1. v. 4. 1. 1. 3. 3. 3.

For the conveyance transmits the function of a
court of competent jurisdiction, to sit outside the convey-
ance to enjoin the donee. De.

To charitable uses, donations to charitable uses
are void, as to creditors, if the donee is indebted at the time.

De. are they void if the donee was not indebted
at the time? i.e. void as to substanting? (v. 2. vid. 1. v. 2. 2. 438.
and a purchase for valuable consideration cannot set them aside, as May comment Rob. 439. 64.) by construction of v. 2. 2. 2. 438.

Donations causa mortis. A donation causa mortis
must, on principle, be void as to donors during Rob.
442. 1. Rob. 2. 16. M. 406. v. 4. 22. 7. 2. 17. 11.

As to claims arising ex maleficio. It has been de-
termined in Eng. that a conveyance to trustees, for payment of
debt, was not void as to a half as an action arising
ex delicto, the court handing the suit, with the view
of intention of spoiling pith of his damages. Rob. 156. 7
Secura made between juries & Episc. So hotly even at C. 5. Rob. 372. 19.

v. 2. vid. 1 IS.
Fraud: conveyances.

It seems known that a conveyance by any other than a valuable consideration is not void in such case, by law of the land. (p. 457.)

Claims arising on covenant. But it seems, if a vol. 377. settlement made between the dates of the breach of a covenant, giving a right to damages only, is not void as a covenant, unless the actual facts appear. (p. 460.)

Purpos. in another's name. If the proceeds and estate are conveyed to another, originally for his use, instead of himself, it is not void as to his creditors. [Note: under the Bankruptcy Act. (p. 499.)] In purchases under him, unless the conveyance appears to have been in trust for him. (p. 462.)

(p. 466.) Case 350, note. 470.

So hold (or, not to be paid.) tho the father held the prof. it took the profits, during the sons minority. For he is considered as acting in the character of guardian. (p. 468.)


Deeds, if the father continues to enjoy after the sons full age. (p. 469.)

(p. 407.) For that it is a trust for the father.

Power in another's right. In general, if one has a mere power over property in another's right, a conveyance by the former, the interests at the time, cannot be paid as to his creditors. e.g. trust. sells a term in right of her property, etc. (p. 467.) Case 350. for this not as is possession of his property.

(p. 491.) See as to purchasers bona fide.
Secrecy (remem) of the convey or trust for himself or to be disposed of as he shall appoint. For this reason he may acquire, transfer, or if he shall make a valid appointment, what is to be conveyed. If this equitable estate is to be held as to his creditors. Rob. 470. 12: 2 corr. 287

Only appointments! And whenever one has a general power of appointment over property, such as only appointment, it is in equity deemed fraud against his creditors. Rob. 472. 2 corr. 10: Pet Ch. 232. 5 2 corr. 319. 465. 4th Ch. 39. 7th Ch. 55.

For he may make it his own, as he has this right, putting it into other hands without consideration.

For if the power is special. Rob. 475. 6

Only Bonds. The validity of only bonds is more frequently tried in equity than at law. For the only bond takes obligors property in his in them is no opportunity (in obligors lifetime) for obligors creditors to dispute the claim at law. Rob. 473. 1 pet. 179. 1st Ch. 292. 3 corr. 377.

But in equity a only bond is an existing merely in court may be restored to debtor should he volitionally consent. Rob. 478. 2 pet. 179. 2nd Ch. 292. 3 corr. 376.

After obligors death, however the court may in many cases be tried at law. E.g. By heirs pleading a bond outstanding to testator. Rob. 477. 480. As to the mode of an heirs pleading a bond outstanding to son. Rob. 480. 4th Ch. 35. 5th Ch. 38. 4th Ch. 620. 18th corr. 52.

But usually when the claims rest merely in court the feasibility of only being implicated with matters of discovery trial. Rob. 496.

A bond's remaining in the poss. of the obligor...
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is a very strong badge of fraud. Rob. 480. 6. 586. 8. 62.
376. 2. 23. 1. 526. 3. 76. 1. 767. 10. 66. 517. 3. 67.
E.g. In
this gave a bond to his daughter, but retained the partition till his death. 709. 78. 148.

But such bonds are in general good as to mere voluntary, as legacies, if not to be disputed by scire, to which it is, to preserve the effect of fraud. Rob. 486.
486. 66. 1. 769. 10. 769. 427.

And when a void bond has been delivered up to be cancelled, a bond of eq. has and no special cause arises, decreed performance if it be voluntary Rob.
486. 769. 427. E.g. ab. 87. V. vol. bond after marriage to settle a jointure, the jointure being settled, if bond was given up, jointure afterwards failed?

Rule of Eq. yf. that if one claims on a bond for money but it fails to prove that cons. he cannot afterwards set it up as a void bond on meritorious consid. Rob. 486. 10. 769. 429. 10. 769. 478.

Voly. judge. If a bond or other obligation is vol. yf. a judg. can

If a judg. by confession is claimed to be fraud. self in the judg. must prove a just debt. But if taken by brind. the onus probandi is on the other side Rob.
489. 490. 6. 767. 327.

But the mere presence of one creditor to another does not make a judg. or conveyance fraud. as in the
stat. 10. 767. Rob. 490. 1. 436. But the debtors yf. can pre
for only as between creditors of equal degree Rob. 476. 6. 767.
490. 5. 576. 420. 3. 767. 340. 8. 767. 224.
Fraud: Conveyances.

The rule somewhat different has been introduced by the policy of the bankrupt laws in Eng. (Ceb. 442. Po. Cook 2D. 35, &c. 466.) (G. & H. 157, 397. Young 382. Comp. 629. 303. &c. 294. 310. &c. 108.

Consider ex post facto. A conveyance void in its creation may become good in favor of a bona fide purchaser, by another ex post facto. (Ceb. 133. Rob. 619.) 294. &c. 170, makes a part convey, if convey to B, a bona fide purchaser without notice of the fraud. It B, then conveys to C, the sale is held to C, (Stir. 118. Rob. 695. &c. 497. Holt. 477. 173. &c. 473. Sma. 423. 3 Leu. 387. Cob. 422. &c. 49.) (Ceb. 95. 294. 310. &c. 108. Young 382. &c. 466.)


The rule seems to be the same as in Eng. under the Stat. 19 Eliz. Sma. 427. 256. &c. 490. Rob. 697. &c. 497. T. 95. (proviso to Stat. 18 Eliz. (Rob. 619.) that the same shall not extend to conveyances bona fide. Rob. 582. 2.

No such proviso is our Stat.

Hence it has been before us Con. that a creditor of a grantor may set aside the conveyances made by such grantor to the bona fide purchaser. Stinton v. Root. St. 6, J. 186. By 6 Prac. 186.


Under the Stat. 27 Eliz. a valuable credit; where it accrued, extends to the grantee so that it can never again affect the transaction. Rob. 697.

Thus a purchase for value of grantor, grantee, etc.
Fraud: Conveyances.

Laws 50c, bona fide purchased from the original grantee, Rob. 477d.
In all cases, the value of a purchase for value.
The party avoiding a fraud, conveys by the original grantor, Rob. 477e.

In some cases, if marriage settlement is construed.

Thus, when one, having been long in possession
as a valid conveyance, enters into a treaty of marriage, the
other party to the marriage, ereaining in his appearance
of ownership, is voided by it to convey to the marriage
tenant a settlement of the property. The settlement has been
adjudged to be good as a purchase under the original

But, outside, a conveyance originally good, cannot
become fraud, by marriage, post facto, e.g., bona fide
mortgages, fraudulent mortgages to remain a long time, in fact.
The mortgage is not, then, made fraudulent, Rob. 577, 58, loc. cit. 405,

But a fraudulent grant cannot, a new, be legitimized,
50c, in favor of the grantor, grantees, by lapse of time, a
lengthened paper. This is put under the grantor, died, does not en
title to the benefit of the Stat. of Limitations, Rob. 521,
Tab. 82, 33, 40, 62, 66, 67, 197, 1811, 105, 322.

Construction of 5. Stat. The Statute 13, 27, Cit. 13,
all other Stats. As grants are to be construed literally, 12, 50
far as they do, upon the grantor, transaction they are so
construed, in large line. Of tenant for life commits a
#3. 50 5

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may enter to defeat tenants creditors the creditors may
avoid the forfeiture as fraud (Rob. 392, 393, 377.) Rob.
fraud items 2, 24 as well as grants. Rob. 59, 349, Rob.
542, 543, 87, 26, 92, 58, 36, 54, 73, 3, 59.
Being to the penal part Rob. 83.

(Badges of fraud.) The signs or badges of fraud usually
may occur, especially where the Stat. 12 Edw. 3 are the fol
lowing: 3 c. 31, Moore 632, Rob. 541, 559.
1. The grant is being general to all the grantees jointly.

2. The remaining on prof

3. Being made in offence, (Rob. 559.)


5. The grant is being an apparent trust between the parties.

6. Suspicious clauses e.g. that it is made honestly

7. Made in the absence of the grantee

8. Granting retaining the deed

9. This being involved in debt

10. Clause of renunciation. Rob. 518, 519. This is an

however to many others the marks of fraud being indif

...
Tract: Conveyances.

Especially if accompanied with acts of ownership. Rob. 549, 555.

For the possessor being inconsistent with the purport of the conveyance, evinces a trust. Rob. 472, 202, 579, 588, 555.

But such possessor not altogether a strong badge of fraud, when the subject of the conveyance is land, as when it consists of personal Chattels, for title to the former is to be sought in the title deed, in the latter in the possessor. Rob. 549.

Possessor of the title deed by grantee, is known very cogent evidence of fraud, as is possessor of the land accompanied with acts of ownership. Rob. 551, 554.

Such possessor is almost uncontradictable evidence of fraud.

Rob. 555.

Where land is the subject, however, possessor by grantee is only evidence of fraud, it may therefore be so far as to rebut the presumption, e.g. If one, having executed a trustee, for payment of debts, is left in possessor title.

Rob. 555.

But it has been held, that possession of goods by vendee, after an absolute sale, makes the sale fraudulent, in point of law, i.e. it is no sale, fraudulently of any fraudulent intent (C. T. Rob. 537, 595, Rob. 503, 555, Per. 257, 2 Bell. 225) by such, void of creditors.

So, de cujus, whether it is anything more than a badge of fraud. (Rob. 537, 576, Rob. 553, 576, Con. 81, Con. 452, Rob. 555, 2 Bell. 225.) Decided both ways by our, E. C. but, according to the current of our authors, it is only a badge.

Beattie: (on Railman.)

But however the last rule may be, it is clear, that
Fraud: Conveyances.

And a conveyance after a grant has been had in good faith, by a person who had no notice of a fraud; it is a conveyance free from all defects by the notice, even in equity. Rob. 573. 9 B. 2 B. 19. Doug. 34. Moore 460.

But if the purchaser, for a full price, with notice that grantor is indebted by both or other contract, his title is not affected by the notice, even in Equity. Rob. 579. note 6.

Under the Stat. 13 Eliz. if a conveyor lays with the intent to commit a forfeiture, or to commit a felony, then the land will be forfeited. Rob. 582. Note 39. B. n. "Fraud" 8th. 360. 82. Stat. 352. 360. 34.

If the grant is void, the conveyance committed before afterwards, the influence of fraud will prevail. Rob. 582.

The word "forfeiture" is not evidence. Stat. 14th. 355.

Now avoided. The party taking the benefit of a Stat. has a right to treat the prior conveyance, as void as if the conveyance had never been made. Rob. 571. 58. 3d. 223. 2nd. 177. Eg. 367. 426. By 245. 2d. 223. 2d. 177. 426. By 245.

The party is considered with regard to granting as part of granting estate.

Thus where a grant of 1 acre of land and 10 acres more, to plaintiff on mortgage, it being found that he had conveyed to defendant, who had cause of action for the land, grantor was given his home upon Stat. 18 Stat. 3d. By 245. 2d. 223. 2d. 177. 426. By 245. - Considered in Law (as of those who are entitled to the benefit by the Stat.) as no conveyance to be so treated, or of the conveyance. Rob. 571. 3d. 223. 2d. 177. 426. By 245. 2d. 223. 2d. 177. 426. By 245. 2d. 223. 2d. 177. 426. By 245.

Eg. 367. 426. 2d. 223. 2d. 177. 426. By 245. 2d. 223. 2d. 177. 426. By 245.

Note: In common cases of a conveyance to defend, nothing can be done having a valid mortgage or other rights the property is in the grantor's grantee, the defendant of grantor, Rob. 571. 3d. 223. 2d. 177. 426. 2d. 223. 2d. 177. 426. By 245.
trans. conveyances.

And of course, having made a partial sale of goods, such as debts, the property is considered as a part for paying off his debts, as if he had died. 1. Rob. 592. 2. Dec. 602. 3. Rob. 592. 4. Dec. 603.

And a day? may be taken on evidence of persons. 2. Rob., 592. 602. 603. 3. Rob. 592. 603. 2. Dec. 602.

In sum, the real property of a person deceased is now taken as evidence for his debts. 1. Rob. 592. 2. Rob. 603. 3. Rob. 592. 603. 2. Dec. 602.

In general, I conclude, must be for the debt, to pursue, 1. Rob. 603. 2. Dec. 602.

But in case of one died after a grant, an interest of his real property, his creditors, by simple contract, cannot take the property as evidence. In such contracts, but the personal effects only. 1. Rob. 592. 2. Rob. 603. 542. 3. Rob. 598. 602. 2. Dec. 602.

Sums as to credits, by specifically, 1. Rob. 598. 602. 2. Dec. 602.

A case in action as the hire, proof that the ancestor conveyed was paid. Support the assessment of goods by direct. 1. Rob. 592. 603. 2. Dec. 598. 602. 2. Dec. 602.

Under the Stat. 12 Geo. 3. 2. Dec. the purchase of goods of the deceased, after the death of the vendor may be enforced, be charged as in the case of the contract, as a charge in trust. 1. Rob. 592. 603. 2. Dec. 602. 598.

Rule: If he obtains the goods by the permission of the vendor, even, he may be thus charged by the Statutes. 1. Rob. 592. 603. 2. Dec. 598. 602. 598. 2. Dec. 598. 603. 2. Dec. 602. 598.

Do not pray of this rule, that the rightful owner is a charge to the goods, militantly to be? / Thus, as to them, unable to seize all. 1. Rob. 598. 2. Dec. 598.
Fraud: conveyances.

Probate of the will, or administration granted, may be thus charged. Rob. 574. 5. 2 T. 5. 587. De can then be an Esq. de son test, & Con., where his estate is insolvent. 2 T. 645. 56.

But if he takes them, without permission after probate, or admin. grants, he is a trespasser to the Esq. de son test, may be subject to such. 3 M. & Q. 3. 237. 2 T. 5. 587. 485. 6. 843. 541. Rob. 3. 999.

For in such cases, there can be no Esq. de son test, Rob. 573. 5. 303. 343. 411. T. 3. 49. De as the sale is irregular, all binding on the sale might be not be considered as a stranger to the goods, fraudulently sold. Thus the vendor be considered Esq. de son test.

For the a fraud. sale regularly binds vendor to his Reps. (Rob. 581. 7. 587) yet, the Esq. de son test may claim it, for the benefit of creditors, 3 M. & Q. 3. 270. 485. 6. 843. 561. Co. 9. 270.

This was formerly so decided in Con., it has often been recognized by T. 64.

This course is therefore perhaps a proper one to be taken in C. (ante) i.e. where the vendor takes the goods, without permission, after probate or admin. grants, or after as T. 5. 587. 41), which may be taken as Esq. of the Creditor, 2 T. 5. 32.

But what must be the course here, if taken in permission of probate, for by the one possessed, cannot claim them as his own delivery.

In this case, is there any remedy in Con. except
Fraud: Conveyances.

In equity, and if the goods are seised in entirety, creditor?

And suppose the property to be real, is not a bill
in Chy. the only substantial remedy? For who would buy?
and an order of sale by Probate? And it cannot. Suffe-
to take or, in case, and so.

If an heir makes a fraud: Conveyances of an estate
descended, to defeat the creditors of his ancestor: the con-
veyance is void under the Stat. (1322, Rob. 600. 2 Leon. 4. 500.
Est. 4441, P7. 105.) the the debt is not originally known
inure rule, as to fraud: sales by execs. Rob. 600. 6 Tro. 403,
Rob. 609. 22.

As to the effect of a bona fide conveyance by the debtors
(they are at Q.S. in their P. Rob. 600. 14, 9. v. Rob. 600. 14, 9.)

And a Ct. of Egy will in such cases pursue, if
appeals specifically, in the hands of the fraud. Executors. (Rob. 609. 22, 30. 616.) it treat heir as trustee to the creditors.

Leaves both at Law the Egy as the vendor's bona
fide purchaser. In such cases the only remedy of creditor
is as the 3. 14th 4. 63. Rob. 609. 22, 30, 10, 149.

As 5 of creditors as even rest of heirs can prove col-
clusion between their debts of the estate, it dimin-
ishes the debts, they may by a bill in Egy. prevent the pay-
of the debt to the debtors Rob. 600. 14, 8is. 65.

How far binding in the party to a fraud:
conveyance is binding upon the grantor, his heirs, of those who
claim as voluntary under him—E.g. as his heirs. Est. 413.

Same rule in Egy. as to executory conveyances (Rob. 617, 406. 183.)
Fraud. Conveyances.


And where the death of the assignee was granted to B. who, finding a suit for the payment of his letters promissory due, as above, the suit was brought, valid as to the assignee afterwards apoints. Rob. 646. 5. 6 Co. 13.

And where the grantor himself attempts by a collateral act (as by destroying the deed) to defeat a void conveyance, Equity will, in some cases, interfere. 65. 565. 5. 65. 66. 106. 77.

Rob. 668. 1 Ed. 6th 68. see Rob. 652. 5. 6 Ed. 69. 106. 77.

And no one can defeat his own fraud. convey. by his last will, even for the payment of debts. the former being binding upon him. Rob. 649. 652. 6. Much 160. 161. 132.


So where one having made a void settlement on his wife afterwards cancells the deed, it was holden to be void in Eqy. Rob. 652. Pow. 61. 275.

But any equitable interest remaining in the trustor, grantee may have by a subsequent void disposition. E.g. Trustor m'dgey. a subsequent void convey. of the Eqy. of Rob. 657. 372.

So if the grantor convey. has been desired after a bona rice mortgage granted.

And if a deed has been wrongfully obtained relief may be had to it in Eqy. by a person claiming under first of grantee. Rob. 655. Pow. 61. 162. 65. Cab. 86 266. 37 147.

And a void deed for a sum certain is good in Eqy. if it does not interfere with the claims of bona fide
Fraud: Conveyances.

As to the specific execution of executory agreements, contra: Rob. 661.

An agreement in consist of consanguinity or natural affections, will be specifically decreed in favor of a wife or children, or of a grandson, or an illegitimate child: Rob. 664, 2215, 525.
Injuries to Real-Estate.

Trespass.

1st. Its General Nature.

"Trespass in its extensive sense, signifies any trespassion of law. 3 B. 203, Esp. 380."

As consider under the present title, it means: entering on another's lands without lawful authority, doing some damage. 2 B. 209, Comm. 4 Trespass A. B.

Every unwarrantable entry on another's land is a trespass, called trespass by breaking his close intends some damage - e.g. breaking down a hedge at law. 3 B. 202, 210, 5 B. 378, Esp. 380, 2 B. 74.

In certain cases, however, an entry on another's land without license is allowed by law - e.g. to execute legal process to pay or demand money, payable from the distress of goods - by process to sue whether made is committed to get repayment at an issue. 3 B. 380, 330, 212, 360 466, 2 B. 74, 3 (5th)." 

So, if one leases land, cutting the trees, he may enter to take or sell them. Esp. 381, 1060 466, 2 B. 26, 15 B. 67, 39, 1160 52" (Title by Deed p)." 

So to hunt venereal beasts - public good. 6 B. 180, 274, 2 Bulst. 62, Comp. 231, 3 B. 212, 15 B. 334, (Comp. 296, 216 B. 253, 52). But beasts may not dig for them.


on another land, Deem. 2 Sam. 15.

Says, if other unlawful use of authority so given, not
a party a trespasser or tithe? For it is said, we salt. su
motions arising from a subject act, is, that the original
entire for the purpose of committing the unlawful
act. 30 Be. 213. 810016. 62016. 149. 191. 27. 272.
351. 5 Dec. 161. (Rev. 35; 44. in reason. P. 35; 72.) poor.
5 Dec. 162. J. But not rather, that there is a kind of law,
condition connected to its license, which is thus broken. The
law will not suffer one to be injured by its license.

E.g. a traveller, having entered an land, steals
any thing in it. A land lord having disputed about,
his or injures the trespass. 3 Be. 213. 191. 27. 32.
351. 5 Dec. 161. 213. 2. 213. 47. 18. 12. 2. 36 Dec. 161.

But in general, bare nearness, or night can
not make one a trespasser by relation. It supposes not
at a more omission. This is a tortious act. There
must be a misfeasance. 353. 363. 549. 398. 213. 6 Dec. 161.

E.g. a traveller at an inn, fails to pay for his inn.
Of Trespass (upon things real)

trespass, this is only a breach of contract. 310, 335, 340, 379.

So if trespasser refuse to deliver back his distress, or tenantry of demands, before the foundling. Rom. 13:11, 142.

Last general rule is said not to hold if a thief who having made an arrest or misuse thereof consents to deliver the suit. 310, 312, 314, 332, 336, 350, 379, 112, 117, 118, 119.

(For distinctions on this point see till next.)

In prosecution. — Reason: Because without notice it can not be given of evidence. Perhaps in the above view, this is not strictly a trespass by relation, for the arrest does not appear to have been originally lawful. Besides when a further act is necessary to complete what is begun by because of law; the omission of it must leave the theory that not unjustifiable.

When one enters upon the estate of another, due a license in fact from the latter, a subsequent abuse of license does not make him a trespasser by relation. 310, 312, 320, 323, 336, 356, 350, 379, 112, 117, 118, 119 (The action of trespass for injuries to personal property) declar'd, by distinction. 310, 312, 320, 323, 336, 356, 350, 379, 112, 117, 118, 119.

To constitute trespass, the act causing injury, it is said, must be voluntary, for if done intentionally and without fault no action lies. 310, 336, 340, 342, 350, 356, 350, 379, 112, 117, 118, 119.

But this rule is not true, in case in which the act complained of is committed by p. itself himself. Then if done does not regard p. intent. Hence an infant doing wrong, a lunatic, an idiot are liable both as to trespass.

Who can maintain an Action.

No person, except him, who has absolute, not privity, 

Injury done can maintain the action of trespass:


2. 174, 1st 62, 28. Trespass is an injury to another

3. 1st 62, 22. Trespass in an injury to another

4. 2nd 124.

It is said, yea, that no person can maintain an action 5 Dec. 186, 2 Dec. 187, 2 Dec. 384, 4 Dec. 184, 2 Dec. 78.

But it seems that the man holds only as between

a person done to his heir, who has right of trespass,
Of trespass upon things ease.

It has lately been held, that any actual page is suff. to support this action as a wrong done (post 225 1 East 246 6.

Secr. 159 7. 20 Bar. 166. 24. 1238. "Wills 22. 1160 81. " 35 405 [Secr. in Ejectment - then p. must have right of pafs. 3 244 7 5 Con. Inst. p. 3 35 2 2 Con. 177. Not as p. person having the right of pafs.

The person, in whom the freehold is, cannot generally maintain the action for an injury done to it, which in the lawful poss. of another actual poss. is of pafs. being possession (see supra) 5 205. 4 201. 20 554. 4 1581. Con. 21. 3. 4 2 party in poss. is a wrong done, see section Post 21. (and vide 22. case of minor at will.

And according to the theory of the law, he cannot recover, tho the poss. of the third person was unlawful. But in this case may, after regaining poss. maintain action by fiction of law, the not poss. as in fact at time of injury.

Post 21.

A heir cannot maintain an action, viz. tony, for if he has acquired part. of pafs. by entry, he may make a lease before, see ejectment 3 5 658. 2 205. 2 355. 3 20 Con. 1 22.

A person disposed of land cannot before re-entry maintain his action for an injury done to it, but the ownership, of his disposing 2 re-entry - not of poss. at time of injury 5 205. 4 418. 29. 20 222. 2 205 35. 3 4 555. 3 20 Con. 22.

In 23. post 72.

But suppose that his estate determined at a time so that he cannot re-entry 35. Inst. p. 2 205. 30 22 In this case, he may have the relief, by acquisit.
...he may maintain the action at defamation for such injuries. For, as to damage, the defamation is, after re-entry, considered as having been continuously in force, as in the action for money
profits after a recovery in ejectment. (Roch. 1. 57, 2. 125.)
(2d ed. p. 43.) 11 Co. 31, 46. 2 B. & P. 283. 2 R. 506. 1 R. 100. 1. 2 Roll. 554.) Laid with a continuance. Con. 1. 122.
Co. L. 37, 2 R. 57, 2 R. 306.

The defences cannot, however, even after re-entry, maintain an action at a stranger, for injuries committed before the defamation presently, for the above fiction obtains only as between defences & defensors. (Emble. 11 Co. 31, 5 Co. 70. 4. 106. 2 B. & P. 283. 2 P. 84. 1. 2 Roll. 554. 2d ed. 122.)


Reason of this said to be, that J. purchaser under defensor is supposed to have paid him a consider of £. his payg. upon defensor is liable to him; and neither of them ought to be twice chargeable. 2 East 246, 6. 11 Co. 316.

2d ed.

...The last rule holds, however, only good actions, not good proprietors. Hence, if a defensor may after re-entry expel the party of 3. land, which he had during the time as well as first defensor, whenever he may find them as guilty, can treat to (H. 116.)
11 Co. 31. 566. 6. 132. 2d ed. 85. 61. 66. 10. 472. 7. 2d ed. He being there for the property concerned. (2d ed. 116.)

To send in defensor? Defensor may have part of defensor for the act of defensor, i.e. for the first entry, before he himself.

To...
of trespass (upon things real)

re-enters for he was there in pos. 5 Con. Trespass, 2545, 404.

So of a trespass done by force or dexteris. 3 Jac. 164, 2 Rol. 353, 20.

418. post 72.

The person in pos. either of a freehold, a term for years, or an estate at will or by suffrage (3 Con. 3 Fr. 33, 2 Rol. 351.)

53 Jac. 167 may maintain this action. So of any person in actual pos. (1 East 446, 6, 59, 1) as a defenser.

But tenant at will or by suffrage as defenser, can maintain it, only as a stranger, not as a lessee (landlord), or person having the right of pos. for the latter may maintain a trespass in either case, when he pleases, in distress or tenancy. 2 Tit. 150, Lec. 37, 2 Tit. 175, 5 Jac. 167, 2 Rol. 351. 1 Tit. 357, 126, 69.

Terms of tenant for years (5 Jac. 167, 2 Inst. 103, 183, 109.) he may subject lessee.

If lessee at will, it is as of lessee's entailment of land. he may have trespass either. 2 Tit. 146, Som. 121, 1st, 5 Jac. 167, Con. 1 Fr. 121. post 55. 1 Cre. 117, Esp. 50.

Said that tenant at will cannot maintain a trespass to anyone, who rising by colour of right. 5 Jac. 167, 412 (on 33b.) 2 Sec. of the def. was actually a lessee; in pos as another, any pos? is sufficient. 56, 49. 5 Con. 3 Fr. 112, 2 East 246, 6.

Lessee at will, it is said, may maintain a trespass to a stranger, if the trespass injures the land, because pos?, if lessee at will, it is pos. of lessee. 3 Con. 3 Sup. 2 Rol. 551, Esp. 56.

Of lessee of a term for years reserves the trees, he may have trespass quære to for cutting down or injuring them during the term: for by preservation of trees, he is to use with, thus he retains. 5 Jac. 167, post 42.

If lessee at will, cannot maintain trespass, may
may have this action at law; for such an act determines the
estate, it makes him a trespasser. Stone v. Trespasser, 12 Geo. 37.
1 Chitty, 310. 630. Post 4o.
A person entitled to the existence or harbor of land may
have an action of trespass quare et. for a trespass done to
it. 3 D. 169. 19st 4. 9th 1811. 1 Chitty 552. 549. 11 Geo. 30. 1st 8.
E. 4. 21. 259. 41 D. 213. but he must be in possesa
of the land at the time of bringing the action, the right of action accruing when
the injury is done. 259. 41 D. 213. 259. 41 D. 213. 259. 41 D. 213.
2 D. 169. 1st 8.

The action lies for an injury to land unenclosed as
the word "close" does not necessarily signify an enclosure. Chitty.
2 D. 169. 1st 8.

If a higher way may have an trespass quare et
for an injury done to it. 3 D. 169. 1st 8. 259. 41 D. 213. 259. 41 D. 213.
2 D. 169. 1st 8.

If land is possessed by A., it is done by B., and is to have half the
cost, if it is said, cannot join with the trespasser in joining
A. for a trespass before it is done, because not in possesa (3 D. 169. 1st 8.
E. 143. 2 D. 530. 549. 2 D. 530. 549. 2 D. 530. 549.) but the holders that they might join for
an injury done to A. (3 D. 169. 1st 8. 259. 41 D. 213.) the not in trespass, quare et
which all be lost by it alone. (259. 41 D. 213. 2 D. 169. 1st 8.
2 D. 169. 1st 8.

The husband & wife, may join in this action for trespass, done on their lands, for injuries done to their lands, & damages received by them by trespass. Esp. 424. Co. L. 10. Sec. 182. (See the law of husband, \\
& wife.)

Tenants in common (as well as joint tenants) do join in trespass for injuries done to their lands, & damages received by them, & the damages to be recovered are not so Esp. 424. \\
Sec. 318. Co. L. 198. 2 Bl. 149. 2 Bl. 131. 3 Bl. 577, see Trespass in common.


If a commission of bankruptcy has been issued to any one, who was not an object of the bankruptcy laws, & who in his takes away his lands, house & this action is then, his commission being void. Esp. 398. Stiles 332. How 480.

For what injuries, action lies. & contra.

Every person is answerable, not only for his own trespass, but for those of his cattle; & if they by his negligent keeping stray upon another's lands, much more if he feeds, & drives them, he is liable for the injurious acts of his cattle. See action of Trespass 336. 2 Bl. 118. 3 Bl. 179, Post 5. 1.

Secs. of the rents, negligence, or fault of another's land, as you want of a sufficient fence, which it was his duty to maintain. 3 Bl. 131. 2 Bl. 505. 3 Bl. 121. 3 Bl. 347, 4 Bl. 67, 5 Bl. 71, 210, 211, 4 Bl. 455, 456. Post 9.

But, in this case, if partly injured, he has his election of remedies. He may either distrain the cattle, as damages, or \\
he, then impose his real satisfaction made, doing \\
this action. 3 Bl. 111. 3 Bl. 179. Esp. 356. 7.

The action lies 48. 1. registra of cattle, because he specifies \\
cows, & him only. Accords to others it lies 48. 2. of agistria, or cows. \\
5 Bl. 131. 138. 9. 2 Bl. 505. 346. Esp. 327. Post 8. 45. 

\[\text{Verte,}\]
Of trees, p. 13.

But he cannot regularly pursue both remedies.

Thus, if in distress, he cannot maintain trespass because he was not in full satisfaction, 5 Dace. 179. 1 Rob. 246. 12 M. 353, 347. (For the distinction see Capdevila.)

It has been held, that if by a continuous pull of a tree, the land of B. be any diminution, there is no damage at all. 6 1 Rob. 469. 12 Mac. Disturb. 3d 1 Rob. 717. 2 Du.

For B. cannot maintain trespass. 13 B. Com. Tres. C. 1 1 Rob. 353.

[see two written rules] - are not p. 125, which mention instruments of mischief in A's hands?

If the tree of A. falls down upon A's land of B. A. does not take it away, the action does not lie. 6 Dace. 717. Power of the lopping of a tree which grew on another land. If falling might by proper caution, have been from the A. 12 N. 897. Doug. 749. arg. The falling of the tree is not the act of A. the lopping does consequent falling arise. The former is inevitable, the latter not so.

If A's timber falls upon B's land without damage, it is not, by itself, done unless negligence. B. is liable in trespass. 9 2 N. 2578. In case, I presume.

If A's least, being stolen, is put into the box of B, this justly is in going after it, he acts his 4th harm. 5 Dace. 752. 2 Bell. 557.


If the fruit of A's tree falls upon B's land of A, he is not liable, p. 124. Doug. 749. arg.

But if 3 roots of a tree, standing on A's land extend into B's land of 15. A's are tenants in common of the tree. Trees of roots do not extend into B's land, the shadow 15. But in this case, the whole is A's. 5 Dace. 85. 5 Rob. 347.
If A., being bound to repair a bridge, cannot do it without going on B.'s land, he is justified in going on to it by necessity. [5 Bar. 179.]

If A. has oak trees, growing on his own land, B.'s ladder is justifiable in going upon A.'s land to cut it taking away this right is implied in the rule. [5 Mac. 180; 2 Rob. 605 (p. 26.)]

Once holding, that if one goes upon the land adjoining a navigable stream to row a boat, if only it is justifiable for a public good. [5 Mac. 180; 12 Ray. 168; 6 M & B. 169.] But this is not law. [3 T. C. 233; 13 B. & C. 295; 36.] Not allowable, gift of property.

But it seems to be agreed, if a public highway is passable, travellers may go on the adjoining ground, required by public convenience. [1 Ray. 228; 6 M & B. 169, 269; 7 Mc. 283; 12 M & B. 163; 3 Co. L. E. 400; 25 Co. L. E. 276; 8 Co. L. E. 796; 4 Co. L. E. 400.

Qn. if the adjoining land is enclosed? [1 Ray. 228.]

The above rule does not hold, however, as a private way. The public, not interests in it, it is granted duty to keep it in repair. [5 Mac. 180; 12 Ray. 168; 6 M & B. 169; Con. supra, con.]

A person cannot maintain this action for non-juris to graze, growing on land, in which he has a common right of common; for the he has a right to take it by finding his cattle, he has not. [5 Mac. 167; 12 Rob. 532; 6 M & B. 169.]

Nor is the property his - the right is incumbrant. [2 D. 250; 333.

If defendant in the enjoyment of his right of common, he may have trespass on the case. [See Nelson's Digest, p. case.

Entering another's house, without permission, a lawful authority, is, in stripping a trust off, the room in firm. [5 Mac. 167; 12 Rob. 532; 6 M & B. 169.

But if the owner has unlawfully taken another's goods, you...
...of trespass, upon things real... into his house, &c., may go in after them, &c., door being open, without permission - the owner being the first owner - down. 5, Bac. 182. Co., 3, 166. 2, Rolle, 8, 56. 2, Dub., 1855. The law gives the license.

So if he enters to suppress a riot, affray, or disturbance, 3, 189, 182.

So the law allows one to enter the house of another, the door being open, to pay a debt, and money, there payable, in 1716, 2, 214, Esp. 380.

So to execute process of law, 3, 182.

And a house may be broken open, for the purpose of executing criminal process, provided the officer first demands admission, or declares his cause of demand, but otherwise he will be a thief after, 5, Bac. 183, 5, Co., 46, 460, 460, 460, 460.

But a sheriff cannot justify the breaking of an outer door or window of another dwelling house, for the purpose of arresting his body or taking his property in civil process - 3, 189, 182, 5, Co. 467, 187, 187, 187, 187, 187, 187.

But this privilege of castle is construed very strictly. It extends to no other than the outer door and windows, not to inner doors, chests, trunks. &c., these, after demand of justice, may be broken open, by 4, Bac. 469, 187, 187, 187, 187, 187, 187.

The privilege does not extend to a rent of habitation. profession, 5, Co., 46, 2, Bac. 179, 179, 179, 179, 179, 179, 179. Gilmer, 3, 3, 3, 3, 3, 3.

For further distinctions with 'castle', p. 3.

An officer is justified in breaking a house, &c., on a lawful search warrant. 3, 4, 187, 187, 187, Esp. 399, 399, 399, 399, 399.
But all general search warrants are illegal, even if not justified—strictly so. Warrant to search for goods in a suspect's place—Est. 299, Tit. 212, 26 Vic. 27329.
Scn 273, 21st 31st. Earth 409, 11th 444.
And as the law is now settled, no search warrant is legal, unless it is issued upon the following restrictions—
1. The party applying for it, must make oath to facts on which the application is founded, to his belief that the goods are concealed in such a place. 2. It must be served in daytime time, & by a known officer. 3. It must be executed in the presence of an informer—Est. 399, 1st, 492.

The warrant being legal, the party who obtained it, is justified in not, by the court, to the magistrate. &
officer are justified, whatever the event is—Est. 299, 1st, 27329.
The party assumes the risk. Est. 215.

For theft trespass in barn, see 25 & 26 Geo. 4, c. 422.

Against whom action lies, re conditio.

It has not run over for years, for cutting timber, nor
for carrying away (Est. 401, Tit. 393, 45 & 62, Est. 391)
unless not in purs of the laws (arts 14.) The remedy is by
suit of waste.

But if after being cut, they are sundered to remain
trees, or trees carried away, trespass by lessee is not in-
deed for the cutting, but for carrying away. This known
is not trespass upon est. 400 & 45 & 62. The property is
then a chattel personate, of which the lessee has a perfect
See "founder." 5. Same of the cutting & carrying away are one
continued act.

If one leases land, excepting the tree, lessee is liable.
in trespass for cutting them. The lease does not entitle him to the profits of them. As to them he is a Stranger. Esp. 400. 6 Co. 57* (ante 22.)infra.

As the action lies for lessee at will not before for cutting timber trees upon the land, the very act determines the estate, this must be lessee. Esp. 400. 10 Hen. 8 Co. 57* Eliz. 47. 1833 (ante 22.)

So, if he does any other positive injury to the subject. 5 Bac. 188. 5 Co. 18* 6 Co. 5. 784. 72 Eliz. 125.

But it lies not in such case, as tenant by sufferance, unless lessee has entered for the act does not determine the estate. Of course, before entry, he is not a trespasser, nor stranger, but a tenant in possession. Esp. 400. 21 Eliz. 131.

If the trees are excepted in a lease for years (ante 22.) infrav, not of injured, a destruction by lessee cattle, the action does not lie; for lessee has peace of his soul, so right to trust his cattle upon it. Esp. 180. 8 Stat. 739 (ante 22.)

This action will lie if a lessee, as a lessee, not as his

pay, intention not regarded. 5 Bac. 188. 7 Hen. 8 Co. 10* Eliz. 125 (ante 125.

Every person concerned in the trespass is liable to the action. 42 cases, 66th. 10 N. Y. ac. 21, all principals. 6 Bac. 185. 16 Eliz. 124. 31 Eliz. 30. 54 Eliz. 612.

E. g. If A. commits a trespass, B. to commit a trespass, it harms it, 34 cases as 12. is liable. 5 Bac. 185. 51 Eliz. 609.

If A. agrees to a trespass (i.e. to the benefit of it) commits to for his benefit, by B. he is liable, the he does not concur request B. to commit it. 5 Bac. 185.

Know one person is liable, for several trespasses, see "Masb. 66th.

If several join in a trespass, 2 parties injured may have partners

as one a new a all of them. 5 Bac. 185. 8 Co. 189. 5 Sel. 469. 715.
Said by Bacon, that if the party injured has brought his action vs one of them, he cannot bring a second action vs another for the same trespasses. (5 Bac. 157) & that, where

divinity of p. former is a good plea in abatement.

Not Dam. He may sue each in a separate action.

5 Bac. 172. Tab. 420, post 52.

But he can have only one satisfaction & one

recovery of damages. (5 Bac. 115..lv.3.y. Velo. by Voco. 66, 63, 743.415.

Therefore a formed recovery of one of them, is a back

an action afterwards vs the other of them, for the same trespass.

5 Bac. 157, 4 Bac. 115, lv. 367, Velo. by Voco. 66, 63, 743.415, post 64. (53)

If a person who has granted the custody of bulls

of his lands to another, disturbs the quiet & the enjoyment

do, his trespass lies vs him, the grantor. 5 Bac. 157, by 285, ante 2.

The action lies vs lessee for life, 20 years, for a trespass

upon lessee's johns. 3 Mass, 159; 5 Bac. 187, ante 2.

If A's cattle being ejected by B, break into C's close,

B is liable, according to some opinions. (5 Bac. 187.)


If B's cattle pass upon the delivery of A's fence into the

close of C, C's trespass is the defect of A's fence, but the close

of C, C may have trespass vs A, for C was bound to fence

A's cattle only, as B, Ck. put into his close. But A

may then have cases vs B. (1 B. divided under 31. 743. 2

31 Bac. 189. dimin. 181. 10 Eas. 379.

* Said also by Bacon, that an acquittal of the debt,
in the first is a good bar to the second. (5 Bac. 157, by 280. 743.

which does not support the entire proposition. Not

so as it stands. *)
trees pass may be proved in any way. 1st. CoL. 230; 232. 
post 6. 1. 73.

592. 
So the action may be lost at summa for a joint 
trees pass, or to each separately in a separate action. 5th. Bac. 
100. 193. 5. 190. 266. 132. ante 4. 3. 1st. 317.

But it is said, that if it appear upon the face of the 
declaration, that a certain person, not sued, was party to 
the trees pass with the D if, the declaration is ill. 5th. Bac. 192.
1st. 191. 166. 192.

2d. as to the principle, not summa, 1st. 192. 
5th. 32. 638. 132.

It is argued how now, by all, that if a declaration 
charges the wrong to have been committed by D if, together 
with another, to which unknown, it is good. 5th. Bac. 191. 1st. 191.
But it makes no difference in principle, whether those, not 
joined, are alleged to be unknown or not.

The practice is, to take no notice of declaration 
of any party to the trees pass, who is not joined as D if. And 
there is no need of mentioning any other than the D if. The 
act of all, is the act of each.

The trees pass must be laid to have been done, with force 
towards (veri mense) it at the time, these at 6. 1. new malle.
56. 19. 19. 1st. 536. 936. 950. 196. 98. 236.
506. build 370. 66. 16thow 22.

Reason, of the rule: In conviction of a wrong commit 
ted with force, p. dif. was at 6. 1. find, p. dif. a caper in 
dems. if the wrong was not forcible as in aiding or contrive 
the p. case to this p. p. any p. p. dif. was a miscarriage of 
princip. 2d. Bac. 506. 7. 576. 191. 5.
Of Trespass (upon land real).

But by St. 16. c. 17. Car. 2. omission of these words may be amended after verdict (5 Baco. 192.) but a declaration is ill in general denarius. Sal. 536. 681. V. 408.

Here, indeed, by St. 5 W. 5. 11. the condition pro fine is taken away. To 60 shillinges all judgments in the two classes of cases (ante) destroyed. Pluffed or signing judge pays 5s. 8d. for the fine to 1 crown, 0 recovers it back as costs, from Decit. 5 Baco. 192. 1. Decit. 84.

Some holdeth by G. Holt, that since 4 Stat. 7. words in returns, are not necessary. 2. Ray. 935. 5 Baco. 191.

But this is not done, says he. The condition still remains in Eng. to be in the provisions of 4 Stat. 7 W. 5.

5 Baco. 191. 2.

'In how these words are not, on principle, matter of substance. No fine, no condition, no difference in judgment, no such fine as that of 5 W. 5.

Once decided by our Sup. Ct. that a declaration omitting both sets of words was good, on special demur. 

(Boysworth v. Philips. 1796.) Setl. 74. what fine was prayed out, but not present.

It is a general rule, that the injury for which trespass is not, must be specifically described in the declaration. (3 Baco. 191. Pat. 225.) I.e. no evidence can be given of any particular wrong, for which damages are claimed, unless it is specifically charged, e. Trespass for breaking plough house, taking corn in taking carrying away his goods, not provedable. Such reliance, since the action arises by trespass, (at Pat. 225.) to avoid invidious.

164. The declaration must state the value of the thing.
Of Trespass (upon things real.)

for the taking or injuring which the action is set out of
grapes (sozen down) &c. 5 Bac. 196. 1St P by. 2 dec. 2320 43024607.
35 Ray. 113. 37Dea. 3 686 497) but it is not necessary in all
cases to state any quantity (So example) 5 Bac. 196. 235.
cattle's eating feed, destroying buildings.

But the omission of the value is void by verdict
4 Bac. 1435. 23 p 467 200. 1398.

In trespass of a permanent nature where the in-
jury is such as to be capable of renewal or continuance
where it is renewed or continued on different days, [the
may recover for the whole, or two actions, laid with a con-
tinuance.] 3 BL 212. 2 Rolls 546. 2 Ray. 240. 244. 447. 417. 6 Sim. 8 Mac.
(1873) by continuing or leading down grapes to 72. 3. and
of trespasses which may be laid with a continuance; con-
suming a leading down grapes &c. 2 M. 212. 207. 1078. there
are capable of renewal or continuance.

Or he may bring a separate action, for each days
separate injury. 5 Bac. 197. by. 320.

Saying the action with a continuance is at-
losing the injury to have been committed by continu-
ance from one given day to another. 33 Ch. 212. 5 Bac. 193. 7 Ray.
240. 25 Ray. 396. 1st ment. 410. 2 Hill 444. 44223. 322. 332.

But where the several acts of trespass terminate in
themselves, or being once done cannot be done again, continually
they cannot be laid with a continuance; the continuance
or renewing the injuries by. 2 Hill 444. 44223. 322. 332.

But in these cases the several acts of trespass may be
laid to have been done at several days times following.
...of trespass, (upon things real)

Such & such a day, not continually. Ex. 20:7, Deut. 21:2, Is. 63:15. 2. Ray. 315.

But if several trespasses are charged, only one day laid in the declaration, no evidence can be given receipt of the acts of done on one day. Is. 20:7, Deut. 21:2, Ex. 20:14. 64:1, Is. 63:15.都被

There are two ways of declaring with a continuance.

1. The trespass may be laid, with a continuance for the whole time, from such a day to such a day. This mode is proper when the trespass was continued without intermission for a longer term than one day. 64:1, Is. 20:7, Ex. 20:14. 63:15. cattle continued on 135 land several days.

2. Where the several acts are not committed in continuity, but by intervals, on different days, they shall be laid, by continuance, on divers days, but divers times from such a day. (20:7, Ex. 20:14. 63:15. 64:1.) but the particular intervening days not to be laid. (20:7, 63:15, 64:1.) Ex. Destroying herbage on different days, but not continually. Deu. Is this distinction attended to in practice?

When there has been an act of pensing cattle, if all the acts done together may be laid with a continuance: the thief, trespassing pens, having been continued 12 or after re-entry, thief has been again pens, again in waste. There may lay the whole with a continuance. Ex. 20:7, Deut. 21:2, Ex. 20:14. 63:15. 64:1. Ex. 20:7, Deut. 21:2, Ex. 20:14. 63:15. 64:1.

If trespass, which cannot be laid with a continuance, as 63:15. declared, is ill even after median. 63:15. but 63:15. Deut. 21:2.
6142. But if some of the trespasses, notwithstanding a continuance, may be so laid, others cannot. A declaration is good after verdict.

(As the damages are entire.) For it shall be intended that the damages were ascribed only for the former. 5 Sess. 200, 3 Sess. 216. 1 Thuc. 376. 7 Show. 176, 29 Bal. 624, 2 Ray. 223, Esp. 403. (See further distinction & Ray. 239, 240; per Pound, J.) It is good also, in pleading in demurrer, as some of the trespasses were not laid, 250 — a sufficient cause of action will arise.) Do is this come in principle?

The general issue in this action is not guilty. Esp. 401.

And if a person indicts for a trespass but confesses
the only of his confession has been made upon principle,
he is not found after imposition to plead not guilty as an action
but for the same trespass. Esp. 401, 2 Mounk 333.

At C.B. a special justification must be pleaded, prince.

by not given in evidence, unless, a justification, for &c. &c. &c.

If not given on evidence, unless, a justification admits to avoid this, evidence inconsistent with the plea, Esp. 400, C.B. 292, 1 Sess. 61, 12 Ray. 702. 2 Sess. 247. Then, under one Stat.

But, 250. may give in evidence, unless, a justification, or
least. For, for this, disproves the material allegation
of the declaration, viz., that the defendant, &c. &c. &c., 250.

So, a justification may prove, that he is tenant in
common, with the plaintiff, for the action does not lie between
tenants in common. But, that plaintiff is tenant in common
with a tenant in a suit, still be pleaded in abatement.

6152. A plaintiff may justify under several grounds, without
pleading the first (i.e., when the action is by a party to a suit,

2027.}
Of Treasons upon things real.

- If a jury are in any way the unit, and if a person acting in aid of an officer, as an assistant, may justify, as the officer may do, but if request is unreasonable. Exp. 412. Tol. 107. 409.

- Acco. & satisfaction is a good plea in this case, but an acco. alone is not. Exp. 415. Tol. 126. Peir. 39. 76. 305. St. 27. 30. Tol. 126. 116. 125. 298. 190. 191. 192. (See "plaints of a false quit.

- So is an order of arbitrators. Exp. 411. 66. 66. "This is upon:

- Release is also a good plea in law. But if release before action, that is pleaded, there must be a license, that he is guilty afterwards. Exp. 415. Tol. 222. Tol. 106. 117. Reg. 229. (See "plaints of a false quit.

- If the action is not for a joint trespass, a release to one is a discharge to all. Each to answer for the acts of another. However, if there is a release of the whole, Exp. 415. Tol. 60. 41. Du. 282. Tol. 332. 5. 97. 66. 449. 4. 39. 279.

- But if the action is not for two, whoever in pleading is found guilty, it damages all. A false plea may in a way prove as to the other. Exp. 415. Tol. 70. 60. 60. 232. 5. 97. 66. 449. 4. 39. 279.

- But if the action is not for two, whoever in pleading is found guilty, it damages all. A false plea may in a way prove as to the other.
Of trespass upon things real.

Now settle that a real, or ree, may be entered as above, in the earlier stages of the action, that the other defeas are not discharged. Not in nature of a trespass. Davis 207. 210. 213. 232. 242. Earth 19. Rules 98.

So, if there has been one only of several joint trespassers, I recover my profits here this is pleadable in bar to action afterwards but if the others can be but one recovery.

By Stat. 21. fac. 1. defeas may plead in bar a disclaimer, that the trespass was by negligence, in voluntary, venon of theft, without before action brought - but he must plead that same be pleaded. Stat. extends only to cases of involuntary trespass to disclaimer. Ex. 416. P. 197. 212. 578. Lenth 216.

No such Stat. in Con.


The plea of title in trespass amounts to a good issue; is therefore not allowed. Plead it may be specially pleaded by giving color. 393. 399. 4. Bar. 102. 117. 208. 9. Legal 51. 126. 150. See "Pleading." 79.

In Con. a special plea of title is warranted by Stat. ( Stat. 406. 406.) as it may be given in evidence in particular.

The Stat. provides that when in an action of trespass before a single, master of law, as a justice of the peace, if plea title, notice shall be made of it. The matter of fact shall be taken for confession of the defe. Shall be bound with one or more sureties in a recognizance, that he shall pursue his title, and bring a suit for the value of his title.
Of Trespass (upon real estate)

at the next lot of Comm. 30, of the county in which the trespass is laid to 2 pay all costs & damages that may be recovered against him.

If deft. refuses to become bound, his plea shall stand; if the test. shall try the case as in the gent. process of ease) statute 625, "upon proof of the trespass committed." If he becomes bound (at suiffa) the record is to be certified to the next lot, & if he fails to bring forward such suit as is defective should be recorded, & soi for future on the recognizance. Stat. 662.

The practice in this State is not however, for deft. to bring a suit in C. C. but to enter in that lot a copy of the justice's record upon that to make his defence. 2 St. 80.

And if in trial, the deft. does not move for his title, & shall become liable to damages deo. 2 St. 26, 2 St. 80.

In C. C. deft. must alides by his plea of title cannot change it. 2 St. 80.

A plea in this plea of title, is no bar to an action of ejectment, & an unsuccessful party does not conclude the title. 2 St. 159. Title 371. ejectment of a higher nature (6607). As it is conclusively as to the same fact a title (which was put in force by a justice's action) as an estoppel. 3 East 340. Am. St. 2175.

Title may be given to evidence of title, under what plea, before judge, minister. The record does not import to decide the title.

As to a new assignment see "Plaing." 5 Mac. 210.

Accord & satisfaction given in evidence unless the general issue is not stopped. (2 St. 21, 3 St. 357. 365.) The good in done. (Title by 2337.)
Of the Evidence.

The evidence must follow the issue, i.e., no matter going to the merits, but not entailed by the issue, can be given in evidence. Exp. 417; 2 B. & C. 1165; 8 Bar. 1085.

But under the general allegations of alien ownership, plaintiff may give evidence of any matter of aggravation which will not itself support an action (i.e., a general issue). But no evidence can be given of a fact, which itself supports an action for the plaintiff, unless it is alleged. Exp. 417; 5 B. & C. 225, 2 Bar. 1114, 1115. Dec. 21.

If plaintiff puts out the abutments of his claim, he must prove them as facts. But if an abutment is laid "to the east," proof that it is W.E. is sufficient. Exp. 417; 2 B. & B. 677, 678, 679; 41 N.Y. 114. "Execution" 39.

When the action is laid with a continuance, plaintiff must confine his evidence to the time laid (Because it enters into the description?). But he may vacation, continue, and prove a trespass any day. Exp. 417; 8 Bull. 86 (and note). Or he may give evidence of only part of the time, laid with a continuance. Bull. 86.

When it is thus laid, plaintiff must prove a railway, when he can recover for the first thirty years. Exp. 418; 4 B. & C. 222, 223. This rule holds only when a plaintiff has been ousted.

If plaintiff makes a new assignment if gent issue is pleaded to it, he cannot prove a defect of the trespass at the places mentioned in the plea in bar, that is unjust. Exp. 418, 4 B. & C. 492, 493; 5 Lem. 261; i.e., when the trespassors and their assignees are alleged to be at a different place from that just-mentioned. (Lew. 741; 763; 41 N.Y. 164.) They are generally so alleged, not always
Of trespass, upon things real.

S. Luke, xxii. 166. If they were here so they are no more a trespass in relation, by a new assignment, which the acts justify. If those newly assigned are one transaction. Cite. Entering house, breaking furniture &c. 1 T. & C. 37. 80. 148.

If on a plea of justification the defendant as much as amounts in law to a justification, it is sufficeth, tho' he do not prove the whole, as Venus. Esp. 419. y. 175. 148.

When the action is by a stranger to an executors a leeff, and the act under it, has committed a trespass, p. 815. must shew in evidence a copy of the judg. Venus. If by a party to the exec. (as p. deft. in it). Esp. 419. 111. S. Ray. 733. 15 B. n. 2031. 7. 57. 701. 0. 33.

As to recovery damages, when there are several defts. See "Action of Assault & Battery." Esp. 420.

For costs see Phil. 6. 674.
Of Ouster & Remedies for it, viz.

Ejectment & Dispossession.

(For the real actions at I.S. see 3 Bl. 179.)

Ouster is an injury by which a tenant in possession of land is wrongfully removed, or tenant out, from it. 3 Bl. 179.

The word "dispossession" denotes an ouster of the tenant; the word "dispossession" an ouster of an Estate. 4 Bl. 109.

3 Bl. 180, 199. For the different species of ouster, see 3 Bl. 130 ff. Ejectment is an action by which a tenant for years, when ousted of his tenancy, recovers it from the wrongdoer, together with damages. 3 Bl. 199, 205, 207, 208, 209, 210, 3 Bl. 109.

Dispossession (see above) is an action by which a person, being ouster of his feoff, recovers it from the dispossessioner, with damages.

An action of dispossession is strictly a real action, so is the action of ejectment called a real action. 2 Bl. 160, 208, 263. 3 Bl. 199. The term does not exactly correspond with the judicial term. 3 Bl. 113.

Anciently, the plea in ejectment recovered damages only, no restitution. The iff ejected by the lessee, he might recover the pledge by an action on the covenant for quiet possession. But if the ouster was committed by a stranger, the lessor had no other way than by ejectment in which he recovered damages only. 3 Bl. 187, 200, 206, 210. Any lessee might, in a real action recover pledge; if the lessor afterwards however, when the once ejecting began to compel the lessee to make specific restitution, the 30 of
Of Ejectment and Possession.

Statute also adopted the same mode of doing justice by rendering judgment for the recovery of the land, after issue out of possessor, the declarator's demands damages only. 2 Salk. 200, 124, Flax. 11. There is a land in a holder's recovery. 1 Coxe. 63.

This practice appears to have been adopted as early as the reign of Edw. 4. (3 Bl. 201) Since that time the remedy has been specific.

And for a long time past, this action the plaintiff nominally when the owner of a term only, has been, in law, the commonest almost the only method in practice of trying the possessory title to real estate. It has been used for this purpose even since the time of Gen. 3 Bl. 200, 1 Bl. 168. 2 Cm. 667, 8.

This is now done by a string of legal fiction, and it puts no great strain on the above rule, in consequence of the judgment, directly by action of depisition. Since the action has been thus used to try, before title, the damages recoverable at it, are usually nominal (3 Bl. 205, 2 Bl. 111). In real actions (such as adverse) the damages are recovered. 2 Bl. 181, 160, 657, 658, 237, 3 Bl. 187.

For what things to demand lies.

The action will not, regularly, lie for any thing which the possessor cannot claim joint as the executor of which is the same thing) for any thing on which an entry is fact cannot be made. 1 Bl. 206, 2 Co. 142, 1 Bl. 129, 2 Bl. 116.

In general, therefore it will not lie for a tenant in possession, heir-at-law, or thing lying in grant, merely. 1 Coxe. 937, 1199, 2 Bl. 163, 24, 2 Co. 202, 2 Co. 146, 3 Rob. 52.
OPINION & DECISION.

But it will lie for land laid out as a highway in favor of the owner of the soil, as the proprietors in Sec. 18, 5th ed. (1809), 26th ed. of 1810. For laying out a highway does not divest the right of soil. But the land is recorded subject to the easement. Esp. 428; 390; 1
3 Cap. 167; 110; 113; 3 Cap. 54; 54; 1009. "Impediments: The law.

So it lies in favor of the grantee or owner of his estate of land, as the soil belongs to another. 2 Bar. 167; 5 S. 162; 5th ed. (1810), 230; 216; 401. But if it belongs to the grantor, title the crop is taken.

But it lies not for a watercourse or stream flowing to nominee: for it is conducive to the use of the crop. It shall lie for so much land covered with water. 2 Bar. 87;
3d. 143; Esp. 428; 167; 93; 18; Brown. 142.

The action must lie for an entire thing, e.g., it will lie for a certain part of a close or tenant. Esp. 428; 5th ed. 695.

Who may have the action.

General rules: No person can maintain an action, unless he has at the time a right of entry (the action being founded on a right of property) for the tenant to the property being held under a lease, yet the fiction will not aid him, nor is an actual entry, of the lessee, requisite to entry. Where the parceling is held to be an entry. Esp. 428; 5th ed. 671; 3d. 145; 106. 117; 180; 120.

2 Bar. 163; loc. cit. 68; 10; 143; 177. An ultimate right of property in lands is tried in 2d. by a real action. 3d. 173; 170; 170.

E.g., Tenant in last alinan the final title, it is a discretion open to him, cannot enter, of course he cannot maintain ejectment 2d. 172; 171; 2.

Esp. 428; 5th ed. 595. This may be by an action real. 2d. 171; 170. 5th ed.
Of Ejectment v. Disquisition.

So if the lender of p.l. or a person under whom he claims have been out of p.l. 20 years in Eng., while having the right of p.l., he is barred of this action by the Stat. of Limitations, 12 Geo. I., which takes away his right of entry, Esp. 4812, 1 Will. I. 208, 2 Will. I. 15, 7 Will. I. 103.

Our Stat. limits the right of entry to 10 years after the title accrued, Stat. (25) 438. 5.

Both Stats. have the usual savings in favor of in sajant, from court, persons insane, imprisoned, beyond sea: Stat. 435, 3 Will. I. 509. In Eng., ten years are allowed after any disability removed, 12 Geo. I. 2. Secs. 4 and 5. Decided, in Eng., that the preceding disability cannot be joined with saving clause. 6 East 20. 4 Mansel. 32. Bush 18. Bradley 6th, Calm.

If the Stat. has begun to run, a subsequent disability will not save the title. The disability in p.l. proviso being only such as exist when right of entry first accrued, 206, 6 East 20.

The p.l. is entry of the owner of p.l. and the right of p.l. must have actual p.l. and not possession, so that if he cannot prove a p.l. or fact within 20 years, he must be forsaken. Esp. 432, Bull. 101. This 142, 55. Calm. 42. The person has been in p.l.? Esp. 203, 206. In case of present p.l., no person will be let in to defend. Esp. 432, 6 East 29.

This rule is not adopted in Calm. Here a right of p.l. is declared, even in trespass, equivalent to actual p.l. And the stranger in p.l. still has the right of p.l., p.l. itself being sufficient to found this action. Esp. 432, 43, 48.

If the owner brings ejectment within 20 years, it is nonsuit, that does not prevent a Stat. from running Esp. 432, 55. 30.
Of Ejectment and Disceiion.

An undoubted possessor, for 120 years, in England, is not only a good defence to the action, but a sufficing ground on which to support it. 3 H. 1, 400. 12 R. 2, 492. 3 Bac. 504. 17 S. 142. Possessory title acquired by occupance.

In Eng. houses, such possessor confers the possessory title only. 10 T. 2, 493. 18 G. 2, 492. 3 H. 142. Last Pet.

In Conv. such possessor carries with it a complete absolute title. This I suppose is upon the principles that as he who has the title has without entry the possessor is in law, when his possessor is lost, the title is lost with it. 10 R. 2, 493. 18 G. 2, 492.

Succeeding in title in continuity, for 120 years, bastards in real. (3 H. 1, 400. possessor must have been present within 15 years.) 11 R. 2, 443. 2 R. 2, 453. 2 B. 2, 461. 12 R. 2, 492. Last Pet. does not confer a title on last possessor, so that he cannot maintain the action.

But the possessor, which bears an ejectment of good title, under the Stat. is an adverse possessor only, if not adverse the Stat. does not run. 3 H. 1, 400. possession tenant or tenant in common is in title possessor for 20 years. Not as to the other. So, if a new tenant remains in possessor as mortgagor. 12 T. 2, 492. 2 B. 2, 461. 14 B. 2, 453. 3 R. 2, 492. 3 B. 2, 461. 4 Q. 2, 492.

In these cases there is no presumption of advenat.

But adverse possessor by one tenant in common, &c., is better enough. 12 H. 2, 492.

If therefore, one joint tenant or tenant in common enforces to hold the whole estate by possessor must prove his or adverse possessor of 20 years. Sews his possessor is that of his companion. 3 H. 1, 400. 2 B. 2, 461. 4 Q. 2, 492.
Of Ejectment & Disceisin.

But what shall be deemed an adverse possessor in such case is a person due to be tried to the jury, who may presume an onus from great length of sole possession. Esp. 424, 101a, 217.

If the party in poss, claims under the party ouster is no title acquired by p. pos. not adverse to own cestui que bane. 21. Tenant at will for years in pos. 2 years, also not barred. Esp. 425. Bull. 103. Sec. 1 Post 68, 51. 101. 122.

Ryman v. Morton 6. 102 1811.

So pos. by particular tenant does not give possession man or reversion (Conf. 211). The has not p. right of pos. 215. When adverse pos. is valid or by tenant alone then & be some proof of actual ouster, the presumptions evidence of the fact arising from circumstances may go to the jury. Esp. 425. Bull. 109. 1 Roll 639. 37. Tenants declaring that he holds under a Stranger.

But it has been held that the tenant who has taken a lease from a Stranger, is no evidence of adverse pos. unless the latter has actually taken non-crown entry. Esp. 425. 1 Rol. 639. (Sec 215.) 101. by a Stranger and a claim of right is adverse. East 297.

If the action is founded upon a lease as a lease giving a right of re-entry for non-payment of rent the actual entry is not necessary to maintain the action. Esp. 425. Doug. 460. 3 Bw. 139, 189, 291. 1 Sax. 339. 211. Bull. 103. 22. Possession of lease, entry due, but draft is not the same serves of evidences appears to have been the other way. Bw. 172, Sax. 339. 1125, 173. 180. 62, 537. 246, 218. Kat. 2 49, 93. Esp. 466.

And the last rule it generates wherein entry is necessary to complete jib's title seems to me necessary to substantiate the
as to avoid a fine. Here actual entry is necessary. Doug.
Ex. 406, 11 T. 122, 319, 2, 327, 12, 125, 182, 126, 187, 126. 126, 185.
In the former case the right accrues upon the act, event or
contingency; in the other upon the entry post 33.

Who can maintain the action? No, who
has the legal right of ejectment? Thus Mortgagor may maintain
this action, either before or after the day of payment, not
only as mortgagor, but as Mortgagor's Lessor also, as well as as

Same rule in favor of mortgagor as before. this foregoing
Ex. 436. Part 745.

But of lands leased care afterwards mortgagee
cannot evict the Defendant, he is the elder title. But if by
mortgagee is allowed in such case to proceed to ejectment,
if he has given notice to the latter before contract
that he does not intend to distrain his p. 2. but merely
to secure the rent. This is allowed, as the common means
of securing the rent. Ex. 435. Doug. 25, 269. "Mortgagors"

So mortgagee may recover in ejectment the p. mortgage
money has been paid, if it was not paid at p. day, for he
has the legal title. Wood 20. 7. 8. Feb. 1805. 2 Day 187.

And it is a general rule that the person in whom the
legal estate is, shall recover in ejectment (257. 2, 222. Doug. 95.
Doug. 25. 187. 7, 2, 187. 384). The equitable and trust in
another in itself only.

In some modern cases however, etc. If some have seen
If Ejectment & Disposin.

what altered the rule, it takes notice of trusts, equitable rights, and in specific circumstances. The principles of these cases has however, been questioned. See cases 470, 395, 333.
660. 5 80. 516. 642. 8112. 378. 458. 7 458. 23.

So genuine the plff must recover by the strength of his own title. Of course a recovery may be defeated by proving the title in a 3rd person. Rule 418. 6. Dan. 24271. 1. 455. post 2.
Dec. 2 Day 227.

But this cannot be done, when the plff's title is derived from the deft., or whom deft. asbestos was the title derived from p. plff. In both cases the doctrine of estoppel is applied.

As Mort go to Mortgo. Mortgo to his own Def. 17. 636.
636. 7 476. 1 480. 75. 1457. Rule 418. 10. 422.

Upon the same principle, if plff claiming under a lease to Eject from Ejectment by A. 288. The latter cannot dis
fi. A. 288. 7 476. 488.

248. Devise of a term may maintain Ejectment, but
not in Eng. tit. p. eton has appents to it. (Esp. 126, Pa. 76.
250. Comp. 228. Apen. 1901. 160. 128. the legal title being in the deft. Case 128. 190. 484.

In. Is there agent money in Comp. Actions for Leg.
aries always lie on one lot. If B. T. if of the Legacy court.
Specific, distribute is first money.

But where a fund is devised, devise may receive it immediately, on transfer death. No agent money. But
has no concern with it. 2 the heirs title is gone. Esp. 208. 240. 6. Devise has immediately of legal title. Case 128. A. 190. 198.
Apparatus of a Bankrupt may maintain that action.
Of Ejectment & Disceision.

for land, which belonged to her. 2 Esp. 407.

So of Ejectment or disceision in Co. (Burton & Adams, 6. 2 Esp. 407). This was disceision. 2 Day 70.

The Committee of Lunatic cannot maintain ejectment for the land of the lunatic. In that case the committee cannot make necessary demission, being only a body of a agent. Esp. 439. Note. 26. 7th. 10. 2 Will. 130. The lease is made of lunatic land by committee upon an order of Chy. 2 Will. 130.

In Cor: the action must be in the name of lunatic, being by his conservator. Stat. 33. 2. No suit in Cor.

So E., may have of action for an ouster either of his testator or of himself, when the testator was a free person, it being a chattel in interest. Esp. 439. 6. 639. 9th. 23. 7th. 20.

So of an Admin. (Esp. 439. 7th. 12.

If one is disceised of an estate of inheritance in Cor: the remedy belongs to his heir. Co. L. 169. 2 Will. 665. 7th. 22. 3 Will. 169.

2d. For the disceision of a ancestor? But he cannot derive title from an ancestor who was never sued. 2 Mil. 239. 2 Cor. 17th. 15.

In Cor: the heir may support the action, the ancestor was never sued. The marvin being joint stipulation, is not arguable here. 2 Day. 156.

An alias cannot maintain this action for he can not lose land. Esp. 439. 6. 639. 300. 2 Will. 249. 276. 299. 63. 3.


A claim having a became a house, may maintain ejectment for it. 10th. 193. 7th. 7th. 6. 139. 3.
A defendant for years may maintain ejectment to defend himself, the former having the present right of possession.

In Co. of Berwick tenants in common join in ejectment to defend a mortgagor of land not the first lessee or owner. So of a release by one to the other. The rents payable for their share. 2 Ser. 70.

Of the Pleadings.

The declaration of estate (usu. title as it is, if there is no subsisting title at p time of p action but. If he has no title at that time, he has regularly no right of recovery. Esp. 444, 459. 1 Bl. 1, 29a, 30b. 2 Bl. 274, 6 Bl. 650. Bull. 105. Esp. 447, 8, (post. 31.) 3. the if he states a longer term, he has, he may recover. Post. 3. 3.

But it is not necessary in p action to state the plaintiff's entry on a day certain, suffice is set out his title, if the demesne p time that he afterwards intends for some
the precedents (esp. 493.) Besides the entry is not necessary.

Def. must confess lease. Entry docket.

In Co., not necessary to state an entry by possession. 1 suff. to aver that at such a time he was subp. possessed as p case may require. Credit of a particular p. at a term for years. 3 that at such a time defendant in the action sh. be laid as subject to proceedings of p's title. hence no cause of action. Esp. 443. 459. 1 Bl. 106, 124. 2.

The particular day of possession, it is said, 2. 2. not to state. 3. the particular day will be stated. Suff. if p's action appears in p's declaration to have happened after p's title accrued. 1 before p's one last Esp. 455. 6 Ser. 377. but it is usual to allege.
a day. Certain 2d. Is not the omission fatal or special notice
required? Not traversable. (Supra.)

The Lat. 3. Subject sets for must be so described in a decla-
ration, that the Plf. may know of what he is to deliver proof.
On the writ of habeas prayer, 2nd. p. declared is ill. 3Deo-
158. 2 & Ray. 1479. Conr 350. 1 Be. 297. 2 Be. P. 291. 3.

Great precision was anciently necessary, but 3. rule is
now much relaxed. (Conr. 350. Esp. 438. 1 Be. 529.) for, if
In law, the subject is usually described by a designation
of the town to which the 3d. of the boundaries of said to-
gain, with a statement of p. exact or estimated quantity.
The quality or kind of said, is not mentioned.

In esp. the boundaries are not usually given, but the
parish in which to the kind of said (as above mentioned)
3d. quantity (ie. some certain quantity) are required to
be designated. Esp. 446. T. B. 335. 3. 26. 27. 30. 24. 1. 3.
Bull. 129. 2. 54. 1 Be. 295. 3 Will. 23. If land in a town
plf. cannot maintain a action. 2nd. So a con
suppose of land in a town, 2 East. 497. 501. 2. 26. 27. 30.

But plf. is not bound to declare for a part quantity
that he is entitled to recover; for he may sue for a cer-
tain quantity to recover so much only, as he proves title to.
Esp. 447. 2 Be. 31. 2 Be. 706. 3. 26. 27. 30. 24. 1.

But he can recover no more than he declares for the he
may recover by. Esp. 447. 1 Be. 328. To, in such action as. So, if he declares
for a longer term, he has no recovery: for p. Plf. is whether he has pos-
sessory right to subject matter for Esp. 447. 1 Be. 106. post. 3.
Of Ejectment & Disseisin.

3 p. 2. The party having caused a breach of a lease, the plaintiff will not be deemed to have sustained it, he must in himself, or by some other. Esp. 452. 2 Ex. 220. 2 Lev. 782. 3 Ex. 100.

In Cor. also, the plaintiff must prove deft's poverty.

The general issue in disseisin, is no wrong as a

Prin. 316. 345.

In ejectment - not guilty. 1 M. 414. 18. 1 X.

Judges on a plea of title in truth pass is not bar bar
d of ejectment - a higher action. 9 H. 395. 2 Ex. 271. 7 St. 356.

2 P. 423. 2. Th. 27. 12. 6. 125.) 2. 412. 2. This seems not Law. 9 H. 395. 2 Ex. 271. 7 St. 356.

S. 23. 21. 175.

The C. J. requires deft to plead poem issue. 1 M. 414.

Of the Evidence.

The plaintiff in ejectment must recover by a strict
of his own title, not by proof of title of deft. 9 H. 395.

to prove p's title in a Stranger. Esp. 452. 2 Ex. 271.

2 P. 423. 2. Th. 27. 12. 6. 125. 2. 412. 2. 2. Day 227.

But the title proved in a 3. person must be a good
substituting title, or it is no defense. 9 H. 395. deft produces
an old lease to a Stranger. not sufficient until in possession
orion served it within 20 years - a sufficient title, not
suff. 9 H. 395. 2. 412. 2. 412.

When a lease is void and recoverable, deft may be
covered by the issue by this action. But it often happens if
a plaintiff disposes of his right of recovery by some act, assuming
the lease (Esp. 406.) is showing this right.

Rule: 412. if lease is void, waste & deft will affian it. Ejectment
for life claims to see it is void acceptance of rent by remainder
Of Ejectment and Seizure.

But if the lease is only voidable, there may be an implicit confirmation of it by the acts of the lessor of p. p. if e.g. lease on condition that if lessee assigns without the lessor's consent, the latter may re-enter. This is only voidable, not ipso jure void.

Recent acceptance of rent by him of lessor after notice of the forfeiture, is a confirmation of the agreement as a warranty of p. condition. Esp. 460. Corr. 11. 360. 44. Comp. 303. 463.

If p. p. fails to pay or sublet to his lease, he must prove them as letts. But if an sublet to a land "less" profite, it is n.e. to the suff. Esp. 147. Gla. 147. 2. Act. 677. "Tractat" p. 72.

Of the Verdict, Judgment &c.

The p. p. in this action may recover according to the letter, which he proves, the suff. from that laid in the declaration. E.g. Where having title for 5 years only, he declares for Swe. Esp. 470. 447. and 3. 41.

So if he declares for a certain number of acres of own title to a ley 2. only, he shall recover the latter. Esp. 490. Comp. 260. and 26. 2. Lib. 177.

So if he declares for several things (as a house & land), may recover one first & other, if the particular 5th be well as to one, it may be good to join & render, for the other. Esp. 2. 186. Esp. 490.


If p. p. recovers quiet, he has been used, if the p. p. commeat the suff. to put him to p. p. others all other out. Esp. 120. 26. 178.
Of Ejectment & Distress.

In the execution of this writ, the plaintiff may seize, by power of a dwelling house, if it is necessary. As when a house is rented, &c. &c., otherwise, he executes, if he is hereby entitled to it. 2 Brev. 177. 5 Co. 91. (Troutman v. Wood 31.) It is true, if the plaintiff having taken before a sheriff's suit, does not present his recovery, the same shall have judgment for damages and costs. 1 Aaron 72.

In Eng. it may, indeed, be pleaded in bar, but often joined it is discretionary with the judge to admit it. 3 Bl. 157. 59. 134. 120. 8 Esp. 454. 4 Esp. 68. 180.

So of the term for which the action is not expressly pending the suit, the plaintiff has justifiably for damages & costs. 1 Esp. 192. 9 T. R. 328.

Tha. 1056. 2 Brev. 177. 69. 288.

If after suit is put into suit, the defendant and plaintiff put in suit, the former may have a new suit for possession, and the latter may have for damages & costs. 4 Esp. 454. 4 Esp. 68. 180. 171.

In the Engl. action of Ejectment & Distress, is for deft. to will and do as it may please, if ever, grant a new trial: for the same being a second action, no necessity for new trial. 5 Brev. 255. 4 Brev. 2224. Tha. 1106. 1 Barn. 323. 3 Esp. 993. Just. on 3. first, as bar, the parties being fictitious.

But if mortgage is for plaintiff, a new trial may assently be obtained as in other actions, to prevent the charge of fraud. 1 Esp. 454. Possibly deft. may have its only title, in which case he brings a new action, might be if personal. 5 Brev. 255. 4 Brev. 2224.

Formerly before that a mortgage was not to prevent in any case of ejectment. 5 Brev. 253. 64. 68. 171. 51. 3 Esp. 993. 171. 207.

In Coa. 57. it is granted, as in all actions, one party being a bar to another action, between the parties, as to same title.

Of the recovery for misne profits.

The remedy of ejectment, when in plff's favor, having settled his title, it follows that from 5 time of plff's curing, plff had been in possession. & 2 Kae. 181, 3, 44, 205. 206, 205. 3 & 3 Wils. 2.

After a recovery in ejectment therefore, plff may have an action of trespass on the case, to recover damages for the latter unjust profit. This is called trespass for misne profits. & the damages recovered are plff's values of the land during the

post. 6, 4, 3, 4, 181, 205. 2 Kae. 181, 3, 44, 205. 206, 205. 3, 4 Wils. 2.

Said with a continuance, & 2 Kae. 181, 205. 206. 205. 3, 4 Wils. 2.

The whole case may be stated 6. 0 3 Wils. 2.

477. 3 Wils. 2. 3 Wils. 2.

This action is incident to a recovery in

Exeunt. 3 & 3 Wils. 2.

It is said that plff may, if he so elects, bring a bill in

Ch. for an account of misne profits. But this is not usual. 2 Kae. 181, 205. 3 & 3 Wils. 2.

The necessity of this second action arises from plff's

compliance, that in ejectment the damages are not at

205, act 2 & 3 Wils. 2. But it has been shown that

plff may recover his actual, as an age in ejectment. 2 Kae. 181,

205. 205. 205. 3 & 3 Wils. 2.

plff has to recover.

 Said & so, that p. whole of these cannot be used

in a ejection, because p. action is not laid with a continuance.

2 Kae. 181, 205. By crying the ejection with a continuance, plff might

recover p. whole. & he & he be obliged to proceed actual in a
cry. 3 Wils. 2.

In Coa. there is no doubt that full and

recovery.
Of Ejectment & Disgression.

Our practice may be recovered as ejectment. Allowing the 2d action seems to favor the politics, but it is established. Sometimes full commission recovers as ejectment.

In this second action, it is not necessary for plaintiff to prove entry of defendant. The recovery in ejectment is conclusive evidence of that fact. 2 B. & C. 1374. 1 Bl. 792.

The plaintiff is not, however, confined to the time by which the levies are laid in j. d. declaration as ejectment. He may recover a contingent profit if he can prove contingent title.

But this distinction must be noted. If he recovers for the profit, accrued since plaintiff laid in a declaration as ejectment, the record is that action is conclusive in his favor, but if he goes for a contingent profit the defendant to show contingent title. The record does not prove it. 2 Bl. 205. Esp. 444. 2 B. & C. 1374, 1 B. & C. 85. In the former case proof of the judge as ejectment, of the execution of the writ of ejectment is sufficient. But by Esp. 444, 2 B. & C. 1374, 1 B. & C. 85, in the former case proof of the judge in ejectment of the execution of the writ of ejectment is sufficient. So is suffrage to recover as ejectment. It is 're o. a. o.' ejectment. Plaintiff must prove his title.

Esp. 444. 1 B. & C. 139.

The plaintiff having required proof, that proof is said to have relation to the time of his title appearing. This gives him a right to maintain his p. in the defendant's p. of Esp. 444, 5, 2 B. & C. 1374, 1 B. & C. 85.

This action, however, is within the purview of the 2d limitation. The defendant may therefore plead that as to the rental nothing except what have accrued.

Suppose self or Co. goes for full damages in the ejectment, can deft. avail himself of the Stat. as to the amount of damages?

In Eng. the action may be lost either by giving the nominal self or of the legio of the self. Esp. 495. Bull 88. Ric. 205. Bull 89. 9028. if the nominal self releases part or he is guilty of a Contempt. 2 Bac. 181. v. Pal. 281. This 247 will not p. St. 9028, 9029. will it not p. St. 9029.

This is common cases on trust or assignor cannot maintain trespass to his companion, yet after accessory in ejectment he may have this action, it being incident to the former. Esp. 495. 1 Can 118. Itt. 323. v. "Estius: invenire:"

In the action for none profits the trespass is laid with a contina 2 Bac. 181. v. 2 Bac. 104. 268. art. 6. p. Esp. 402.

"Trespass," 54. 61.

St.
Of Waste.

Waste is any spoiling or destruction of house, lands, or other corporate immovables, to the destruction of
him who has remained or received, in possession for
title. 2 Bl. 281. Co. S. 253. 3 Danc. 435. 7 Lart. 222.

There seems to have been formerly a distinction between waste and destruction, not attended to now. Co. Litt.
5 Com. 577, 977, post. 117. Merriam Th. E. 356.

Two kinds: voluntary and involuntary. Voluntary is that which is occasioned by positive acts of point or de
struction, as offenses of trespass. Involuntary is that
which happens by negligence or omission. 2 Bl. 281, 5 Com. 577, 5 Danc. 435, 7 Lart. 222.

Government. By lessee not to do any waste, as being by
involuntary waste. Denier's 5 Danc. 437. 2 Bl. 281, 7 Lart. 146. By
corner, that is lessee, for any waste, upon a year and a
half house, suits for some or repairs or other like right, until
What amount is waste, what does not?

In general: whatever works a lasting injury to other
(lessee is waste. 2 Bl. 281, 5 Danc. 437. 2 Bl. 81. (definition supra.)

1. In houses or buildings: Demolishing a corner house
moving boards, leaning floor, or anything that spoilt the
of house. 2 Bl. 281. 6 Co. 437. 5 Danc. 437. 2 Bl. 81. 815. 2
a window, a breach, a shelf is Co. S. 257. Co. 329, 374, 384, 474, and 815 (voluntary).

Other acts by lessee of things annexed to a fixture, by himself
is waste. Co. 329, 374, 384, 474, for if it is panel, it
building.
Custody.

(130) Custody.

(Bac 468. Boy 5: 512. 4 53. 64.) Voluntary. Alor 177. 2 Com 577.

The in general nothing is waste, except what works an injury to a person; yet changing the structure, or use of a building by likeness is waste, the advantage of a tenant, by converting a cow into a bulling milk— the profit to this increase.


Suffering a house to decay for want of necessary repairs is waste of a tenant, provis for he is bound at his peril to keep his house from wasting (Bac 532. 5 Bac 468. 7 Rot 515. 8 Com 577). unless exempted by contract.

Defence is limited to that last case, the tenant is under the law; this is at his peril. Bac 535. 1 Bac 661. Sense of the defence has not all the burden since life decesso, 5 Bac 565. Rot 822. Alor 7. Com 109. 9.

Building a new house on land tenanted, when there was none before is not waste, see Bac 468. 2 Rot 815. Rot 234. Law 532. Costing six hundred and 22.

But if same may not take defence the house or other materials to build or repair it. It must be altogether his own charge. Rot 234. 5 Bac 468.

But if defence having built a new house (at owner) suffices it to decay, he is guilty of waste; for it becomes part of his freehold. Rot 234. Bac 532. 2 Com 109. Law 138.

If defence built a new house after the demise, defence is not bound to keep it in repair till four years (in waste). For it thereby (Rot 234) it was not part of land leased.

If a house has been made at commencement of the lease, its decay by want of curing is not waste in defense. Rule 532. 2 Com 96. 2 Bac 468. Com Law 138.
Of Waste.

At C.S. the burning of a house due to negligence of the amount the tenant. The is now required in s. 1. case of an accidental burning by Stat. 6 Geo. 3. 1846. 206. 5. We have no such Stat.

The destruction of a house by the act of God (as lightning &c.) or by public enemies is not waste, in 9 tenant. 5 Geo. 464. 474. 6 Geo. 7. God. 53. Com. Waste E. 6.

But if the house is in the last case, by left standing, plant must repair it in a "convenient" or reasonable time; otherwise, if it suffers further injury for want of repairs, it is guilty of waste. 6 Geo. 464. Moore 62. God 53. 1860. 1. God. 53. 1860. 3. God.

If the tenant commits a waste, the house, yet if he repair it before action is had, no recovery can be had there. But he must lodge subsequent repairs in 5 tenant. God. 53. 6 Geo. 462. But he may not take his right to repair after he is actually suffering waste. 6 Geo. 464. God 53. 1860. 4. God.

D. In Lands: Digging up (carrying away) soil by tenant is waste. Com. Waste d. 4. 2 Oct. 816. 215. So suffering water to be useless, in consequence of which the lands is injured by the influence of water. 5 Geo. 468. God 53. 2 Oct. 816. 2 Com. 468. Moore 62. 73. Com. Waste d. 4.

Secs. if of the waste be caused by want of water by tenant or tenant's work, the of the tenant does not remove it in convenient time, or if the land is injured by the influence of water. 5 Geo. 468. God 53. Com. Waste 5.

All bad husbandry is not waste. 5 tenant suffering able lands, this negligence, to be comprised with them not waste. 5 Geo. 468. 2 Oct. 814.

But generally the conversion of the species of land into another
another is waste. by. arable into woodland or e. convert
meadow into arable t e convert. For it changes not only
the course of husbandry, but the evidence of p. beauty of the
914. 310. 281. 6.

De. 43 to the last rule in Co. The custom is, usually
for tenants to change arable & pasture into meadow t e
conversion of pleasure. Perhaps no change here is to destroy
waste, only actually t lasting injury.

If tenant for life t rent how much of f land, leasip
of waste, only the mines themselves were done to Co. 153.
3 Co. 12. 2 Mt. 193. 2 Mt. 282. 168b. 234. 5 Dec. 430. Co Wash. 9. 6.

But digging in mines upon at the time of the denial, not
arable; Co Wash 9. 6. Co 252. 2 Mt. 282. 5 Co. 12.) to the last and
not mention mines. 5 Dec. 400.

3. In Trees: If tenant for life t cuts down timber
(from in special cases except) he is guilty of waste. Timber be-
ing part of the inheritance. 2 Mt. 281. 6 Co. 61. 5 Dec. 439. Co 33.
54 to Co Wash. 9. 5.

So if he does any act in consequence of which p. timber
decays, Dr. lopping or lopping. Co Wash 9. 5. by 55. Co 53.
So, if destroyed thru his negligence. 5 Dec. 439. 5 Oct. 815.

By timber trees are meant, trees fit to be used building.
so that all trees are not timber. 18 Mt. 69. 3 Mt. 281. 2 Mt. 429.
John 26. 64. Cutting down shade trees near the house (the rest
timber) is waste. Co 232. 5 Dec. 419. Called by Co. destruction.
Co Wash. 9. 5.

As to what particular kinds of trees fall within this description,
93. 2 Mt. 281. By 55. Co 232. 2 Mt. 429. 5 Dec. 47. 5 Co. 439. 5 Oct. 815.
Of Waste.

Tenants are entitled to certain rights under the law, including the right to build wooden fences or buildings required for repairs. If a tenant builds a fence or building, it must be removed at his own expense. 2 Hol. 192, 96, 192, Co. 1 Touch, 26, 31, 466, 12, 2, 3, 36.

That if the tenant builds a house, he becomes entitled to waste, and if repairs, he cannot take back tenancy to repair it. 2 Hol. 192, 96, 192, Co. 1 Touch, 26, 31, 466, 12, 2, 3, 36.

It is guilty of waste if the tenant builds a house, fence, or anything thereupon before. 2 Hol. 37, 96, 192, 2, 3, 36, Co. 1 Touch, 26, 31, 466, 12, 2, 3, 36.

So if he sells, for repairs, which are not necessary, or want of which occasion to his own fault, 2 Hol. 192, 96, 192, Co. 1 Touch, 26, 31, 466, 12, 2, 3, 36.

So if he has sold timber for necessary repairs, he sells it to appropriate parties on making repairs, the guilt of waste. 2 Hol. 37, 96, 192, Co. 1 Touch, 26, 31, 466, 12, 2, 3, 36.

Tenant is entitled to sufficient timber for necessary repairs, even if he has sold_ for repairs at his own charge, for the right cannot be taken away except by express consent. Co. 1 Touch, 26, Co. 1 Touch, 26, 12, 2, 3, 36, Co. 1 Touch, 26, 12, 2, 3, 36.

The object of the covenant is to repair. 2 Hol. 192, 96, 192, Co. 1 Touch, 26, 12, 2, 3, 36.
Of Waste.

So, as the lease is without impeachment, it is in the house were vicious, and the tenant, under, in which case he is not liable for its decay. 6 Ed. 3d 1100; 10 Ed. 3d 1100; 12 Ed. 3d 1100; 12 Ed. 3d 1100. Case Waste 96.

Destroying fruit trees in a garden, where it is waste, since they grow upon other grounds. 3 Bac. 461; 10 Ed. 3d 1100. Case Waste 96.

Decrees, etc. that tenant in down of ault lot, who had cut timber for sale, built a saw-mill, it was not guilt of waste. But if treed as a lot, if they will prevent waste, waste is made case by injunction.

Rules applying to waste in general.

Breaking down corn fences, not itself waste, only 3 Bac. 461. The court considers may be. But destroying the fence of a piece, or suffering it to decay, so that the deer escape, is waste. 3 Bac. 461. Case Waste 93. 10 Ed. 3d 1100; 12 Ed. 3d 1100.

Farm not liable for waste unless the value exceeds 6/10 of its greatness. "De minimis non curat lex." May 4. 6 Ed. 3d 1100; 12 Ed. 3d 1100. 30 Ed. 2d 1100; 12 Ed. 3d 1100. Case Waste 81.

No person can be guilty of waste of the place in which is no part of the demesne, or last holding, by the tenant for life or years. E.g., lease of a farm, except a piece of wood, do not entail onto the wood. Not guilty of waste. 6 Ed. 3d 1100; 12 Ed. 3d 1100. Case Waste 81.

But if there be a proviso, that lessee may cut timber, tenant guilty of waste, if he cut it, for it is necessary, not in respect to other, but in matter. 6 Ed. 3d 1100; 10 Ed. 3d 1100; 12 Ed. 3d 1100. Case Waste 81.
And if tenant assigns encumbering the wood - trees, &c., in the wood, he is guilty of waste, as the assigner. It is part of the demesne & the exception is void, 36 Geo. 3, 21 Stat. 512, 5 Thoma. 1083, 1039, 1052, 2019, 2544. For before had so much interest in the trees, as to support exception.

If a lease is made, with the clause "without improvement," the tenant is not liable for waste. Com. Waste 232, 1857, 215, 226, 1863, 222, 223, 223, 224, 225.

But this exception can be created only by Stat. 25th, 25th, 25th, 25th, 25th.

And to constitute a bar to the action after it must be by the same act, which contains the lease. Other, it is a covenant only. 1854, 1854, 1854, 1854, 1854.

If tenant is tail, "without improvement," the clause does not bar his issue, tho' the latter convey the lease by accepting rent. 1855, 1855, 1855.

Tenant not guilty, if the injury is occasioned directly or indirectly by the lessee - E.g., if to destroy a fence, a consequence of which trees are destroyed. Com. Waste 25th, 25th, 25th, 25th, 25th.


So if the injury was occasioned by the act of 25th, in the public enemy - the in this case he must repair or cause it to be repaired, if the subject is the means the capable of repairs. 25th, 25th, 25th, 25th, 25th, 25th, 25th, 25th, 25th, 25th.

Who may maintain an action of Waste.


Waste being to the dishonor of the party, the action must
Of Waste.

be less by him, who has the immediate reversion, or fee,

1 Pet. 10°. 4 Inst. 212. 681. waste 60.

The remainder of the fee must be in a

mediate, i.e. there must be no intervening feoffess.

If there is the remainder, i.e. it shall not maintain a

fee, if the court the recovery to destroy the intermediate estate.

Post. 5 Bac. 466. 476. 302. 244. 681. waste 60. 681. 687.

to 3d. 2 Inst. 212. 681. waste 60.

2. For life, remainder to B. for life, remainder to C in fee.

Then if C or remainders the A. during 33 life, 63 only for, for

future. to devise 63 remainders it being feoffed 21 Excel.

1 Inst. 685. 681. waste 60. 2 Inst. 212. 681. waste 60. 681. 688.

Of if the intermediate remainder is B. (i.e. last case)

our for years only; it might maintain possession 33 during

B's life, for B's remainder being a chattel interest does not re-

quire a continuance of a fixed particular estate to support it (20 1. 166) but may take effect after B's only on death,

2 Inst. 212. 681. waste 60.

If after commencement of the lease for life, grants

the remainder for years to anyone else, this is not a

remainder, a remainder can have no action of waste 

during the precedents. Bac. 466. 2 Act. 215. 600. waste 60.

2 Inst. 212. 681. waste 60.

If an intermediate remainder for life is in an 

case, at the tenant cannot waste before the contingency.

the remainder. If I fail to may maintain the action for

here the recovery does not destroy the remainder, but prevents it from wasting. Bac. 466. 2 Act. 215. 600. waste 60.

So if a lease for life he is made to A. remainder to

C. for the life of B. the remainder or may have the action

wasting
Of Waste.

during the first limitation, for both estates are in the 2 Inst. 261. Co. 54. 6 Co. 258. 6 Co. Waste. 62.

Suff. if p. f. has the immediate, inheritance at time of action, and the heirs be dead, not at time of p. waste, cons. 62. Co. 28. 5 Co. 458. 5 Co. Waste. 52. 5 Co. Waste. 58.

If June to a few life to remainder to B. for life. If

Comm. Waste. afterwards B. dies a bar code 56. Connecticut 132, or by may have action. Co. 2. 547. 2 Inst. 529. 66. 60. 5 Co. 307. 5 Co. 36. 6 Co. 37. 6 Co. 38. 5 Co. 39. 6 Co. Waste. 62.

If tenant in common in fee to lease his part to his conc.

tenant for life or years, he may have an action, preserv.

ence of the premises on damages. 6 Co. Waste. 6 Co. Moone. 1 Inst. Waste. 2. 5 Co. 317. 1 Inst. in common if p. inheritance may have this action as his fellow, for waste commits in p. estate.

The reversion, if so lease at 2 years.

The Equity of the Plot. extends to grant tenants, not to 2 Co.

parcels, for they might complete partition at Co. 2. 335. 37. 6 Co. 138. 149. 5 Inst. 693. 4.

The who has p. inheritance may join in the action one, who has a smaller interest. Co. 2 Inst. 292. She that

the remainder to is to have the benefit of p. trust. 6 Co. If

the remainder to is in B. 64. 5 Co. 548. If B. The conjurer join

in the first case. 2 Co. 2 Inst. 828. 6 Co. 6 Co. 585. 92.

Co. Waste. 62.

If life for years commit waste, this ten years expires

before action be set, yet life may have an action, jest

for the damages (table), she he cannot recover the place.

Waste. 6 Co. 468. 6 Co. 237. 2 Inst. 368. 36. 6 Co. 588.

[off cannot maintain the action, but he has the

same estate continuing in heirs, with the he had clear p. waste.}
was committed by. Convictions as for after waste. Consent grants the revision to another, other taking back of same estate. Action year, for his right of actions was disposed by the grant. The purchasing does not warrant it. 5 Bac. 406. & 1. 52. 256. 2 Rool. 825. The priority of estate destroyed. See 421.

As in grantee of a revocation in fact to. Can not maintain this action. The non commission of waste being a condition to which he is in the party non prius. 206. 166. By Att. 1315. he may (206. 158. 6 Co. 5. 168. Mon. & Bl. 306. 168.) after notice of grant given.

Against whom it lies.

As to waste, lay in Prudencia in Chivalry, tenant in demesne, tenant by p. customary only. 206. 282. 3. 2c. 14. 299. 250. 3. 36. 224. 1. 365. 121. Con. Waste C. 44.

As to tenant by custom. Opinion contrary to Bac. 409. & 1. 52. 256. 2 Rool. 825. but by the latter opinion he was (256.) that a lease for life a years was est. 206. 290. 5 Co. 15. 2 last. 299. 3. 365. 409. Con. Waste C. 44.) Rev. Al. 15. 245. 3. 365. 2. (Aluergo as to life. for a life.)

Tenant by p. customary holder needs in Con. 24d. 254.

The reason of the diversity at B.c. between Prudencia. to and tenants for life 8. was, that the estate of a permanence created by law, if law gave this remedy 8. 8 then, but not estate of the latter were created by p. owner of p. inheritance n a right, man and provided as waste 206. 260. 5 Bac. 569.

But by State of Aluergo. (32. 2c. 215. 365.) Waste 260. 8. 8. 5 Bac. 569. 299. 409. 475.) Against him that tenant by law upon a term, wise, tenant of life a for 4. years 5 Bac. 690. 690. 36. 36. 36. 36.
It lies therefore on the lessee for life one year. (Buch, 1891, 264.)

So if the assignee of a life tenancy for life, for waste done after assignation, Co. Wash. C. 4, 627, 216. Cal. 301, 361, 234, 178, 158, 56.

In the action, in the case, there cannot be sustained as the original tenant for life. (Buch, 1891, 267, 182.)

For it is a general rule that the action must rest in the assignor. (Buch, 1891, 267, 182.) Besides priority of estate in question between his son and nephew.


Indeed the heir in the last case cannot sue assignee at life estate for the tenant in demesne. 217, 182. Cal. 301, 361, 234, 178, 158, 56.

But if tenant in the demesne, the heir grants away his reversion, grants of the reversion can sue the assignee for waste, the assignor there is priority of estate between them. Tenant by conveyance to his heir, as such, if now but the heir. 216, 217, 182. Cal. 301, 361, 234, 178, 158, 56.

The action lies for an occupant, common or special. Co. S. 54, 217, 182. Cal. 301, 361, 234, 178, 158, 56.

So as an occupant he takes a claim, as against. Co. S. 54, 217, 182. Cal. 301, 361, 234, 178, 158, 56.
Waste.

4. if a stranger, a tenant on pasture.

If a tenant, for life, to commit waste, other than agric.

3. If a tenant, for life, to commit waste, other than agric.,

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Of the action.

The tenant has the right to sue for damages caused by the landlord, as stated in the statutes. See C. 77, p. 110.

If the landlord is at fault, the tenant may sue for damages. See C. 77, p. 109.

In both cases, the tenant must prove that the damage was caused by the landlord's negligence. See C. 77, p. 108.

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Waste.

of the crown estate to hire, if for so long a time as may be sufficient in their judgment to enable him to make the necessary repairs out of the rents of profits, unless the tenant or lessee will give good security for leaving the estate in good repair.

Act 2, 197/193.
Lex Mercatoria. By French.
Sec. 1. March 5, 1812

The Mercantile Law, as is usually called the 'Law Merchant', has been oftentimes denominated a 'Particular Custom'. But this is manifestly incorrect. A particular custom is one confined to particular local limits, one which does not extend through the realm; but the Law Merchant is not so confined. This is one reason why it is not a particular custom.

Another reason why the Law Merchant is not a particular Custom is, that the Law Merchant never is specially pleaded, while a particular custom always must be. Again, except in such cases where the general usage is not ascertained, the usage can never be proved by witnesses, yet all particular Customs are provable by witnesses.

I apprehend that where the Law merchant is provable by witnesses (as in new cases at common law) it is not to instruct the jury, but to inform the court as to the usage. And in this way it is doubtless as proper for the Judges to apply, to experienced persons in those for a knowledge of their Customs or usage, as it is to apply to literary men in literary Customs.

Again, the Law Merchant is not to be tried by a Jury except in the single instance I have mentioned above. All these considerations go to show it is not a particular custom. That it is so. 1 Bl. 35. Contra see 2 Sel. 125. 213. 12 El. 13. 2 Bl. 93. 3 Bl. 1669. 6 T. 268. Doug. 75, 3. 659.
Sex Mercatoria

The term 'Merchant' was originally confined in its operation, or case of inland bills of exchange, to Merchants only. That is, in case of inland bills of Exchange, no person other than a Merchant can avow himself of this system of Law. But it is not now confined in its operation to any particular class of men. Its general particular transactions through out the realms, but the whole community are included in its operation. 3B.C.C. 426. 2Ab. 457. 481. 486.

It results then that the Mercantile Law is no other than a branch of the Common Law properly so called - it is not a particular custom, any more than any rule of the C.L. as e.g. that rule which allows the obligee to bring Debt or Bond. It is not confined within local limits or to particular classes of Community.

II. Of Bills of Exchange & Promissory Notes.

A Bill of Exchange is as fine letter of request addressed by one person to another, requesting him to pay a certain sum of money to a third person, or to any other to whom that 3d. person shall direct, or to the bearer who is himself the holder, at a given time. 2B.C.C. 466. 6th. 93.

Bills of Exchange were invented for the purpose of facilitating distant remittances by creating a credit in one country, thereby extinguishing a debt in another. Thus if in America one debt
to B. in London, & C. in London owes A. Now A by drawing a bill in favor of B or C his Debtor, extinguishes the debt due from him (A) to B. & C. by accepting or paying the Bill extinguishes the debt due from him (C) to A. By so doing the risk & trouble attending a remittance of the debt due from C to A, & also from A to B, is wholly prevented. For a form of a Bill of Exchange see No. 13. P. 179. B. 87 tons.

It follows then that a Bill of Exchange may be drawn payable to "A or his order," or which is the same thing, "to the order of A." Or it may be drawn payable to "A or bearer," or "to the bearer" generally, without naming any payee. And if the bill has the necessary qualities, it is a good bill, if drawn in either of the above different ways. 1 St. 190. 3 Me. 147. 1527. 2 B. C. 467. Libby B. 47. 107. 8.

The person who makes or draws the Bill is called the Drawer; the person on whom it is drawn is called, before his acceptance, the Drawer; after acceptance, the Acceptor; the person to whom it is made payable is called the Payee; if he sells it paid to another, this other is called the Indorsee; if anyone who has possession of the Bill, is called for the time being the Holder. Thus the payee or the indorsee, while the bill is in their possession, is called the holder. 2 Rob. 205. 2 B. C. 467. 176. 132. 386.

Indeed a Bill of Exchange is substantially nothing more nor less than an assignment of the Payee of a debt due from the Drawer to the Drawee,

that is, a supposed debt, for it is not always the case that a debt is actually due from the drawer to the drawer, but it is so on contemplation of Law. Thus there A draws a Bill of Exchange, & payable to B. This is an assignment to B. by A of the debt due from B. the 1st. Dec. 1807. Aug. 13, 18.

A Bill of Exchange properly so called differs from a common draft or order by being negotiable. This is all the Specific difference. Unfortunately called drafts or orders are very common in the country, yet they are not Bills of Exchange. The reason is they do not contain operative words of transfer, that is, they are not negotiable...

Now it becomes a very important subject in all Commercial countries to ascertain what instruments are, & what are not negotiable. There are certain instruments which may be assigned or transferred, as e.g. a bond or a mortgage, but does not make them negotiable instruments.

A negotiable instrument is one, in which the legal title is in the equitable owner, or in which it is in the party to the instrument, as this is what distinguishes it from other instruments. The equitable interest in a Bond, Covenant of a Bill may be assigned, yet the legal interest cannot, therefore such instruments are not negotiable.

The negotiability of an instrument lies in that quality in it, which renders it assignable at
Text Mercatoria.

(Bills of Ex. from &. Notes)

Law. It thus becomes important to ascertain in what consists the difference in fact, between the assignment of the Legal & Equitable interest. In many cases the difference is so total, in others very important.

The person who has the Equitable interest in the assignment of an instrument can sue upon it in his own name. The assignor has no control over it; he cannot discharge it; he has in fact no more concern with it than any other stranger. But if the assignee has only the Equitable interest, he cannot sue upon it in his own name; the assignor may control it and discharge the instrument precisely as if he had never parted with it. The assignee in this latter case, takes the instrument, subject to such incumbrances.

If then A draws a Bill of Exchange on B in favor of C, and the bill is assigned to D, he (D) may have his action on the bill either as the payee or drawer or acceptor; furthermore, he (D) is the only person who can sue upon it, for the Legal & Equitable interest are both in him by the assignment.

This negotiability of instruments is opposite to the rule of the C.L. in relation to choses in action generally. For the rule of the C.L. is that they cannot be assigned, because it promotes litigation, it is transferring a right to a lawsuit. The meaning of the C.L. rule is, that the legal interest in the
A debt, raised or secured on the instrument cannot be transferred. Hence so far as the rule permits the assignee of a chose in action cannot maintain an action in his own name. E.g., a Bond made payable to A. is by him assigned to B. Now B cannot maintain an action on the bond in his own name; it must be brought in the names of the original obligee, for the legal interest is a Bond and cannot be assigned as a Bond is not a negotiable instrument.

The rule is the same as to all promissory notes, unless they are drawn payable to order or bearer to all endorsers; to all promissors; and indeed the rule of the C.D. holds as to all other than mercantile contracts properly so called. 1 Dall. 265; note 1, 2 Dall. 402; 1 N.C. 211, 1 Samb. 8. 6. 108.

A consequence of the C.D. rule is that choses in action cannot be assigned is that the obligee of the instrument, or party originally obtaining may release the debt at law as well after as before assignment. 7 B.T.R. 682.

The general rule invades a in law, with respect to promissory notes, payable to bearer or order, until five years after issue. But, now by Stat. 1706, promissory notes payable to order or bearer amounting to $50 or upwards are put upon the same footing with inland Bills of Exchange. promissory notes in England, of the States.

But the rule of the C.D. was so strict as prohibiting the transfer of choses in action, that th.
L. Mercurialis
(Bills of Exchange and Drafts, etc.)

Purchasing of a chose in action was held actionable to maintenance; punishable as a crime at C.B. This rule has long since been relaxed, it is now wholly abolished.

But now, the purchasing of an instrument, which is not negotiable, is no offence at C.B. The courts of equity, wise protect the assignment of choses in action the not negotiable, if the assignment was for a valuable consideration. So if a bond is made by A. payable to B and B assigns it to C. and it has notice of the assignment. Now if it pays the bond to B, a court of equity will compel him to pay it over again to C. because they allow the assignment of such choses in action. The equitable interest is assigned the the legal interest can not be. 1820 187 2 942 482 478 340 595 672
359 874 199 1043 411 412

In C.B., the choses in action are not assignable, yet our C.B. have determined that choses in action, has been assigned, the original debtor has taken a discharge of the instrument from the Creditor or the obliger after he has had notice of the assignment, that the assignee may have an action in the sense of the original debtor, for the fraud in accepting the discharge provided the original Creditor (or obliger) is insolvent; this appears to say. No. 1790. The rule would be the same if he was not insolvent.

Art. 1323. As to bonds. An assent of assignment.
Sex Mercatoria.

Bills of Exch. & Prom. c. 8.

As now good at Law as between the parties to it, it is good at Law as between the assignee, assignor, as the assignment does not transfer the legal interest in the debt, so that the assignee can maintain an action in his own name. This is a demotion of the C. D. rule, that is, it is a demotion so far as the above cases differ from it. It is true, the old C. D. principle, upon the general subject, remains inflexible.

A mere assignment of a chose in action amounts to an express covenant of the transfer of the beneficial interest in the debt, so that the assignee may use the name of the obligor on assignor to collect the same. The Contract of assignment per se implies this covenant. And if the obligor (assignor) releases the debt, or receives the money due on the same, an action of covenant broken lies at his own suit, this is the usual remedy in Eqw. 2 B. & 42. Salk. 12 C. 327. A. P. 155, 158, 159, Thell. 180.

I will here observe, that a chose in action may be assigned by parole, as it is usually done by writing, as by indorsement on the back, etc., but it is not required to be in writing by C. D., for the C. D. did not allow of it, neither is it required by any Stat. to be done in writing, therefore it may be done by Parole.

4 Th. & 692. The same remedy, viz, Covenant broken, may be applied to the Case of Co. As it is usual here to bring an action on the Case for fraud, the Co. broken again cite.
Indeed as the Law now stands the equitable interest of an assignee in a chose in action is for several purposes recognized in a bill of Law. Thus it has been determined, that an assignee of a chose in action not negotiable, as e.g. a Bond, is a sufficient consideration even at law to support a promise by the assignor. Thus if the assignee of a Bond assign it to a 3rd person, i.e., the 3rd person in consideration of it promises to pay a sum of money to the assignor, it binds him in Law. 17 T. R. 29. 1 Ed. 212.


Again, it has been determined that the assignor of a Bond having become Bankrupt may still maintain an action upon it in his own name for the use of the assignee—or in other words, the assignee may sue to maintain an action in the name of the Bankrupt, i.e., a Bankrupt cannot maintain an action in his own right. Bankruptcy is always a good plea to set off disability yet in the above case, the equitable interest appearing in the assignee, the Co. will allow the action in the name of the Bankrupt. This is another instance where the equitable interest in a chose in action is recognized in a Co. of Law. 1 T.R. 319.

And it has been determined on an action on a Bond given to F. in trust for B. a debt due from A to B, may be set off. Thus if I give you a Bond in Common form, in trust for A, if you give me on the Bond, I may plead a debt due me from
I would here observe on closing my observations on this particular subject, that the negotiability of Foreign Bills of Exchange was recognised for the first time in the 17th Century, that of Inland Bills of Exchange in the 18th Century. P. 477.

Thus far as to the C.D. rule that choses in action are not negotiable, I now proceed to treat of the general subject —

I have to observe that generally in all actions on simple contracts the *Piff* must prove a sufficient consideration, as in actions on special contracts, as *Beds*, it is otherwise. [C.D. 520, 2 Sc. 331. 14 Ky. 47.]

But in actions on Bills of Exchange, the thing are not *Beds*, it is in general not necessary for the *Piff* to shew he gave a consideration for the *Bill*. In actions on these *Bills* a consideration is implied as in case of *Beds*, the thing are not *Beds*. In this respect a *Bill* of Exchange has one of the main qualities of a *Bill*, which is that it contains external evidence of a consideration; thus is the distinguishing trait in the difference between simple *Special* Contracts.
Sex Mercatoria.
(Bills of Exchange, Promissory Notes.)

The foregoing rules apply equally to negotiable Notes as to Bills of Exchange: but the rules hereinbefore laid down apply to both, although I may not be careful enough to mention both in treating of the subject.

But to the general rule last laid down, viz. that a Bill of Exchange contains internal evidence of a consideration, there is an exception where the holder claims as owner of the bill transferable by indorsement, and in suspicious circumstances. If the bill was lost by the Payee, and the person bringing an action upon the bill, he may be required to prove that he or some intermediate person between him and the drawer paid a valuable consideration for it. For if the plaintiff is finder, he will never be allowed to recover, tho' he paid a valuable consideration for the bill, even to the finder himself, he shall recover, because the subsequent holder of a negotiable instrument is not to be affected by the want of title in some former holder. The example is found in the plaintiff's reason. It appears that another originally owned the instrument. He lost it. It is most probable the plaintiff found it or stole it. At any rate it has gone out of the hands of the original holder without consideration, so this may be excused. But if the plaintiff had bought the bill of the finder, or any other person, it will be otherwise. Here the plaintiff is not to be excused, as the bill is in the hands of a bona fide holder. 3. Bla. 1516. 152. & 3. Thaw 208. Addy, 491. 254.
But this exception cannot hold as to the origin at face of the note, because he appears on the instru-
ment itself to be the very party obtaining under it. The rule is the same as to the indorsement of a bill, i.e., the exception cannot hold where the bill is endorsed to the pay. If B is the holder of a bill, he is not to prove a consideration, the A might prove that he lost it; for by the endorsement of B, it appears B's bill is good. All suspicion is removed. You have now both presents with the general rule, the exception to it, viz. in what cases the holder of a bill is obliged to prove a consideration.

On the other hand, the Deft is in general not permitted to prove that he received no consider-
ation for the bill, except when the action is be-
tween the persons who are immediately concerned in the negotiation. As if the action is brought by the acceptor vs. the drawer, or by the indors-
er vs. the indorsor in these cases the Deft may prove the want of consideration, for the parties in the suit are privy to the Contract; and by allowing the Deft to question the consideration, there is no danger that thereby the Credit of the bill will be injured, or the rights of any 3rd person at all affected. Again suppose the drawer sued the acceptor - now he can question the consideration for by doing it the Credit of the bill is not impaired nor the rights of any 3rd person injured, for the part-
ies in the suit are immediately concerned in the
new mercatoria.

bills of exchange, drafts, notes.

negotiation of the bills, but if the action was brought by an assignor to the assignor, the consideration can
not be questioned, for if it would injure a
third person who trusted to the mercantile credit of
the bills. philby 51, 63. plowden 144. taylor 174. 199. 13 scox
674. 675. 676. 4.

it would seem questionable, from a case late
by determined in the state of new york whether the want
of consideration may be urged when the action is
brought by the parties to the negotiation. 2 baines
246. Evans 18, 236. 247. 247.

the case in baines perhaps raises the ques-
tionable which I had no idea but was fully esta-
blished. our first books have always laid down the
rule as settled, but the 2d in new york says there
is no judicial authority for the doctrine. how far
his decision shakes the old rule long received opinion
upon the subject i am unable to tell.

March 9, 1812. Lecture 2nd.

i concluded my yesterday's lecture with laying
down the rule that the 2d was in general not per-
mitted to aver the want of consideration except when
the action was brought on persons immediately concerned
in the negotiation. but to this rule there is an exception.
for when a person acquires a bill by transfer or in-
dorsement, after it is payable, any person who is sold
when it now shows the want of consideration by way
of defenses, he may insist upon any other equitable
defense of which the holder was aware at the time of
Dear Sir,

The reason is that there is ground of suspicion that the holder knew of the want of consideration or other equitable defence, as above. Hence when a holder who has received a Bill after it has become payable, commences an action upon it to recover from the prior party, it is left to the jury, upon the slightest circumstances to presume the fact of want of consideration, or fraud in the transfer of the Bill. 3 H. 32, 323. 7 C. 33, 333. 10 East 223, 633. 25 Dec. 170, 770. 60, 116.

Hence where a Bill has been transferred after it has been noted for non-payment, this will be sufficient evidence for the jury to presume that the holder knew at the time the facts which rendered the transfer unfair. And if it can be proved that the holder at any time of receiving the Bill knew it was dis honored, the rule is the same whether the Bill is noted or not. 7 B. & C. 323. 7 P. C. 423. 3 B. & C. 323. 423. 233. 10 East 223, 633. 25 Dec. 170, 770. 60, 116.

Since it has been said that a holder who receives a Bill after it is payable, is liable of course to all the equity, to which the Bill was liable in the hands of the original party, it is independent of any notice. This opinion is advanced by Justice Buller and some others, but I am inclined to doubt its correctness. A late case on this a contradiction. According to this opinion there is no need of leaving it to the jury to presume want of consideration, that suffices for according to Buller’s opinion he is liable of course to all priority parties, if none be.
Bills of Exchange are divided into 2 kinds, viz. Foreign and Inland. Foreign Bills of Exchange are those which are drawn in one Country as Sovereign of State, or payable to another. Inland Bills of Exchange are those which are payable in the Country where they are drawn. This is the characteristic distinction, there is no difference in their structure. Vide 10.

Bankers' Checks, or drafts on Bankers are in form like Bills of Exchange. In one respect they differ however in form from some Bills, for they are never payable to order, but always drawn payable toBearer, i.e. course negotiable by mere delivery.

7 F.C. 423, Chitty 16-17, 109-171.

These instruments, viz. Bankers' checks, drafts on Bankers, Bankers' drafts, notes are negotiable like Bills of Exchange. Formerly they were not. The rule as above is now well settled. 3 Burr 1517.

These instruments are not payable until demanded. In this case they differ from Bills of Exchange which are not usually payable on demand, but on a particular day, or so many days after sight. Chitty 16-44-45. 7 F.C. 423.

These instruments may be: 1. Usuarily are declared as such as Bills of Exchange; 2. it is said they cannot be protested, i.e. a protest will answer no purpose. Same with above. 3. Burr 1517-1519.

They are also treated as cash, for they have become in use a circulating medium. This is not the case in Eora. nor private banks are here.
forbid it. But in England, many of the States have allowed, or in those places such instruments constitute a great portion of the circulating medium, they are for this reason so nominative, least, I will pass it in a note to nominate. 2 Ray 174. Doug. 72, 73, 74.

If these Bankers' Notes be not demanded in a reasonable time, the Banker fails, the holder must bear the loss. This is reasonable, for he is in his power to demand payment of the bill immediately. Therefore, if he neglects for an unreasonable length of time, he shall not be permitted to resort for indemnity to the person of whom he originally received the bill. The Law does not point out a particular time when the demand shall be made, it must therefore be within a reasonable time.

13 El. R. 1. 2 Ray 174. 72, 73, 74.

And I would here make an observation which will frequently apply during the title, viz. that what is a reasonable time, which was formerly considered a question of fact, determined by a jury, is now a mere question of law determined by the Court. There is some ambiguity in the terms owing to a want of precision in laying down the rule. There was a great diversity in the decisions of juries what was what was or what was not a reasonable time, I think, a great principle in the Law merchant, was rendered uncertain and unsettled. For this reason the Ct. took upon the

selves the liberty to determine what was a reasonable
times. I observed that was an ambiguity in the Books upon this rule, owing to a want of precision in expression in laying it down. It is true, there is no time being given, whether it is a reasonable time or not, is a question of Law to be determined by the Court. What is a reasonable time is a question of Law; for the Court, it is said, to determine; but when in any particular instance, a dispute as to the time being unreasonable arises, it is in the first instance a mixed question; if the facts are not settled by the parties, the jury must determine them, but these facts being determined, it then becomes a question of Law, whether reasonable or not.

Thus, suppose the holder of a Bank check delays to present it for payment for a month, so the question is, is this a reasonable time? Now there must occur in every case a number of questions of fact, as how far do the parties live away, or, for it makes a vast difference in the idea of neglect, whether the parties live 500 miles apart or in the same neighborhood. The first question of fact is, what is the conveyance? Is it by Mail or otherwise? If by Mail, how often does it go to these different places of abode of the parties; what is the length of time employed in the journey. These are all questions of fact, which are important to be ascertained. But suppose these questions of fact are all agreed upon or conceded by the parties, it then becomes a mere question of Law, for the
Court to decide. But if they are not convinced by the parties the question is a mixed one of the Court: direct the jury if they find the party to be so to act for the

I have been thus far considering the general nature of Bills of Exchange. I come now to treat of the necessary requisites contained in the part of 

I. The Parties.

And here I would again observe that, that forming it was held that no other than a merchant or one engaged in mercantile transactions could be parties to a Bill of Exchange. But it has long been settled that any person having ability to understand and capacity to contract may be parties to a Bill. The Law Merchant regularly particular transactions but is not confined in its operation to any particular class of persons. Chitty 19. Gaunt 289. Bent 292. Comb 132. Show 126. I Falk 125.

And not only natural persons capable of contracting, but also Corporations may be parties to a Bill of Exchange. A Corporation must become a party to a Bill by the act of its agent or attorney. They may authorize a person to act for them in the name of the Corporation whose act will be binding upon them. But they cannot sign, endorse, or in any way become parties
Lex Mercatoria. Title of each Chapter.

to a Bill in this aggregate capacity, it must be done by procuration. 1. Act 181. 2 Prin. 1216.

And I would further observe that if a Bill is drawn, accepted or endorsed by a person who is legally incapable of binding himself, yet it will stand as good as to all others who were parties capable of binding themselves. Thus suppose a Bill is drawn by an infant endorsed by an adult, the adult would be bound, the the infant is not. So if a True Court draws a Bill, to a person legally capable endorse it, he is bound. 2 Act 181. 182. Tit. 21.

The original parties to a Bill are generally three, the by subsequent negotiation the parties many become indefinite. The original parties to a Bill are the Drawee, the Drawer, and the Payee. Their character have before been explained. (Rice wrongly incorrectly) observes that there are 4 original parties to a Bill. In legal theory, there are three parties, but these may not be three persons actually engaged in the creation of the Bill. One person may act in two capacities. Tit. 22. Tit. 23. 2.

It is not necessary however that there should be 3 persons originally concerned to make a Bill, as in the theory of the law there are 3 persons concerned, but one person may act in two capacities. As e.g. one may draw a Bill on another, payable to his own order. There one person has the right to capacities of Drawer Payee. In this...

Case there are two persons concerned, yet one acts in a double capacity. And as one may draw a bill on another payable to his own order, so he may draw a bill upon himself payable to a 3d person, and to the order of a 4th person. In both these cases one acts in 2 capacities. 1 Salt. 160, 6. Mo. 189, 150, 3. story 48.

Know that there may be a valid bill without one actual party in the case. Thus a man may draw a bill upon himself payable to his own order, it is a good bill. It is true the bill is entirely inoperative while it remains in his own hands, but if he negotiates the bill he is liable in the capacity of drawer, acceptor, or indorser. 3 Bar. 1677, Foss. 281, Earl, 509.

But I have observed that a person not originally a party may become so by negotiating, as if the bill is indorsed to him. Every indorsement creates a new party. And further, one may become a party to a bill by accepting it for the honor of the drawer or indorser. The bill having been dishonored. The drawer or indorser is supposed absent, any person may by his own voluntary act become a party by honoring the bill (accepting) whether in reality the drawer or indorser wished him so to do or not. This is called an acceptance supra protest. For the acceptance is after the protest. The acquire certain rights, is liable to certain duties, which will hereafter be considered.

The acceptance of a protest is an acceptance for the honor of the drawer or indorser when refused to accept by the drawer or indorser; but further, if the bill has been accepted by the drawer or he has afterwards refused payment another person may become a party by paying it for the honor of the drawer; this is called payment of the protest. "Rep. 112," "Boas & Walker," Page 439, Art. 154-6. "Ch. 315-165, 166-164.

A person may become a drawer, acceptor, or indorser, not only by his own immediate act, but by the act of his agent or partner. Indeed when one partner binds his copartner, he does it in character of an agent for the partnership. "Ch. 175-6.

And when a party drawer, acceptor, or indorser a bill by the act of an agent, he is said to have done so by procuration. "Boas & Walker," Placita, 33, Art. 129.

Now as the act of the agent is merely ministerial, persons in capacity of binding themselves may as agents bind others. Thus if one employs an infant, some grave or even an outlaw to give them authority to act for him, he can be bound by their acts. The agent in this case acts merely ministerially, it by so doing the rights of the agent as infant, some grave or outlaw (if indeed an outlaw may be said to have any rights) are not at all invaded nor violated, the consequence of the agency. He is merely the instrument by which the principal himself is bound. "Ch. 52," Art. 24.
Law Mercatoria, Bills, Pead, Drafts, Notes.

And it is a settled rule that an agent may be constituted for any of these purposes as will by Parol, or by Deed. There is no need of a Power of Attorney to authorize another to make for me a simple contract, and a Bill of Exchange is a simple contract. Boas S. Mo. Placitum 36. 12 Mod 564.

A general agent, i.e., one acting under an unlimited authority, may bind his principal to an unlimited extent. But a special agent, i.e., one appointed for a special purpose, acting, of course, under a limited authority, can bind his principal only to the extent of that authority. If I give to a man authority to draw a Bill in my name for 1000£, he can bind me in a Bill to that amount but no further. On the other hand, if I give a man a general authority to transact my business, to draw Bills in my name to an indefinite amount, he is a general agent and his acts will be binding upon me. 3T. 37, 36, 185, 58, 111, 69, 39, 176, 86, 155, 206, 68.

A person by signing his name to a Blank piece of paper & believing it to another, authorizes the latter to fill it up with whatever sum he pleases. It is at Lord Mansfield says, an indefinite letter of credit. In Eng. if a blank bill is used, it could not be filled up with a greater sum than what is imported by the Stamp, i.e., it could not be made binding upon the party to a greater amount. The rule was the same in this country in those days when the Stamp act...
was in operation in America. But when the law
of stamps does not exist or there is no restriction
by Stat. the general rule holds. Doug. 4,96. 1,512.
4 Tu. 22. 313. Pull. 112; Chitty 25-26.

I would observe that this rule does not hold
in case where a person signs as above directed
it over to another if this other fills up the blank
with a 'Dear.' There must be a special power to
make a deed. The rule holds as to all mercantile

But an agent who is authorized to draw
accept or endorse a Bill of Exchange cannot dele-
geate his authority to draw it to a 3° person unless
he is expressly authorized so to delegate. It is a
general rule in Legislation as well as municipal
law that a delegated authority cannot be perform-
ed by proxy. A bill of Eng. to whose interest is derived his seat
from a line of ancestry may vote by proxy; but
a representative of the people whose authority is
deligated to him by the people (as a Commoner
can not act by proxy). If then I delegate authority
to an agent to act for me, I give him no power to
delgate his authority. For he cannot do it. 1 Poth. 336
960-75.

In drawing, endorsing or accepting a Bill of
Exchange, for a principal, the agent must act in
the name of the Principal. If he does not,
this act in his name of the Principal, he, the prin-
cipal will not be bound, but the agent himself will be.

But if he does act in the name of the principal, himself, he is more bound, but if principal is. He must sign as agent. The most correct and approved way is to sign thus "AB. by CD his agent." He may be thus "CD acting for AB." If he is bound in either case. (Bo. 75.)

D Stra 933. 6 Chitty 27. 36. 25.

One of the joint traders may by an acceptance in the name of both, or of the firm, bind both, provided the Bill relates to the partnership concerns. For the purpose of binding the partnership by the act of one, each one of the partners is an agent for the whole partnership, on this principle: the act of one binds the firm. (Salk. 125. E. Ray 2175. 4424. Salk. 292. 7 Bl. 287.

12 Bl. 213. Peak 216.

It is said however that the act of one partner, if it concerns only his separate interest, will not bind the whole partnership. This rule seems questionable, because there are opinions that the act of one in the name of the firm; the for his own separate interest will bind the whole partnership, provided the holder of the Bill did not know that the partner was acting for his own separate interest. If he did know it will not bind the whole partnership. When partners enter into business, they agree in full consent to the acts of each other, and when the firm is to prosecute for the firm, it ought to bind.
The first point: it can't be done out of the words an innocent person may be injured, and it is a general first principle, that one or two innocent persons has been injured by the act of a third, he who has enabled this third person to do the injury shall suffer rather than the other. Bost. R. 30. Div. 237-292. Esp 61 172 Chitty 3: 28.

It seems however that two persons, who are not now Partners, may by making a Bill payable to their own order, make themselves expressly parties to that transaction, so that one may endorse for the other. It might seem that this doctrine is denied in a Case before Lord Mansfield where he admitted the testimony of an order to prove the endorsement not valid, unless made by both. But in the Case before him the person did not sign in the name of both, but in his own individual capacity. So that Lord Mansfield did not decide that it would not be binding on both, had it been signed for both. Wat. Law. Part 253 Doug 653.

Salk 6 18 Chitty 3 28.

If a Bill is drawn upon a Corporation to accept by one of the members as such, in the name of the Corporation, it will not bind unless this person is authorized by the Corporation to accept or appoint for that purpose. It is not the act of the Corporation. The individuals composing a Corporation are unknown to the Law, it being an ideal entity, but it can bind itself by

by a corporate act, as by vote. Here, therefore, authority delegated the act of this person cast the bill.

When one Partner draws a Bill for himself, the Partner he should do it as for himself; the other or in the name of the Firm, else it is doubtful according to the English authorities whether the Partner who did not act is bound. Our Supreme Court have decided that both were bound the only one sets, provided the Note or Bill was drawn for a Partnership concern. Talbot 126. E. Pla. 175. 1489. Dec. 653. May 30. 36. 73. — March 10. 1513. Sect. 3.

Form and requisites of a Bill.

A particular form or set of words is necessary in the creation of a Bill of Exchange. The three are ordinary words, which have become so established that they are usually found. The ordinary way is "as such a time", or "so long after sight of pay" to A. B. or his order, or A. B. or bearer, or to the bearer alone. But neither of these forms are essential, for the construction of all negotiable instruments is liberal. Hence a promise to account with A. or his order for a certain sum has been held for a good bill. Com. Bi. tit. Obligation. Ch. 12. Sec. 61. Stas. 629. E. Pla. 1376. 3. with 213. May 21. 58.

But the instrument must contain certain formal qualities else it will not operate as a bill of exchange. It will not constitute containing the qualities original as a legal instrument. As
properly so called, the it may be evidence of a parole promise to pay. But it is mere evidence and does not constitute an instrument.

An instrument you will frequently find the term "instrument" used. This word in the sense thus used is nowhere defined. But by an instrument is meant such a writing as may itself be sued upon, which lays a foundation for a suit and is the basis of a recovery. A Bill of Exchange, a Bond, a Bill a Promissory Note is such an instrument. But there are certain unsealed writings which of themselves support an action and a suit is commenced, it is brought on a parole promise, and these writings are introduced as evidence of such promise. These are, not "instruments." 1 Cog. 1546; 2 East 359. Chitty 170, 179, 192, 193.

The precise difference this is this; an "instrument" is a writing upon which an action may be founded, upon which the Declaration is grounded, which is the basis of a recovery. But a writing not an instrument is one which is only evidence of a parole promise. Without these essential qualifications a writing will not carry with it any internal evidence of a consideration. Neither will it be negotiable. It is not a Bill of Exchange. 3 Todd 213, 215; 14 East 1079; 5 T.R. 495; 7 H. B. 441; 176 R. 259; 292.

These substantive requisites are in reality, but two; the they are sometimes illogically divided into three. The first is that the instru.
instrument, to be payable at all events, and not upon a contingency. The second is that it be for money only, not in money but any collateral article, or money at a collateral rate, (as labor) and a price not in any collateral, article or act altogether. 3 Meig 313. 2 Bl. C. 172. 57 T. R. 435. 7 T. R. 261. 17 Bl. C. 239. Str. 1151. 1271.

It is frequently mentioned as an additional requisite, that the Bill must not be confused in its payment to any particular fund. This is not in reality an additional requisite, but a breach of the first. The first is, it to be drawn payable at all events, and not upon a contingency. The reason of this requisite is, that if it is payable on a contingency, it would perplex mercantile transactions by embarrassing the credit of the Bill. If then a writing, or form of a Bill of Exchange is drawn payable on an event which may never happen, it is not a Bill at all, for there is not negotiability. This if a writing is drawn payable on the day of A's marriage, This is not a Bill. Indeed it is not an instrument according to the description given, it is mere evidence of a personal promise. The reason is as above, that it would perplex mercantile transactions, by embarrassing the credit of the Bill. 5 T. R. 485. 3 Meig 313. 130 U. S. 373. Str. 1151. Kip 356.

And for the same reason, if a writing or form of a Bill is made payable out of a particular fund, which may not be production...
it is not a Bill of Exchange but not negotiable. In fact if the bill is not negotiable at its inception it can never become so, at the end or while it is drawn may afterwards become productive. Thus if it be drawn a bill of Exchange on time payable out of a particular fund which may become productive, it is not a Bill of Exchange but of course not negotiable but yet it is evidence of a parole agreement. L.Ray. 1362-1375-1535. 3 Sel. 207. Th. 78 V. 1 St. 57 V. 1151-1211. 4 34. 1284. J. 280.

It seems however according to some opinions that such a writing may be considered declared upon as a Bill of Exchange in an action between the original parties. There are opposite opinions, but the former I think is the better one. I can see no reason why it may not be considered as a Bill, so far as respects the original parties to it, but the reason is conclusive why it should not be considered a Bill so far as other than for original parties are concerned, viz. that were this the case it would tend to embarrass purely commercial transactions. But the force of this reason does not at all apply to prevent its being considered a Bill with regard to the original parties. This paper is merely subject to no particular protection, nor subject to any rights not common to other instruments except where they have been negotiated to. But where they have been negotiated, they are protected subject to certain rules. 7 243. 207. 6 485. 6 St. 123. 2 136. 107 V. 55 555.
But to the general rule that a Bill may not be drawn exclusively upon a particular fund, there is an exception where the event on which the payment is to rest is of such notorious, morally certain, and unsuspectable nature. Thus, it has been determined a Bill payable on the death of a Ship is payable on the death of a good ship. Thus if the event on which the Bill is payable is one which must inevitably happen at some future time, however distant it is a good Bill. Thus if a Bill is made payable 6 months after the death of A, it is a good Bill, for the day of payment will inevitably arrive, however soon it is uncertain. So also a Bill payable in one year after it becomes of full age, (specifying that time) is negotiable. For although he may literally never attain full age (as of the date) yet the Bill is construed as one payable at that time when by computation he would attain that age, if he should chance to live so long. If the time is not specified it is not negotiable, it then depends upon a contingency. See 12 T. R. 226. P. 57. S. 53. 4.

But the a Bill confined to a particular fund is not negotiable, yet the mentioning a fund

merely to inform the Drawee how he may receive himself will not vitiate it. For how the D
ter the superscription is not drawn upon the fund, but one payable at all events. A bill imports a
personal credit to the Drawee. Strange! 3rd. R. 1431.

The rule is the same as to words inserted in the Bill for the purpose of pointing out the consi-
deration of acceptance. Thus the particular fund is named, yet the Bill is not confined to its payment
to that fund. Thus where a bill was drawn these
words—pay so much, at such a time, "value re-
cived out of my estate at D." This bill is good, for
the Bill is not drawn upon the fund itself, but it is
mentioned for the purpose merely, of pointing out the
consideration of acceptance. Strange! 3rd. R. 1431, 7th. P. 703. &c. &c. &c. Thus far as to the first requisite.

The second requisite is, the Bill must be
payable in money only. Hence an order payable
in goods is not a Bill of Exchange. If I direct an
order to a merchant to deliver goods, we must mer-
chantize to it. This is not a Bill of Exchange and
cannot be negociated. The reason is Bills of Exch.
are devised to adapt it for the purpose of facilitat-
ing the remittance of money; they are never
intended as a medium of barter or exchange.
besides if an order could be construed into a Bill
of Exchange, it made negotiable, it would greatly
impair commerce, it is in many cases bear very

hand on the 15th move. No. 49. Suppose a man & 2 draw an order on his neighbor for 1000 $ payable in Grocers. This order should be negotiated in Canada. The drawer would be compelled to pay the bill only on the article specified, but he would be obliged to transport the article at an enormous expense. So that he never intended to pay the amount of it in money. For this reason it is that a writing payable on any thing but money is not negotiable. Chitty 34. Ky 33.

And further the bill must be payable in money only. A bill payable partly in money partly in Goods, partly in money & partly in labor is not negotiable for the same reason. Shaw 1271. Ky 85 50. Chitty 35.

It would seem hardly necessary to describe a bill payable in money only, as contradistinguished from one not so payable. I will barely observe that any order which cannot be completed with in any part but by payment in money, is a bill of Exchange within the meaning of the rules. 10 Mod 287.

It is not to be understood that these writings wanting the necessary requisites of a bill of Exchange, are of no force whatever. They are not Bills it is true, yet as I before remarked they are evidences of a contract, hence a writing payable on a contingency, may be enforced after the happening of that contingency. So also if the fund
on which the writing is drawn becomes productive, the parcel contract of which the writing is evidence may be enforced, and I have already observed that the better opinion seemed to be that such writings, as between the original parties, might be considered to declare upon as Bills of Exchange. 2 Bl. 117, 1057. 1058.

In the case of Foreign Bills of Exchange, it is usual to make three of the same tenor and date, so that if one or two of them should by chance be lost the money may be paid on the third. In such cases to prevent more than one payment, they should, in a proper way, to be duplicates or triplicates; for this purpose each one should refer to the others, to be made payable on condition that payment has not been made on either of the others. Chitty 45-46.

The Bill should always point out one payee, yet it need not name the payee, as it may be drawn payable to bearer. It is said however that if the Bill does not designate any payee by name or otherwise, but designates the person of whom the value was received, that person shall be considered the payee. 45 e.g. a bill drawn thus

"For value received of A.B. to here A.B. shall be considered the payee. This is however questionable." Chitty 467. Robins 13th 68. 608.

It is settled that a Bill may be made payable to a fictitious payee – but the figure these Bills have lately made in the Ges. of Westminster

Yale renders it desirable that such Bills (payable to fictitious payees) should never again be allowed. There was a set of speculating men in England who drew Bills to a most incalculable amount payable to Cinsay Baggrowet & Co., when in fact no such company ever existed. It is evident that such bill must be payable to bearer else it is not payable at all. The bill was also crossed in the name of a fictitious person; therefore though the indorsement no bill could be created. But to prevent such flagrant fraud from being practiced on innocent persons, it was definitively settled after much litigation, that a bill made payable to a fictitious payee or order, is in legal effect payable to bearer, as to such parties who knew the payee to be fictitious at the time they became parties to the Bill: but as to such persons who did not know the payee to be fictitious it was otherwise. Thus if the drawer knew the Payee to be fictitious at the time of acceptance, he is liable on the acceptance to a bona fide holder. But if he was ignorant of this fact, he will not be liable to pay the Bill at the he has accepted it. Such bills however have been highly condemned, it has been often said, that a person drawing a Bill, and endorsing a fictitious name upon it for the purpose of getting it into circulation through injuring a 3rd person, is guilty of Forgery. 35 Ch. 274, 1824, 481, 486. 3 T. L. 313, 336, 569. 7 B. L. 104, 298. 10 P. 108, 219, 227. L. T. 4709.

A Bill may be made payable to one person for the use of another, if this is no objection to the validity of the Bill. The nominal Payee will have the legal power of transfer. I there is nothing in it to prevent negotiation. 8 Term 507, 6 Term 176, Kyd & Trench, 16 Bl. 213, Chitty 48, 112.

Every Bill to be negotiable must contain operative words of transfer, i.e., terms of negotiation. The words order or bearer or some void last as a money order is indispensable, otherwise the bill is not negotiable. It is these operative words of transfer which make the Bill negotiable. A Bill payable to it is an old fashioned chose in action, not negotiable. The terms bearer in order is the most usual. A Bill payable to A or his assigns is negotiable. The words assigns is equivalent to order. They are both transferable only by indorsement; but where it is payable to bearer, it is negotiable by manual delivery. 1 Bost. 23, 3 How 211, 2 Shaw 212, 2 Wil. 353.

And a Bill payable to the "order of A" is the same thing in effect as a Bill payable to "A or order." When it is payable to the order of A, it is sworn in strictness that it is to be paid to A order, not to A himself. But this is not the construction put upon it - it is considered as the same as if drawn payable to A or order. 3 Term 220, 2 Shaw 211, 2 Wil. 353.

The words "value received" are according to all ordinary forms inserted in all Bills of Exchange. But it is now settled that they are not necessary
either in the bill or in the endorsement. in both cases a valuable consideration is presumed on an
plead. 2 Shaw 476. 2 May 1481. 3 Willis 212. 8 Mod 267.
15 H. 310. Fortescue 252.
But to enable the holder to recover interest and damages in default of payment or acceptance by the acceptor or drawers these words (whether we receive) are made necessary by Stat. 19. tit. 10, sec.
313, and 3 14 Ann. These two statutes have thus rendered these words necessary, but it is not a rule
of mercantile law. 2 Tha. 410. Kyd 111. Litty 80-93-94.
I have already adverted generally to cases
where the want of consideration is a basis for
liability. I have further to observe that if the
bill is for accommodation merely, that fact is
known by the indorsers at the time of receiving it,
the can recover no more than he paid for the bill,
the the amount paid may be less than the nomi-
inal sum on the face of it. Thus accommodation
bills are very frequent. e.g. A applies to B
for a bill of Exchange for 100£ to enable him to pay
raise money. B draws the bill in A's favor, A
endorses the bill to C. for 50£. Now C, if he knows
that its being an accommodation bill can recover only the 50£ which he paid for the bill.
1 Esp R. 261. Cas R. 61, 216. 2 Caines 268.
And here it may be laid down as a gen-
eral rule an universal rule that in all
cases in which a bill may arise a want of
consideration he may also aver the consideration was illegal, it in many cases the latter defence may be made when the former cannot. 12 P.R. 443.

With regard to illegal considerations, it is an uncontroverted rule, that as between those parties immediately concerned in the illegal transaction it is always a good defence. As e.g. between the drawer & the payee, & between the drawer & the acceptor. Long 614. 626. 

And a 3d person knowing of the illegality at the time he became a party to the bill, cannot recover upon it. Take the rules together they may be exemplified by these 2 examples. A. draws a bill upon an illegal consideration payable to B. B cannot recover 1st. They are privies to the illegality. But further if B endorses the bill to C. C also knows of the illegality he cannot recover. Esp P. 166. 6 T. & 61. Contra Esp P. 6. 801 & 6.

If however a 3d person who having put his name on the bill at the request of the holer, has been compelled to pay it, he may recover the amount paid at the he knew it to be drawn upon an illegal consideration. But this right to recover is on the ground of the payment of the money. He, in putting his name to the bill to give it greater credit, is a mere volunteer, does it in the nature of a surety. It is not considered participant in crimes. 2 Lev P. 215. 801. 823.
For the purpose of pursuing this subject, I will again remind you of the general rule before laid down, viz. that as between the parties immediately concerned in the transaction the illegality of the consideration is a good defence. And I desire further to observe that in general any holder of a Bill upon fair consideration, having no knowledge of its original illegality may recover upon it. This rule presupposes the Bill to have been negotiated; for according to the general rule it is not recoverable as between the original parties. These can't be ignorant of the illegality. A different rule, that is adopted as to the subsequent holder of the bill, who came into possession of it fairly, not knowing of the illegality of the consideration at the time of receiving it. And if he finds out subsequent to his receiving the bill of the illegality of its consideration, still he will not be deprived of his right of recovery. 1 R 280, 150 proceeding 614, 636, 151, 300, 3 T 801. 83, 454, 527. 7 T 607. 3 T 422. 592, 1 S 1845, 1155.

This then is the general rule. But it seems there is an exception to it, operating to the holder where the bill is endorsed after it has become payable. You remember according to some rules that a drawee has a right to demand a consideration when the Bill is endorsed after
it has become due. Or that the jury might presume, upon trivial circumstances, the holders knowledge of the want of consideration. In such case as the defendant may raise the presumption that the holder knew of the want of consideration, so also it is clear he may raise the presumption of the holders knowledge of the illegality of the consideration, when the bill has been indorsed after the day of payment has arrived. Y.t. 233. 234.

There is also another exception to third persons, who become holders in cases where the statute law has declared the bill void. That is, in those cases the holder, having no knowledge of the illegality of the consideration, yet he cannot recover. Thus suppose the bill is drawn upon an insidious consideration, or for money won at play, or in consideration that a creditor with signs a bankrupts certificate; in all these cases the statute has declared the bill void, if an innocent indorser cannot recover as the drawer or acceptor, or indorser. Doug. 646 to 670. 2 H. 2 K. 647. Stu. 115. 5. Gard. 336. Kast. 92. 1 Esp. R. 379.

The distinction then as it stands in the books, so far as respects the present exception, is this—If the consideration is illegal at law, the subsequent bona fide holder can recover, so this without exception. But when the statute law has declared the bill void, even a subsequent bona fide holder cannot recover. But every
much doubt that the reason of this distinction arises from the circumstance of a prohibition by Statute in one case, and in the other by Statute Law. If the consideration is immoral at all, it can be recovered as between the original parties. Suppose the Bill is given in consideration of the commission of a certain crime—now this Bill cannot be recovered as between the parties to it, but if it is negotiated, it may be recovered in the hands of a subsequent bona fide holder.

Why then can it not be recovered in the hands of a subsequent bona fide holder when the Statute Law has rendered the Bill void? It is not merely because the Statute declares the Bill void—the true reason I conceive to be this—when a Statute Law renders a Bill void, if even a subsequent bona fide holder were permitted to recover upon it, the Statute would always be defective itself. It notwithstanding the Statute Law or party intended to be protected would be defeated. E.g. The Statute declares a Bill drawn upon an usurious consideration to be void. The bonaviso (who is the drawer) is intended by the Statute to be protected; but if by negotiation the drawer could be subjected, the object of the Statute would be entirely defeated. So also if a bill is drawn in consideration of a gaming debt—The Statute declaring such Bill void is intended to protect the looser. But he is not protected if he can be
subjects to the payment of the bills into his own hands it may ever afterwards come. The Bill (if by so doing the drawer could be made liable) would always be negotiable. Again suppose a Bill drawn in consideration of the creditor signing a Bankruptcy Commission. This is unjust to oppressive a fraud upon 3d. persons. Such bills are prohibited by statute. But if the bearer gives both a subsequent cause permit to recover upon it, the statute also in this case would be voided by the person whom the statute designed to protect would be oppressive notwithstanding.

This reasoning will not apply to cases occurring under the C.S. prohibition. Suppose the consideration immoral as 2d. a bill given in consideration of paying. Such bill is void at C.S. But if it is transferred to a 3d. person the permit to recover upon it, the object of the law will not be defeated. The party will be obliged to pay the money to an honest man. But the object of the law would be defeated if the original party was permitted to recover upon it. The law is not intended to injure a 3d. person, but to prevent a scandal, from being paid for his vileness. So when a bill is drawn in consideration of committing murder, the C.S. declares such bill void, so it is to far as respects the original parties, but it is good in hands, of a subsequent from a first holder. This criterion, trust, will be found to run this all the cases.
Tex. Mercatoria. Bills of Exch. Prongs, etc.

I do not apprehend that our best writers have laid down the distinction correctly, when they say that where a Statute law prohibits there can be no recovery. You suppose a Statute makes that unlawful which was so at C. law. Now if a bill is made on such consideration it transferred for valuable consideration, I have no doubt but it may be recovered by its bona fide holder. Suppose e.g. a Statute is made prohibiting murder which was also prohibited by C. E. A bill is drawn in consideration of the commission of this crime. The bill is doubtless void in the hands of the original parties to it, but there is no doubt if the bill is transferred but that it may be recovered in the hands of the bona fide holder.

This course of reasoning is also fortified by another consideration viz. that where the Statute law declares the bill void there may be a recovery as between the indorser & indorsee e.g. A draws a bill on B. for an dubious consideration. Now the Statute declares such bill void & no recovery can be had upon it as between the original parties but if it is negotiated to C. he may recover of the indorsee. B. The indorsee is not intended to be protected. The object of the Stat. is to protect A. the drawer of the bill, & the bona fide holder, and further of C. indorsee it to B. he by the B. indorsee may recover of C. the amount. The reason is, the mischief intended to be prevented by
the Statute is not bit in. I have made these observations because I conceive there is no mystic
difference between a Statute & a C. P. prohibition.
If a Bill is declared void by Statute, it is so,
equally so, if it is declared void by C. P. Ex. 1155, Doug. 13. 16.
Mr. Chitty lays down a rule as follows:
an indorser is indorsee which is manifestly in
correct -- it is that the innocent indorsee may
receive of him only of whom he received the
Bill. No citing no Authority for this rule, and
I apprehend there is none. Chitty 36. It is true
when a Bill is transferable by manual delivery
only, the holder can recover only of the person, of
whom he received the Bill. Had M. Chitty
laid down his rule with reference to this case,
I do not to cases of illegal consideration, it would
no doubt be far correct.

On the other hand, if a Bill which is good
in its creation, is endorsed for an usurious con-
cussion, it then passed to a bona fide holder, for a
valuable consideration. he may recover as the
Drawn or accettor but not of the indorser for
the indorser is the person who is intended to
profit of the Statutes against the usury.
East 97. 1 Sa. 294. 3 Ca. 199. 1 G. 80 129.

In every Bill, the Drawn's name
must be subscribed or inserted in the body of
the instrument -- and it must be thus sub-
scribed or inserted by the person purporting to
be


With regard to the Construction of a Bill of Exchange. I have to observe it is very liberal, more so than the Construction of Bills. Therefore where one, for money, acknowledged to have been received in the body of the instrument, gave a Promissory Note concluding thus "and which I promise never to pay." it was decided he should pay for it was manifest it was a mere trick or at best an error. The intention of the Parties was evident, that the Note was to be paid. This is giving words a very literal signification.

It is upon this same principle of liberal construction, that a Bill payable to a fictitious person or even, is upon certain circumstances, effectual as a Bill payable to bearer. Litch. 252.

In general, the Contract entered into or evidenced by the Bill of Exchange, is construed as to take effect according to the Law of the country where made - in other words the loci consul sit. As where a Bill was made in Leghorn to pay in Eng. It was proved that there had occurred certain events which, according to the Law of England, would discharge the Bill. The was discharged from ye payment all the in Eng, where ye action was brought these events had no effect to discharge him. S. 732. 1303. P. 141. 2. 447. 2 N. 1663. 136. 126. 76. 2. 92.

Here is an exception to this rule with respect to the value of payment, mentioned in the bill. This is regularly to be calculated according to the laws of the country where the bill is payable. Thus if a bill is drawn in London payable in Amsterdam, at two months, the time of payment must be regulated according to the laws of Holland with respect to this usage. The drawer must subject that the drawer will calculate the issue according to the laws of his own country. (Footnote: Plac. 225.)

As to the remedy upon a Bill of Exchange, the form of it is it must be according to the laws of the country where fought; but the extent of it is to be according to the laws of the country where the bill is made. The reason of the rule as it respects form is clear—for were it otherwise it would introduce into courts of justice the greatest confusion. E.g., suppose a bill drawn in Algiers is sued on in Eng.? the action must be a Sum in Debt. (Debt is not often bought, but the trial proceed according to the laws of Eng.) upon this subject—now suppose the form of proceeding was to be regulated according to the form in such in Algiers which was e.g., for the Dee to issue his indictment, confine the debtor in a dungeon, or at least, without the privilege of a trial by jury. The proceeding of his nature would be entirely new to Eng., if the law of Westminster Hall, a producer of much confusion & mischief. But still the extent of the right is to be regulated according to the laws of the country when the bill was made. 1868. 138. 1816. 69.
A Bill, when drawn, must take effect regularly delivered to the Payee. This is a requisite, applying to all legal instruments. And a person receiving a Bill in satisfaction of a debt, for which he had not a higher security cannot regularly sue for the debt, until the day of payment on the bill; because by receiving the Bill, he in pleni facies gains credit, until the Bill is due. 6 B. R. 327. 7 B. 64, 33. 337. 17 D. 28, 186. 20 B. 426, c. 12, t. 4, 1, 177.

If a Bill is attaint, while in the hands of the Payee or holder, it is a material point, as in the date, sum, time of payment, &c., and this without the seauer's consent, he is discharged from the payment even as respects to a subsequent bona fide holder. So at the Law intends to protect these instruments. It will frequently oblige the drawer to pay a subsequent bona fide holder, whom he could not be compelled to pay the original party; yet the Law cannot go so far as to compel a man to pay an instrument which he never made. It is not his act at all; it is a forgery to the holder, however innocent: he may be, can never derive a title through forgery. It is also a rule that the holder must run the risk of the genuineness of the bill, the certainty of which he may ascertain by enquiry. After altuation in a material point the Bill is not genuine.


The rule is the same as to an acceptor.

When the alteration is made after acceptance it also amounts to an incohen thesis made after endorsement, i.e. in both these cases the parties are discharged from recovery can be had of them.

But the rule is different in case of a subsequent bill, i.e. where the Bill is altered in one case before acceptance, or in the other before indorsement. As e.g. a bill is origi- nally drawn for $5000 and is altered before acceptance to $5000, the Drawer accepts it. He is bound to pay the amount. The the Drawer is not. The party altering, however, can now recover.

Boas. N. Placitum 194. you will find this doctrine in each. Case cites also to in Acty 63.

But the consent of any party to the Bill will stop him from taking advantage of the alteration. If after the Bill is accepted the Drawer consents to its alteration he is liable, the acceptance is not. q.d. P. 320. Leg. 63.

The party thus making the unwarra- nted alteration is a material part and can not recover of any one. It is a joicing to be the com- mittee it has no right of recovery in any case. 10627.

The remarks I have thus far made, have unnecessarily been miscellaneous.

I shall now proceed to treat...
Of the obligation incurred by the Drawee.

The Drawee by the very act of drawing and delivering the Bill implicitly engages with the Payee and with every subsequent bona fide holder that the Drawee is legally capable of accepting the Bill—that he is to be found at the place described in the Bill—that on due presentment the drawee will accept it—that on presentment for payment that payment will be made.

The Drawee enters into these implicit engagements not only with the Payee but with every subsequent bona fide holder. For if the Bill is drawn payable to order or bearer, the obligation follows the transfer into whose ever hands it may come, to the all its successive stages of negotiation. Thus if by a Promissory Note I engage to pay A. B. or order, I not only engage to pay A. B. but any person into whose ever hands the Note may come be negotiable. Ky. 109. Doug 55. 226. 13c. 378. I Esp. 12. 511. 2 Ky. 7f. 1087. 6 Ky. 63. 4. 70. 72.

The Payee however may agree to assume these risks if there is no such implicit agreement in his favor. But every subsequent bona fide holder not knowing of this assumption will not be affected by it, for if so, he might be defrauded, and the rule is said to be the same where the Drawee discounts a bill, i.e., disposits of it by way of sale. 2 Ky. 120. 165. 8 Ky. 757. I Esp. R. 607. 75. 16. 65. 6.

If there is a failure of any of the engagements just mentioned, the drawer is liable immediately after the day of payment on the bill, if not arrived. For whereas an engagement is broken, there is then an immediate right of action. He is liable immediately for the amount of the bill, if in some cases for interest and costs. E.g. Suppose a bill is drawn payable in one year. If the drawer is legally incapable of accepting the bill, the drawer may be sued immediately and so if there is a failure of any of the implied engagements.

2 H. 136 279. Doug St. 3048. 469. Act 64. 100 126.

153 669. 31. 1867. 620 52. 139. 3 July 18 31.

The drawer incurs these implied obligations whether the bill was drawn on his own account or that of another, and the obligations continue even tho. the drawer should be prohibited by the laws of the foreign country to accept the bill. If thereby rendered incapable of accepting, the drawer assumes this risk. Also in the laws will permit & drawer to accept.

Boas 469. 47111. 2 H. 30. 378. 477 117. 186. Act 64.

The holder, however, may lose the benefit of all these obligations on the part of the drawer by his own negligence. In what manner he may lose them I shall explain hereafter.

I would observe by the way that in title, the holder is the beneft of these engagements (on his favor) on the part of the drawer.

The former must do his duty, as where presentment to the drawee is necessary, the holder must present the Blee. This is one part of his duty. And here I have to observe that, in some cases presentment is necessary and in no cases expedient, where the holder receives the Blee before acceptance.

When the Blee is payable within a limited time after sight, presentment is absolutely necessary. The holder can never entitle himself to a recovery on such a Blee until after presentment for acceptance. For unless this is done, the day of payment will never arrive. 1V.C. 18065. Ch.47. 86. 200. 1 Ed. 117.

But in other cases it is not necessary, the general advantage of the holder to present the Blee, till it becomes payable. It is always said to be advantageous because it is the safer course, but it is not an act of justice due from the holder to the drawee or any other party to the Blee but it may render a recovery on the Blee more certain and easy than for it is advantageous. Pos. 5 Pl. 266. 1V.C. 7123. 5 B.C. 2670. 1 Ed. 118. 2 How. 496.

And even where the general rule makes it necessary for the holder to present for acceptance, he may excuse his omission to do it, by proving that the drawer (or other party) had no notice whatever of the drawer (or other party) on his hands;
or by proving that the Drawee was insolvent at this fact known to the Drawer or other party sued.
So also the party excused the omission to present by proving any fact in general which shewed the party sued had not been injured by the omission to present. 2 Beav. 336-569. Chitty, 102-102-202-203.

Suppose the Note is made payable at a certain time after sight, if the holder does not present the same for acceptance this makes a claim on the Drawer. The Drawer says I am not liable, you have never presented the bill to the Drawer, therefore it is always first liable, and according to the general rule the Drawer is not liable. But the holder may reply, it is true I have never presented the bill, but I can prove you had an effect in the hands of the Drawer of things. No credit with him, or the Drawer is a notorious bankrupt, you will know this fact. Now here the holder can recover of the Drawee for there is no injury according to him by the holder's omission to present the bill for acceptance. The excuse is sufficient.

The use of presenting a Bill is that in case it is not accepted or notice of its being given to the Drawer he may remove the effects out of the hands of the Drawer; but here the Drawer has no effects of the Drawer in his hands. Therefore, he can't be injured by the omission to present. In either case the holder is excused for his omission, the general rule might require it.
March 17, 1812. Dec. 5th.

I have already observed that when a bill is payable at a given time after sight, presentment for payment is indispensably necessary—therefore the day of payment will never arrive. The rule as to the time of presentment in such a case is, that the holder must use due diligence—on other words he must present the bill in a reasonable time according to the circumstances of the case.

And here I have to remark, as before, that what is a reasonable time is before the facts are ascertained a mixed question—but when ascertained it then becomes a question of Fact.


Mr. Chitty, this by evident mistake laps down the same rule with respect to a bill payable at sight—i.e. he says such a bill must be presented for acceptance within a reasonable time. But this is certainly incorrect, for it is never necessary to present a bill for acceptance; it being payable, for by the terms of the bill it becomes payable the instant it is presented. It is true when a bill is payable at sight it must be presented for payment within a reasonable time, this is the way in which the rule should have been laid down; viz. that such a bill should be presented for payment within a reasonable time. Chitty 67. 88.

Presentment should always be made within.
the usual hours of business, otherwise it is not deemed legal to the drawer not being to accept, and
indeed the holder presenting not within the usual hours of business is considered as doing his duty.
No. 125. Chitty 69, 148.
But a neglect to present within the proper time may be excused by the illness of the holder
or as the case may be, by other causes. Same auth.

It seems in strictness the drawer should accept or refuse immediately on presentation.
It is usual, however, to leave the bill 24 hours, that he may have an opportunity of
examining the accounts between him and the drawer, including that drawn voluntarily, accepts or refuses sooner. As if the bill is thus left a refusal of acceptance within the time, it may be considered as
dishonored. L. Ray 281; Bourdeau Le, Planch. 17. Com

But as it is usual to leave the bill 24 hours with the drawer, yet the holder is not justified in doing this, if the maint by which the
notice of non-acceptance is to be sent goes out
in the meantime. In such case he must insist
upon acceptance or non-acceptance before the
mock's departure, so that in case of nonacceptance he may give notice to the drawer. Com 50.
Supra. Chitty 50.

If the drawer is not to be found at the
place described in the bill, or it is ascertained
that he never resided there or having resided there has absconded, the bill or either of these cases is considered as dishonoured. For you recollect one of the implicit engagements on the part of the drawer is that the drawer is to be found at the place described in the bill. 1 Esp R 516. 2 Esp 17 Esp 743. Bowes Plam: 22 to 29. 1 Esp 125. 37. Chitty 70. 71. 128. 136.

But if the drawer having resided in the place described has removed to another, but has not absconded, presentment should be made at that place to which he has removed. In such cases the bill is not considered as dishonoured. And presentment should be made if possible to the drawer in person; but if he cannot be found by due diligence the holder is not bound to present to him personally. As suppose he has left the State, Realm, or Kingdom, the holder is not bound to follow him; in all cases presentment at his house is sufficient. If he cannot be found by due diligence whether he has left the State or not. See 1 Esp 17. 511. Chitty 70. 135. 136.

If the drawer is dead, presentment is to be made to his personal representative, if the latter is to be found within a reasonable distance. If the representative is not within a reasonable distance, presentment made at the last place of abode of the drawer will be sufficient. Polchin 146. Chitty 70. 71. 132. 136.

And what is a reasonable distance?
conclude is a question of Law, in the same sense that a reasonable time is a question of Law. I do not find this rule expressly laid down but I have no doubt of its correctness. I have this for our treating of presentment you acceptence. I shall now proceed to consider the

**Acceptance itself.**

Acceptance is the act of engaging to comply with the request contained in the Bill, i.e. agreeing to pay it. And this acceptence may be in writing or by Parol. Act 26 75. 76. 268.

Acceptance by the Agent of the Drawer is valid, it will bind the principal, but any agent of the holder must produce his authority, else the Bill may be considered as dishonored, for the holder cannot authorize know that the Agent is authorized to accept. And it becomes questionable whether the holder is even obliged to accept in an acceptance by an Agent, because it multiplies the necessary proofs. I think he is not bound to accept unless for another reason, which is that the instrument purporting to be the agent's authority may be fraudulent, or a forgery, the holder ought not to be obliged to run this risk. But as he does acceptances the see principal is bound of the agent acts under his authority. Act 26 75. 76. 268. 125 126 127 128 129.

Acceptance by one partner for both on for the firm, binds the Company. But if a Bill is drawn.
drawn on two persons who are not partners, and
accepted by one only, the on the name of both; yet
the person not accepting is not bound for he is not
a partner, if the person accepting is not able to do
so. He does not accept. For this by drawing a
Bill two persons may make themselves co-partners,
so that a negotiation of it by one on the
name of both, will bind both, yet here they are
not partners, so cannot be subjects as such
by the act of another who is a stranger. In this case
the holder is not obliged to acquiesce in such accep-
tance, but may consider the Bill as dishonored.


If the Drawee is an Infant, or insane,
Court, or is found otherwise incapable of accept-
ing, the Bill may be considered as dishonored, and
not be presented, because by the supposition,
the Drawee is legally incapable of accepting.
This rule follows from the one before laid down
that the Drawee is blindly engaged to the
Drawee’s legal capability to accept the Bill.

Chitty 63. 71. 2.

And a promise to accept, or future
may operate as a present acceptance, even if
it is by Parol. Thus where on presentation,
the
Drawee said to the holder “leave the Bill, and
I will accept it,” it was held on a present accept-
dance, because it gave credit to the bill. But Parol
promise from protecting it. N.F.P. 270. Conf 570. 3 Bur. 1689.
14th 64 a 44. 5 East 914.
Indeed it is a general rule as you will find from the Authorities last cited, that an unconditional promise to accept in future is a present acceptance. And a promise by the Drawer to the Drawee to accept a bill which may be drawn beneath his name is binding, if attended with any circumstances which would induce a 3rd person to take it, else such promise might operate as a fraud upon 3rd persons. As when the Drawer wrote to the Drawee to know whether he would accept a Bill, the Drawee answered that he would only honor the Bill, and the letter containing this answer was shown to a 3rd person which induced him to take the Bill. It was therefore the Drawer was bound by the promise to accept, otherwise this 3rd person would be defrauded. But I trust this would not have been considered an acceptance as between the original Parties.


Acceptance after the day of payment will bind the acceptor; yet in such case the Drawer or indorser will be discharged unless duly notified of non acceptance prior to payment at the day of payment. If the Bill has never been presented for payment until after the day has elapsed, the drawer or indorser is discharged of course, for why should he have not used due diligence to have been guilty of neglect. 12 MoD 410. 1575. 74. 81.

As in such case the acceptor is liable to pay on demand whatever time the bill had to run. It cannot then according to the nature of the case be payable according to the terms of the bill, for the day purporting to be the time of payment on the face of the Bill has elapsed. Dey 364. 51.

[Odd text in the margin]

Said 127. 129. Earth 96. bow 1375. 12 Aedg 47.

Under the English Bankrupt Laws, the drawee, the having effects of the drawers in his hands, is not safe in accepting the Bill if he knows of the Bankruptcy of the Drawer. For the effects in his hands are now the property of the Assignee and if he accepts after knowledge of the Bankruptcy, he will be compelled to pay the Bill; or else to pay to the Assignee the amount of the Bankrupt's property in his hands. But if he had no notice of the bankruptcy at the time of acceptance he will not be obliged to pay the Assignee—i.e. even if he has not paid his bill but only accepted it, still, if Assignee cannot draw the bankruptcy effects out of his hands, for after acceptance he is bound to pay at all events of the effects of the drawers he must be allowed to retain (i.e. sufficient) to secure him self. 2 H. 158. 333. 7 H. 21st. Oct. 24. 152.

The acceptance of a Bill may be either absolute, conditional or Particular. But the bill is not bound to acquire in any acceptance other than an absolute one. And any other acceptance
acceptance he may consider as a dishonoring of the Bill. But if he is willing to acquiesce in any other acceptance, the acceptor will be bound by it. Bodley 47. Chitty 24. 74. 162. 180.

If the holder is satisfied with a conditional acceptance or one varying in any way from the tenor of the Bill, it may be so accepted; and then, if he gives due notice of such acceptance to the prior parties, they will be bound. But if he takes such acceptance, he does not give notice to the prior parties, he can have no claim on them, they are discharged. The reason is, the notice drawn is entitled to this notice, that he may withdraw his effects out of the drawer's hands, and the indorser is entitled to notice that he may have the same chance as the drawer or any former indorsers.


And what amounts to an acceptance is a question of law. Exactly in the same sense as a reasonable time is a question of law. 167 R. 182. 186.

An absolute acceptance is an engagement to pay the Bill according to its tenor, unless a Bill is generally accepted, without any qualification, it is an acceptance according to the tenor of the Bill. But it is unnecessary for a party, expressly to say he accepts according to the tenor; it is an absolute acceptance if without qualification. 167 R. 184. Chitty 705.
I have observed that an acceptance may be by parole, but this is not usual nor is it safe, because the evidence of a parole acceptance is much more precarious than an acceptance in writing. The usual mode therefore is to accept in writing.

The form of acceptance is usually this: "accepted" or subscribed by acceptor's name. Or if the word "accepted" is written without signing his name, it is good—or it may be done by signature without anything written on it. Lippe, 375.

When a Bill is made payable in a City generally, i.e. without specifying any place, it must by acceptance be made payable at a particular house or place in the City, or the holder may protest it. You are not to understand by this that the acceptor will not be bound unless a particular place is designated; but the meaning is, the holder is not bound to accept unless the acceptance assigns the place where the Bill shall be paid. 2. Conf. 574, Corr 17. 75.

The reason of this rule is obvious. Suppose the Bill is payable in the City of London. Now if he were not allowed to claim the right of having the place of payment specified, or the acceptance assigns the holder would be subjected to much inconvenience, for the case might be he would be liable to travel to an indefinite length of time over...
this miniature of the world in search of the acceptor. It is for the convenience and security of the holder that he may claim such a specific acceptance.

There are the usual modes of acceptance, but in general any act of the drawer proving his consent to comply with the requisites of the Blee will be a sufficient acceptance. Thus where the drawer wrote, "seen" or the Blee it was held, an acceptance; so also in another case where he wrote "presents," and in another where he made a memorandum of the day of the month on the Blee, in another where he wrote a direction to a third person to pay; these were all considered a good acceptance; and any thing of this nature will amount to an acceptance, all the written on a different piece of paper, if it relates to property to the Blee. Comb. 410. 13. 48. 270. 14. 280. Vin. ab. 64. "Bills of Ex." 14.

And a verbal acceptance, so it is with one consideration, is binding in favor of the holder of the Blee, the as between the drawer and acceptor, or the want of consideration may be avoided. I understand the rule to be the same where the acceptance is in writing. 513 in 1669. Chiefly 77. 3 D.

But a promise to accept obtained by fraud or misrepresentation does not bind acceptor. But this rule I trust is confined to the person who practiced the fraud. I can't conceive it extends to a subsequent bona fide holder, for if it does
the great principles of the mercantile law will be defeated and destroyed. It is very important in a commercial point of view that the Bill should not be impaired in the hands of an innocent holder by the transactions of prior parties; and the general principle of the C.S. comes to this, for which is the most reasonable that the person who suffers himself to be deceived should be the loser, or an innocent holder of the bill, who was wholly ignorant of the transaction? Clearly the former according to the C.S. principle. Chitty 32, 3 Burr 1669.

It appears from what has been said, that the acceptance may not be made on the Bill itself, it may be on a separate piece of paper, or an acceptance by letter will undoubtedly bind. 1 Ser. 69. 3 Ser. 648.

And an acceptance may be implied, even where there is no writing in the case. But to constitute such acceptance there must be some act or circumstance from which it may be inferred that the holder was induced from the act or circumstance to consider the Bill as accepted. Thus, where the drawer said to the holder "there is your bill, it is all right," the rule laid down by the C.S. was, that if by this expression the holder was induced to believe the bill accepted he should recover, unless otherwise. (Qu. how did the C.S. decide? 9 T. R.

But an acceptance may be implied from the drawer's keeping the bill a great length of time, tho' this implication may be rebutted, as if the drawer had been taken suddenly sick, so that he could not in any way attend to business. I think it possible from returning the bill in due season. This will rebut the implication. It is not however as general as is rebutted but in cases it supposes it is. Such neglect to return is considered prima facie an acceptance. 1 Tred. 301. Blackstone 278. Chitty 87.

And in general any act which gives credit to the bill it induces the holder not to protest it, will amount to an acceptance. This is of course an implied acceptance. 1 Tred. 301. Rtp 56.

An engagement to pay the bill, not absolutely, but on some contingency is called a conditional acceptance. The holder is not bound to acquiesce in such an one, but if he does, he must give notice of the nature of it to the prior parties else they will be discharged. The reason of this I have before explained. But the holder is not bound to receive such acceptance, but receiving it if he neglects to give notice to the prior parties they are discharged, yet the acceptor is bound to the acceptor if the holder does receive it.

Cothirt. Ibid. 23. 34. 75. 79. 81. 87. 103. 180.

For example, how a drawer accepts in the form, "accepted on account of such a ship, when in ballast"
for his Cargo," this is a conditional acceptance; whereas it is thus accepted when goods are sold, it is conditional, & the holder is not bound to receive such acceptance, but the acceptor is bound according to the terms of it if he does receive it. Pln. 1672, 2 N. 2 (bldg. 126, 64.)

Conf. 57, 12. 6, 182.

Here by the way I would observe (because it may occur to you that the last rule is inconsistent with one formerly laid down viz that your bill is to be paid at all events or not upon a contingency, I answer) the Bill is still payable at all events. If the drawer refuses to accept the Bill at all events or not upon condition the holder may resort to the drawer & he is at all events liable. The rule is valid still if the Bill is originally drawn payable at all events, for if the drawer refuses to comply with the request contained in the Bill, according to its tenor, the drawer is also far to liable. The drawer is not bound to accept absolutely - but he is bound to pay according to his acceptance. Such conditional acceptance becomes absolute however as soon as the contingency on which it depends, takes place. E.g. if the drawer accepts to pay as soon as such goods are sold, such acceptance is conditional; but it becomes absolute whenever the goods are sold.

St. 212, Conf. 57, 12. 6, 182.

If the acceptance is in writing the condition written should also be in writing.
A partial acceptance varies from both of the former. This is an unconditional acceptance as far as it goes, but varying from the tenor of the Bill. It is not an engagement to accept the bill upon a contingency, but an absolute acceptance varying, as I before said, from the tenor of the Bill. Thus if the Drawee accepts to pay part of the bill, or to pay it at a different time or place, or in a certain way different from that specified, it is a partial, not an absolute acceptance, as far as it goes. P. 214. comb. 252. 11 Mod. 130. P. 1199.

This species of acceptance also is one which, the holder may refuse, to treat the Bill as dishonored. But if he does receive it, the acceptor is bound by it, and must give notice to the prior parties of such acceptance else they are discharged. Chitty 312.

At this time I would remark that if on a conditional or partial acceptance the holder gives the prior parties notice as of non-acceptance generally, he waives the acceptance.
Because by giving notice of non-acceptance generally he shows he does not acquiesce in it such as it is, and by doing so, he furnishes the prior party with an instrument to secure themselves. The case then, from this general notice of non-acceptance, it appears himself of the partial acceptance besides. 1st Rule 182. Chitty 82. 83. 137.

Whether an acceptance is absolute, conditional or partial, is a Question of Fact.

March 15, 1816. Lecture 6th.

You will perceive from what has been said that by an absolute acceptance the Drawer is bound to pay according to the tenor of the Bill, and by a conditional or partial acceptance he is bound to pay according to the tenor of such acceptance.

The acceptance is binding in favor of a 3rd person, i.e. any one besides the drawer, the man without consideration, it will, then, that fact was known to all here. It is of no concern as respects an inordinate which there was a consideration or not between the Drawer & Drawer, moving to this latter. He is not bound to inquire, if, even he knows there is none, it will not affect him. 12 M. B. 187. 183. 58. 180. 3. 559.

Hence an acceptance by the drawer's Executor will bind him to the habit of apsels, i.e. it will bind him in favor of 3rd person, but not in favor of the Drawer. If the Executor has no apsels, he will be personally liable. In ordinary cases the Executor is not bound unless...
Sex Mercatorum, Bills of Exch. and Prom. Notes.

he has a debt, yet on this, innocent mistake, he is bound by his acceptance, whether he has a debt or not. This character as Executor is not regarded but he is liable as any other person would be.

Indeed an acceptance on the part of an Executor is an admission that he has assets to that amount; he is precluded from ever afterwards averring that he had no assets at this whether his acceptance is in writing or by parole. This is not paying the debt of another, for the acceptance creates the debt, there was none before. And an indorsement by an Executor is the same thing.

To be sure he may, even want of assets as between him and the indorsee, but he is enjoined from doing this as to a third person. It is here also an admission of assets. 2 T. 136. 622. 3 T. 110. 2 T. 1266. 2 B. 1228. 18 T. 487.

The obligation created by an acceptance is irrevocable. This does not vary from the rule common to all contracts. After acceptance he can not be discharged in general other wise than by a satisfaction, or by an express waiver on the part of the holder, as well by a release. 2 T. 136. 622. 3 T. 110. 2 T. 1266. 18 T. 487.

If the acceptance is made in foreign country, by the laws of which it originally is, or after a waiver becomes irrevocable, it is of no force in any other country. 2 T. 136. 622. 3 T. 110. 2 T. 1266. 18 T. 487.
But an acceptance may be conclusive of the right of the holder, without the process or even any writing. I hardly know how (Mr. Giley) how this rule has been introduced into the Mercantile Law. For it is well known according to the principles of the Common Law, that when a right of action has accrued, the court, or it cannot be released otherwise than by suit. The rule is well fitted however. Esp. 26. 47. Chitty 33. 197. Doug. 247. pp. 236.

It has been said in one case that what amounts to an express or agreement to discharge the acceptor from his acceptance is a question of fact for the jury to determine. This opinion is shaken by others indeed it seems to be overruled for it has been decided that nothing short of an express agreement will amount to a discharge, and what is an express agreement is a question of law. It is true the question whether the holder said "I will discharge you," or "I do discharge you," or whether he gave a release, or not is a question of fact—but this being ascertainable, it is then a question of law whether there is an express agreement to discharging or not. Doug supra. Chitty 34. Esp. 197. 47. Esp. 159.

If the holder of the Bill recovers the sum and a release after the Bill is drawn but before acceptance, this does not discharge the holder. But if an acceptance, because a release of note...
only upon an existing liability. But in this case
when the release is executed there is no existing li-
bility for he has not at that time accepted the
Bills. "2. Co. 65, 518, 519, 664. 8 Co. 196.

A parole agreement between the ac-
cipient and the houner to consider the acceptance as at
an end, has been considered as a parole waiver
or parole discharge. The term "parole discharge" may
occur to you as improper, for in law a discharge
can be cut by Deed. The meaning of it is that
it amounts to a Parole waiver. Had again when
the houner sent a message to the acceptor that
the business was settled between him at the drawn
that he need give himself no further trouble, "it
was decided to be a waiver of the acceptance."

And an entry in the houner's Books oppo-
site to the entry of the Bill, in these words "his accep-
tance annulled" was considered as a discharge

It has been a subject of doubt, whether
the houner, taking a part of the amount of Bills
from the drawerr, and taking his (the drawerr's prom-
ise to pay the residue (on the back of Bills) at an enlarged
price of time, discharged the acceptor. See para
possible reason, why it could ever have been imagined
the acceptor was discharged. If the hounor on re-
cieving part of the amount from the acceptor has
given him an enlarged time to pay the residue the
drawerr doubtless would have been discharged. The
acceptors liability is first, the drawee is second. The acceptor in both cases is likely to be benefited by having the period of payment enlarged, but in the latter case the drawee is not benefited. In the acceptor, before the period agreed upon as the day of payment should arrive, may become bankrupt. It is for this reason that in the latter case the drawee is discharged, but, viewing this enlarged time in the case supposed, is safer from proving injurious to the acceptor, that in all probability it will be for his advantage. And how it can be said that that which once operated for his advantage can discharge him from his liability I cannot tell. Cong 248. Ch. 49. 156. 157. 204. 4762. 1604 1587.

It has been determined that the alteration by the holder of a partial into an absolute acceptance, or on refusal of payment, another alteration restoring it to its original form, does not discharge the acceptor. This is going very far, and some it not for the anxiety the Law has to keep up the credit of those mercantile instruments to protect. I do not know that I am conform to the rule would never have obtained. So injury can perhaps result from it, but it is contrary to the rule of the common Law that a person altering a writing of any kind in a material part be not recover upon it. Here the acceptance as written is not in fact part of the acceptor. This acceptance that once been erased, one of a different kind substituted.
If there is no similar to the actual acceptance of the
drawn put upon the Bst, this by the honer.
The rule is however established upon pretty good au-
thority. See 1 Bow's Plac't 222. Hawk. 28.5 T.R. 533. Chitt. 88.

When a future assignment to the accep'tor
a prospect of profit from it is the consideration of
acceptance, the honer agreeing to actually taking
a Bst of Paying from the accep'tor is a discharge
of the acceptance. The consideration of accept-
ance being removed, that by the act of the honer
himself, he has no right to complain that the
acceptance is discharged. Chitt. 88.

And where a honer agreed with the ac-
ceptor that of he would make an affidavit that the
acceptance was for'd, he would not sue him
the did make the affidavit, it was known that
the accep'tor was discharge, altho' the affidavit
was false. The condition on which the honer agreed
to discharge the accep'tor was performed, it was
insignificant whether the affidavit was false or

Not a conditional or partial accept-
ance is discharge, by the honer sending notice
to the person parties of a general non-acceptance.
I gave you this rule in a former lecture for an
other purpose. 15 T.R. 152.

If the honer by his acceptance make
the Bst payable at a particular house, as at a
Banks, if the Bst is not there present for payment,
the acceptor is discharged, provided he would be injured in consequence of the Bill's not being presented for payment at that particular place. Suppose a bill is accepted to be paid at a Bankers, the holder neglects to present it there, if the Banker fails, now the acceptor is discharged, for otherwise he might be defrauded. As considering that the holder would comply with the terms of the acceptance, he has been induced to suffer no money, &c., he had appropriated for the payment of this bill to remain in the Bankers, if the Banker has failed. If he were not discharged then, he would be a loser to the amount of the bill, & this through the negligence of a Stranger: 2 Stan. 1175.

The act of acceptance, when there is nothing in the terms of it to contradict it, implies that the acceptor has in his hands effects of the Drawer to the amount of the acceptance. If then the drawer is afterwards compelled to pay the Bill, he may recover of the acceptor. This rule presupposes that the acceptor is unable to prove he had no effects of the drawer's in his hands. Bowis 455, 1667, 185, 100, 130, 125, Ray 38, 156.

If however the acceptor, on point of fact has no effects, but pays the Bill, he has a remedy to the drawer; but the onus probandi is to the fact of his not having effects lies upon himself, i.e., the acceptor. Noy 156, Chitty 163, 191, 203, 205.
As to all the other parties, i.e. all except the drawer, the acceptor is considered as the original debtor or the person first liable. This will appear manifest upon considering the nature of a bill in all its stages. A draws a bill of exchange upon B, in favor of C and D. A accepts it. Now C must cash upon B. Before he can upon A, for the engagement of A is to pay, provided B does not. A's liability is secondary. Suppose the bill is endorsed, the engagement of the indorser is that he will pay if the acceptor does not. An indorsee thus has three claims, one upon the acceptor, then upon the indorser if finally upon the drawer, and he may sue them severally until he obtains full satisfaction. 18 Eliz. 137, 140. Salter 127, 131, 132, 133.

If the holder makes the acceptor his executors, then A is, the acceptor is discharged, and if he is discharged the others are of course if the original liability is relented the secondary must be. The drawer or indorser have incurred any liability to pay the holder, if by due diligence he could remove the money from the acceptor, and then instead of using due diligence he has voluntarily released him — and it is the same to the drawer or indorser, as if the acceptor had paid the bill. The reason why the acceptor is discharged is, that it is not a duty to write, if an action was not to be brought. 2 B. & C. 514. 515. 3 B. & C. 18.
It is not to be understood however that this claim of the deceased holder cannot be enforced for no purpose: for as between the Creditors of the deceased and the Executor (the acceptor) it may be enforced in Equity but at Law it is gone forever.

Of the effect of Nonacceptance, the duty of the Holder of the Bill when Nonaccepted.

You recollect that it is the duty of the holder to present the Bill for acceptance, in that case only where it is payable at certain times after sight. But if in this or in any case presentation is made, if acceptance is wholly refused, or is made partially or conditionally, notice must be given of the refusal, or of the nature of the acceptance (as the case may be) to the prior parties, i.e. to all the parties on whom the holder can claim, dare in general they will be discharged. The reasons of this rule was before explained to be, that of prior parties were entitled to this notice as an act of justice from the holder, that they may have an opportunity of securing themselves.


It was formerly heldon that any of these prior parties to take advantage of the omission of notice must prove actual damage sustained by the omission. But this rule has been exploded. He is not now bound to prove any damage sustained.
For the drawer is presumed to have effects in the hands of the drawee, if the indorser is presumed to have paid the value of the note. If the holder has neglected to give the necessary notice, it is incumbent upon him also to bring the proper parties to show the latter have not sustained any damage by the want of notice, or if he can do this he may recover. 1 B. C. 406. 409. 346. 182. 2 B. 150. 812. Ky. 27. 32.

Hence, if the holder can prove that from the date of the note to the time of payment, the drawer had no effects in the hands of the drawee, the drawee is prima facie not entitled to notice, and the onus probandi is now shifted to the drawee; for, if he had no effects in the hands of the drawee, there was no need of giving him notice, that he might secure himself. 1 B. C. 406. 409. 2 B. 150. 812. 13. 2 B. 150. 812. 346. 230. 28 Ch. 515. 81. 13.

But if the drawer, not having notice, had effects in the drawee's hands, the fact that he had actually sustained no damage does not dispense with the necessity of notice. This rule is inflexible. For the inquiry of his sustaining actual damage will lead to a very loose examination, and the holder not having done his duty, the court will not go into the inquiry whether damage has been sustained or not by want of notice. 1 B. C. 406. 833.

38 Ch. 158. 7 East 359.
endorsing it with knowledge of the maker's solvency. Cannot defend on the ground that he had no notice of the non-payment. This rule is unquestionable. 2 T.C. 334. 1st. 20th. 388. note. 2 T.C. 389. 1st. 20th. 262. note. 2 T.C. 343.

I have observed that if the drawer had no effect in the hands of the drawee, he is not entitled to notice. And the rule is the same as to the drawee. If the endorser had effects in the hands of the drawer, for if the drawer had none, he can't avoid himself of want of notice. 1st. 20th. 315.

And it has been decided that securities lodged by the drawer with the acceptor for the purpose of raising money, but on which no money has ever been actually raised, are not such effects as entitled the drawer to notice. In other words, securities are not effects within the meaning of the rule. They are not the property of the drawer, he is a mere bailee of them. 1st. 20th. 316.

But if the drawer had effects in the hands of the drawee at the time of drawing the bill, the subsequent death, bankruptcy, or known insolvency of the drawer will not dispense with the necessity of notice. For notwithstanding all these, it does not follow but that the drawer may be fortunate enough to secure himself. Doug. 990. 1st. 20th. 408. 2 T.C. 389. 2 T.C. 312. 7 T. & L. 159. 1st. 20th. 339. 1st. 20th. 334.

The rule is the same in favor of endorsers.
indorsers for a valuable consideration, he is entitled to notice for he is liable as well as the drawer, when or such acceptance no notice is given him, he is discharged, the same as the drawer. Same auth.

And the 1st drawer's having informed the drawer before presentment that he could not honor his Bill, is no excuse to the holder for not giving notice, for although he did so inform the drawer, yet he may have changed his mind - it is the duty of the holder to inform in case of non-acceptance.


I have already observed that the drawer is presumed to have notice, with the acceptor - this presumption arises from the fact of acceptance. On the other hand, if the drawer has no notice of fact that fact affords a presumption that he has sustained an injury from want of notice. According to some opinions, this presumption may be rebutted by proof of actual damage. According to others, it cannot be rebutted; i.e., some say he is not entitled to notice, if he had no rights in drawer; others say, that he is not entitled, as a matter of notice, but if he has sustained actual damage, he may defend on the ground of want of notice. It is true in a case of this kind, no set-off occurs, but there is one of the kinds to be found in that. (See the cases cited on page 157.) 212. 713. 106. 719 128. 131. 6 136. Rich. 203. 186. Sw. C. 329. 187. 37. 89.
This is really a question on which I think much may be pleasantly said on both sides. For myself, I have no doubt but that he is entitled to notice, whether he had notice or not in the hands of the drawer, and this want of notice is a good defence if he sustained actual damage thereby. The objection to this is, that he had no right to draw the bills, but he can't be said to be guilty of a wrong in drawing a bill on a person in whose hands he had no effects. And as the case may be, he may be a sufferer by neglect of notice, as was evident in the English Case. It was this — A in Canada had effects in the hands of B. in London. B writes to A requesting him to draw bills on C. A. (C) had effects of his (B's) in his (A's) hands. A drew Bills on C. in favor of D. and B. became a bankrupt. C refused to accept the bills and on action in favor of D. the letter, of A. to the drawer, the question was whether A was entitled to notice of the nonacceptance of C. It was decided that he was entitled to notice unless he (A) never had any effects in the drawer's hands; because had the drawer notified him of the nonacceptance, he would no doubt have taken measures to have withdrawn his effects from hands B, of which he was now prevented by his (B's) Bankruptcy. Now this A sundered a special damage owing to want of notice, i.e., if he was to be made liable as drawer of the Bills in question.

He has been austerely that if A sundered

If the Drawer absconds there is no need of giving notice, for the holder is not obliged to go in search of him. 1 Esp. 37. 316. And the night or necessary notice is excused by the death or sudden illness of the holder, if notice is given as soon as possible after the impediment is removed. Potth. Exch. 144. Chitty 89.

If the Drawer makes a condition acceptance, the terms of which are to be complied with by the holder, and the holder does comply, no notice is necessary, for by the compliance of the holder with the terms, the acceptance becomes absolute, and where the acceptance is absolute, there is never any need of notice. Thus when the Drawer said, "I will accept the Bill provided..."
you will indemnify me to a 3 person for paying money to you," and the house will indemnify him, the acceptance was to be absolute, if you give no notice necessary. (Chitty 89.90.101.)

If the drawee accepts absolutely for part of the amount only, the prior parties, i.e., the drawee and endorser are bound to the extent of that acceptance without notice. For so far the acceptance is absolute. As if a bill is drawn for $1000, and the drawee accepts it for $500. The drawee is bound to pay the $500, but this without notice. But as to the other $500 there is a non-acceptance as to that, if the prior parties cannot be subjected to pay it, unless they are only notified of such non-acceptance as to the $500.

March 15, 1813. Sec. 7th.

I was in my last Lecture treating of notice necessary to be given to Prior Parties of non-acceptance. The more formal notice by which this notice is to be given is different in case of a Foreign Bill from that of an Issued Bill of Exchange.

In the latter case no particular form is necessary. Rep. 135, 140, 167. 170. Chitty, 90.

In case of Foreign Bills, when not accepted, a Protest is necessary. This notice, without Protest, is not good. This rule of English Law, the Law of most civilized Nations in general. It is not founded on the Municipal Law of Great Britain or of any other Country. The rule on this subject is imperative, so that the want of Protest cannot be supplied by any proof the testimony of Witnesses cannot be substituted. There must be a Protest. 2 P. 729, 6. 8 Edw. 3. 7th, 1811. 2 D. & R. 713. 5 H. 29.

This form it seems is made indispensable by the usage of consent of Nations, that there may be an uniform rule. For there is no other reason why evidence of non-acceptance may not as well be given otherwise than by Protest, in case of Foreign as Issued Bills of Exchange.

This protest is to be made by a Notary Public. For the purpose of making this Protest regular, after a refusal to the holder to accept the Bill, a presentment of the same Bill is to be made again by the Notary Public, 1st on the second presentment the Drawer refuses to accept, the

The Bill is to be noted for non-acceptance, and then a formal declaration of the refusal is to be annexed to the Bill, i.e., a protest is to be entered on it, and if the Bill is lost or not to be found a protest may be made on a copy. Chitty, p. 123. 2nd ed., 126.

Add to this protest so made by a Notary Public full evidence is given by all the officers of Justice, for a Notary Public is an officer acting under Public Mercantile Law, not under any Municipal regulations of the country where he resides, or any other country. Skinner, p. 126. Chitty, pt. 1, p. 164.

The noting the Bill for non-acceptance does not itself amount to a protest, nor will it supply place of a protest, nor is it even evidence of a protest. 2 T. 705. 486. 755. 8 P. 297. 1791, 1813.

And this protest is regularly to be made by the Notary Public himself, not by any of his Subordinates. Being, as a matter of fact, for this Subordinate, this is not recognized as a public officer. 2 T. 75. 1791, 1813. Chitty, p. 1.

If however a Notary Public cannot be obtained within a reasonable distance, as is often the case, the Bill may be protested according to English principles, by any substantial person of the place, where it is dishonored, in presence of two or more witnesses.

The protest is dated on the same day on which the notice of protest is made. The facts,
presentment of the Bill must be in the regular hours of business, and the Protest is to be made at the same time. It must be made in the regular hours of business, or between sunrise and sunset. (Chitty 92. 137. 141.)

The protest must conform in its structure to the custom of the place where made. The forms of Protest are different in different countries. If the protest is made in England it must be regular, and in its structure according to the English forms. If in France, according to French forms. (Chitty 92. 137. 161.) For forms, see § 154.

The protest is generally to be made at the place where the Bill is dishonoured. But, since the Bill is declared to be at A., requesting payment at B., protest may be made at either place. (Chitty 92.)

As a copy of the Bill is always to be prefixed to the protest, but a copy of the protest need not accompany the notice of non-acceptance, the notice of the protest must be given. As a protest of the Bill is a necessary indispensable part of the proceedings, notice of the protest must be given, as well as notice of non-acceptance. But since a copy of the protest need not accompany the notice of non-acceptance, 2 E. & B. 569. (Rep. 1811.) 12 M. & P. 271. 18 Mod. 45. 12 Mod. 309.

As it is not necessary to supply protest

Bill, (Chitty, § 72.)

With respect to Inland Bills, I have observed the form was different. Upon non-acceptance of such Bills, no protest is necessary. Any act existing the drawer's purpose, I prove as fact an ordinarly proof is sufficient to subjoin the prior parties. 6 Mod. 50. 1 Blk. 131. 3 Kel. 69. 5 Bay. 1992. Chitty 93.

It is said in one case, the notice must respect the drawer's intentions not to give credit by experience. This I think is questionable. The reason why notice must ever be given is, that prior parties may secure themselves. Upon notice then of non-acceptance they will know that they, as matter of course, are liable to the holder of the Bill. I think, on account it is not necessary, that the holder informs the prior parties in so many words that he will not trust to the credit of the drawer. 18th. 169.

Chitty 93. 97. 98.

But as by common law in Inland Bills when dishonored does not require a protest, yet by the English Statutes it is said a protest is required for the purpose of entitling the holder to costs interest 1 & damages. This statute is not made for the purpose of subjoining the prior parties, for they are liable to the amount of the Bill without protest, notwithstanding the Statute. It is a mere municipal regulation, introduced by the above Statute, which at 300. 1 we was unknown. 1421. 1 Chitty 93. 94. Kyd 180.

And a protest when made under this statute,

It is to be made by the same person, in the same way, in which it is to be made, upon a Foreign Bill of Exchange. Sect. 29.

But the protest is not necessary in case of an Island Bill, except under this Statute, yet notice of non-acceptance must be given, as well of an Island as of a Foreign Bill. This independently of the Statute, for the same reason. S. 27.

In case both of Foreign & Island Bills notice sent by mail is sufficient, even the letter containing it, miscarries. For it is not supposed that the holder is obliged to go personally or to send a hand to inform him of the refusal to accept. He is obliged to do no more than is ordinarily done, that is put the notice in such a form that it is altogether probable the party parties will receive it. The ordinary mode there is to send by mail. 2 H. 6. 509. Barn. D. 149. Poletier lays down a different rule. In Poletier, Pl. 27. 43.

As what no mail goes to the place, when notice is to be given, sending by the first ordinary direct mode of conveyance is sufficient, though an earlier accidental conveyance might have occurred. 2 H. 6. 565.

As to the time of giving notice, delay may be excused by inevitable accident, as sickness, robbery, 

But in general it cannot be excused, except by some cause, beyond the control of the holder. Poletier, 144.
Notices of non-acceptance, in case of
sign Bills of Protest, also must be sent in a
similar time, and it must be sent to all the per-
sons to whom the holder extends to request for pay-
ment. If he is satisfied with the responsibility
of the drawer alone, notice to him only is neces-
sary. But if he extends to request to the endorsees
as the drawer, he must give notice to both.

What is this reasonable time is, is a difficult
question after the facts are ascertained, before they are
ascertained it is a mixed question, etc. etc.

Formerly much more time was allowed
than at present. Notice of non-acceptance with
in 2 months was formerly held sufficient. But now
it is settled, that the notice must be given on the
day of non-acceptance, if any mails or ordin-
ary conveyance goes out on that day. If there is
none, notice must be sent by the most conve-
ynance or mail by which it can be sent. 4 T.C.R. 499
2 May 743. 2 Sessions 829. 2 T.C. 562; 10 T.C. 168.

And if the party to whom notice is to be
given resides in the place where acceptance is
refused, notice of the refusal, if possible, must be
given him on the same day. As in case the pro-
dui is lives out of the place, notice if possible must
be sent them on the day of refusal, so if he lives in
the place, he is equally entitled to notice on the
same day. 1 T.C. 169. 154 126.

It was once held that the notice required must come from the holder himself, but it has been since determined by Lord Kenyon, that notice from the drawer is sufficient. It is enough if the prior parties have notice, whether it came from the drawer, or the holder. 12 W. 167, 182, 186. Chitty 98.

And it seems that notice by one party, having a right of action on the Bill, will operate to the benefit of the other parties who have claims on the Bill. It will operate in favor of the latter to those who stand before them. Thus if the holder is an endorser, it gives notice of nonacceptance to the drawer or indorser, and thus compels the indorser to pay. Now the indorser may recover of the drawer, without his (the indorser) giving notice, for the holder has given him the necessary notice. There is no need that the indorser should again inform him. So also if the P. indorser gives notice to the drawer of nonacceptance, this will operate in favor of the first indorser, if he should be compelled to pay the drawer. Chitty 98.

And this notice required by former rules should be given to all the prior parties to whom the holder intends to set any event to make liable, or to suit for payment. If this notice is not given to a particular Party, that Party is discharged. Suppose the holder gives notice to the drawer, and not to the indorser, now he may resort to the drawer; but the indorse is discharged. As if A. draw on
In favor of C. and endorses it to D. and D. endorses it to E. and E. gives notice of non-acceptance to the Drawee only, he can not re-accept to any other party, who had no notice. 5 B. & L. 270. 8 B. & L. 45. 11 & 12.

I have observed that in general when the drawee has no notice in the hands of the Drawee notice of non-acceptance must be given him, but since this fact (of no effect) does not dispense with the necessity of notice to an Indorser to whom the holder intends to re-accept. No notice is necessary to the Drawee, for he has never parted with any value for the Bill which he has put in circulation, but the indorser has paid a valuable consideration and he is to pay if the acceptor does not, therefore brought to have notice, that he may secure himself of the acceptor or as the case may be with the Drawee. 1 T. & C. 712. 4 B. & L. 282. 200.

On the other hand if notice is given to the Indorser only, want of notice to the Drawee will not avail him (the Indorser) the formerly considered different. For it is not material to him whether the Drawee has had notice or not; it is sufficient if he himself has been furnished with notice so that he could secure himself. Indorser Indorser is in effect, as to every subsequent holder, in the nature of a new drawee. This is apparent from the structure of a Bill. A Bill is drawn requesting P. to pay to A. B. and B. endorses it requesting P. to pay to C. B. this is in the nature of a new drawee. 1 T. & C. 641. 2 B. & L. 669. 12 & 13.

For the former division suggests the case, principle; see Tulk 131, 133, 2 East 443. I have before observed for another purpose that the consequences of neglect to give notice of non-acceptance may be waived or avoided by acts in the past facts. Thus repeat the rule for the purpose of giving Examples and Authorities.

Thus if after a Bill has been dishonored by the Drawer, a prior party pays a part of the amount, this is in legal effect a waiver of the objection arising from want of notice, it admits his liability. The rule is the same if instead of paying a part, he promises to pay the whole; here again he admits his liability. See 1246, 2 T.L.C. 713, 3 T.L.C. 276, 3 East 1180, 1 CoP 1357.

It has indeed been held, however, that if the promise is made without the knowledge, at any time, of the fact of non-acceptance, no party is not bound. But this appears to be overruled for it has been resolved that such promise is an implied admission, that due notice has been given, it supports the averment of this notice in the Declaration. As to the former rule, see 9 Beav 2676, 18 E.R. 713. For the rule as it now stands see, 1 CoP 1354, 12 East 419, 706 231, 236, 1 Beav P 326.

It has been determined by Lord Kenyon in that case, however, that a promise by a prior party, without knowledge of the legal consequences of want of notice, does not bind him. 2 King
decides the case, in this way, the notice had been actually given, but it appeared the defend. had not knowledge of the legal effect. The case was this - the holder of the bill gave the drawer an enlarged time for payment. Now this would discharge the drawer; but still he promised to pay the bill, and 2d. kenton decided he was not bound by the promise for the above reason. This case is no where to be found except in a note to chitty 103, 3, 158.

I think the above rule questionable. For it is an undoubtedly principle of law, that a man can never discharge himself from a liability by a plea of ignorance. The rule should be continued as inconvenient, for the looseness of the enquired as to his ignorance of the law is sufficient to convince me of its inconstancy. Now by the holders giving the drawer an enlarged time to pay the bill, he clearly discharges the drawer - but a promise to pay after notice of non-existence I conceive to be good. If this decision had been that the promise was a nudum pactum, as made without consideration, it would have been different. But this would contradict a former rule, that the acceptor of a bill could not ever forest of consideration in any action brought by a subsequent bona fide holder of the bill. And further, 2d. kenton decided in his case, not only that the drawer would not be liable on his promise, but that in case he pays or money.
Sex Mercatoria, Bills of Exchange, Notes.

He may recover his back, because he would pay it under a misapprehension of the law. |

In case of an acceptance originally conditional, want of notice is cured by a performance of the condition at any time before the day of payment; for then the acceptance becomes absolute, and no notice is necessary. Chitty 101. 30. 81.

S. 223. 1801. 6. R. 182.

There is a species of acceptance which I have not fully explained called an acceptance supra protest. I shall now consider it.

When a Foreign Bill is protested for non-acceptance, it may be accepted supra protest, and the drawer himself may thus accept the bill, for the honor of the drawer or of any Indorser, if he has refused acceptance according to the tenor of the Bill. The reason of this acceptance is for the honor of the drawer, and not for the benefit of any Indorser, unless it be on special contract. 


This is frequently done by the drawer himself. Where a Bill is drawn on account of a third person, the drawer is unwilling to accept on account of this 3rd person, but is willing to accept on account of the drawer or on his own. Thus if A draws a Bill on favor of B, payable
Sex Mercatorum. Bills of Exch. [and] Notes

on account of B. Now if the drawer accepts this bill according to its tenor it has no effect on the drawer: his only remedy is to B, and he may be unwilling to accept on B's account, for he may not be responsible. But still the drawer may be willing to accept for A. He may think that he has the bill protested for non-acceptance according to its tenor: still, accept it for the honor of the drawer. What he then pays will not go to the account of B, but to the account of A, for whose honor he accepted it. 1 N. 152. Bowes 356. 1 S. B. 269. 1 Bowes C. 109.

So in common cases, if the drawer is unwilling to accept on the drawer's account, yet he may be willing to accept for an inducement, do so in this case: he immediately puts the protest to the holder, as when he accepts for the honor of the drawer, he must give notice to the drawer. Bowes P. 339. C. 103.

This mode of acceptance has this important consequence: that it operates to what the presumption arising from a simple acceptance that it has effects of the drawer in his favor. As suppose A draws upon B. Now B says: I owe A nothing, but state I am willing to advance money you low, for I'm responsible. But I will not accept this bill, according to its tenor. You if I do I thereby raise an implication that I am indebted to him, or that he has effects in my hands; and this same principle in such cases will be upon myself. I state therefore refuse acceptance according to the tenor of the bill, accept it subject protest for the honor of B. 1 N. 209. 210. Bowes 435. P. 106.
The effect of such acceptance is to give the acceptor a right of indemnity as the party for whose honor he accepts, or at all the parties prior to that one. Whereas a simple acceptance accord- ing to the honor of the Bearer can never give anything more than this right to the Drawer or the person whose account the Bearer was drawn. And this gives thus the presumption is that he is indebted to the Drawer to the amount of the Bearer, and that of the person it will only be an effort to his account.

So an acceptance before protest is followed by important results. E.g. Suppose there is no Indorse in yet and the original Payee is the Holder of the Bearer is accepted before protest. Now the acceptor indemnity is to the Drawer, and he may charge him with so much money. And by acceptance before protest he rebut the presumption that he (the acceptor) is indebted to the drawer or that person protest is not upon himself.

But further, suppose the holder is an indorsee. Now there are two persons. The Drawer, acceptor before protest, for the honor of the Indorsee. Now by accepting for the honor of the Indorsee, the acceptor may claim the amount of his (payee's) and also of the Drawer, for the Indorsee could have remedy for the Drawer if the acceptor must by course have the same remedy. But he cannot have a remedy to any subsequent party.

Again there are two Indorsees, Suppof
the Drawer accepts Sufi as protest for the honor of the 2nd Indorser. Now he can compel this 2nd Indorser to pay the money back—but this is not so. For he has a remedy as the first Indorser for the first is liable to the 2nd Indorser. And again if the first or 2nd Indorsers are liable to the acceptor, so also is the Drawer, for he, the Drawer, is liable to both or to either of the Indorsers.

But if after this acceptance, a third Indorser becomes a holder, the acceptor can not claim of him (the third Indorser) the claim only claim of those of whom this person for whose honor he accepts might have claimed. This right is this, first he has a right of the party for whose honor he accepts, and as he comes in his place, he has 2nd a claim on all, who are liable to the person for whose honor he accepts, or title, but his claim does not extend to any Subsequent Party. Bowes 1858, 17, P. 269.

March 16th, 1813, Sect. 3.

I further observe upon this subject, that if the Drawer refuses to accept the Bill at all, and other person may except it for the honor of the Drawer or any Indorser. Bowes, pl. 38, March 129, 1858, 160, Chitty 164.

But an acceptance to the honor of the Bill is the same as an acceptance for the honor of the Drawer in an acceptance in that case is not an acceptance for either of an Indorser, but for honor of the Drawer only. Chitty 164.

A discharge previously accepts supra protest for the honor of one party by one person may afterwards be accepted by another person for the honor of any other party. Thus if A. the drawer accepts for the honor of the drawer, another person may accept for the honor of an indorser. Bows, p. 47.

It has been said that it seems incumbent that the holder is bound to receive an acceptance supra protest than offered by a substantial, unresponsible person. But this is not law. For it has since been decided, that the holder is not bound to receive such acceptance at all. If A. draws a bill on B. in favor of C., B. accepts its note. A. is responsible person. But C. is willing to rely on him. But B. refuses acceptance, and C. is willing to accept the bill supra protest for the honor of A. Bows p. 80. The payer would never have received the note, unless he had expected the drawer would have accepted it, or at least of his having supported a stranger could compel him to receive an acceptance supra protest. It sounds harsh on principles to say that the holder should be bound to receive an acceptance by a stranger merely because he is a responsible person. Bows, p. 27, 36.

12 Mod 410. 17. 155.

If after an acceptance supra protest by a 3rd person, A. drawer himself should become willing to accept, the acceptor supra protest may with consent of the holder permit it, but not otherwise. For this acceptance is as irrevocable as
any other acceptance, and the acceptor supra protest having made himself liable, he cannot discharge himself without consent of the holder. 8 P. 175.

It is said the holder should have the Bills protests before he receives the acceptance, supra protest for otherwise it is said the drawer might conclude that the acceptor was not the person on whom the Bill was drawn. But I apprehend this holding is as to Foreign Bills of Exchange, for it is unnecessary to protest an Inland Bill of Exchange for the purpose of creating a liability, it is a statute requisite made to entitle the party to a recovery of interest, damages &c. Costs. 8 P. 175.

The mode of an acceptance supra protest is this. The party appears with witnesses before a Notary Public and declares that he accepts the Bill, for the honor of the Drawer or Indorser, that he will pay the same according to its tenor. The usual form is to name him, for whose honor he accepts it, but it seems the word "accepts" is sufficient, without any thing more. 8 P. 175. 8 P. 176.

An acceptance supra protest is however as binding on the acceptor as if there was no protest. Its being supra protest does not affect the liability of the acceptor, he is liable at any rate to the holder, the subsequent parties. It varies rights as between him & the hold, his liability, the result of this rule has been sufficiently illustrated. 3 P. 176. 8 P. 172-174.

If one accepts or the honor of the drawee, which is in effect an acceptance for the honor of the drawee, he is liable to all the endorsers as well as to the bill itself. He is liable to all parties subsequent to the drawee for all subsequent parties having the liability which the drawee by reason of the protest was subject to. But he is not liable to the drawee. 1 Esp. 112. Bowes 457. 1 Esp. 105.

If one accepts for the honor of a particular endorser he is liable to all the subsequent endorsers, but not to other endorsers for whose honor he accepts, nor to a prior endorser, nor to the drawee. For the extent of his liability is no greater than that of the party for whose honor he accepts. Now this endorser is not liable to the first as to the first to the drawee, but the drawee is liable to the first endorser of the first. In consequence he has the same rights as the prior parties as the person had for whose honor he accepts.
Bowes 457. 1 Esp. 105. Latitty 105.

On the other hand, as to those parties to whom the acceptor sufix a protest is not liable, he has a remedy or right of indemnity as to those parties for whose honor he accepts, and all prior parties. If the he sustains any damage, as if he is obliged to pay the bill, he may recover of the party for whose honor he accepts and also of all prior parties. If he accepts for the honor of the drawee, he has a remedy only of
for the honor of an Indorsee at the Indorsee's draw-
er of the acceptor for the honor of a subsequent In-
dorsee he has a remedy to him, all prior Indorse-
C. 1788, 115. 37. 110.

And here I would make an observation, which (I think) will more definitively & simply explain his character of liability, than all the rules hitherto laid down on the subject — and that is this, that an acceptor's protest, is, as to the party for whose honor he accepts it, & all other parties in the character of an Indorsee, he ultimately becomes the holder of the Bill — i.e., upon the supposition that he pays it, the prescription as to way is that he will pay it. This is obvious if you consider the structure of the transaction. A Bill is drawn upon B, payable to B, & B indors-
es it, to C, & C indorses it to A for acceptance, and A indorses it to D. Says A, I will accept the Bill, for the honor of B. the Indorsee of D, pays the money upon it. Now D. was a Stranger, but after he pays the amount to the Indorsee, he becomes virtually nothing more or less than a purchaser of that Bill. You observe D. does not accept it on account of any liability, but as a mere Stranger. He pays the money to the Indorsee, he is then entitled to the Bill & becomes the holder of it. It is in effect precisely the same, as if instead of accepting the
Transfer & Negotiation of Bills.

Bills which are not negotiable at all, are in their nature not negotiable at all. This is the case with Bills of Exchange properly so called and with Bankers' Cheques. It was formerly held, that bills payable to bearer were not so negotiable, but it has been long since settled otherwise. 3 Will. 3, 26 Ch. 467. 3 Bea. 137. 1527. For the former rule, see supra, 3 Eng. 293. 1 Poth. 125. 1 Rep. 130.

When a Bill is not negotiable, a transferee will not be the party making it, as if it were negotiable; i.e. it will not give him, the amount of the bill, if the person to whom it transfers it cannot receive of the person on whom drawn. For you recollect that choses in action, like C. E. not negotiable were so far transferable as that the assignee, who can maintain an action on his own name, vs. the original party, may have an action on the implied covenant vs. assignor. Thus if a Promissory Note vs. A. which is not negotiable is transferred by B. to C. Now there is an implied covenant on the part of A. that if the promissory note pay it, and if he does not, the assignee may have an action on this implied Co. vs. of the assignor. See 1 N. 127. 133. 1 Com. 117. 13. 1326. 13 B. C. 152.
And whether a Note is negotiable or not is a question of Fact, for the law to determine.

It is said indeed as to new Causes, i.e. where the doctrine is not settled, that it is a question of the customs of the trade, i.e. the custom of the business may be admitted to testify. This doctrine applies to both in this case. There is no doubt but a merchant may be examined to tell what he knows of a particular custom to oids by merchants. But he is introduced in this case in the same way that a Book written upon that subject would be introduced. I trust as for the same purpose that we would consult a Dictionary. I trust he is used for the purpose of enabling the Jury to find the particular customs & thereby enable the Court to make an application of the law to that finding. But to give information to the judges. The rule is absurd conceived in any other sense. For otherwise, the merchant is testifying to what the law is. Stiles it is always so laid down in the books, 2 T. & R. 1216, 15 C. R. 295, Doug. 655, 4th Ed. 295, Part 254.

It is a general rule that a valid transfer can be made only by the Payee or other person having the legal interest in the Bill. Hence an endorsement by one not having the legal interest does not transfer the interest to another. If a Bill is drawn payable to A B, and C endorses it to D. Dov C. is a stranger & cannot cash for the interest to D. for he himself holds none. And if a
Bills are made payable to A. B. and another person by the name of A. B. should endorse it, this does not transfer the interest to the indorser; for the indorser himself is a stranger and has no interest. 4 T. N. 284, 1 T. R. 607.

But if a stranger with volition to endorse the bill, he will himself be liable, the such endorsement will not make the Prior Parties liable. He volunteer has no title to the bill, but by transferring it, he warrants the payment of it to the persons whom he makes the transferees. Chitty 1241, 1242.

When a Bill is made payable to bearer it may be transferred without endorsement by mere manual delivery. There is no need of endorsement, for by the terms of the bill, the interest lies poised on it. And in this case, if it is transferred by a person who is not the owner of it, such transfer will not subject the Prior Parties, provided the person to whom it is transferred knew that the person transferring was not the owner. But if he was ignorant of this fact he can recover at Prior Parties for his is a bill payable to bearer and a bearer has paid it to him, and were it not that he was allowed to recover at Prior Parties, the credit of these bills would be impaired by their circulation prevented.

The rule holds the same as to a Bill payable to order which has been endorsed in blank by the payee. There is no need of an indorsement in such case, it will pass by manual delivery. If any holder has a right to fill up the blank with his
own name. Suppose then a Bill is payable to A. or order, and it endorses it blank. Now this bill may be transferred by mere deliverance for any person into whose hands it may come upon the blank endorsement with his own name. The case why he has a right so to file it up is, that the person who thus puts his name upon the Bill holds out a credit to any person who will receive it. As I before now asked the holder may file up the blank by inserting his own name. So also the bill may run the quittance over the words by further deliverance to the ultimate holder of it, more to the person Party is by delivering up it at any place. 110. 1516. 1564. 158. 13. 478. Doug 511 633. S.P. 1555. 738. Bottry 9. 51. 100
121. 122. 201. 289. 271. 102.

If a former wife being Payee or holder married, the right of transfer belongs to the husband. She has become legally incapable of endorsing it. 154. 516. 3 190 53. 10. 103. 2746.

If the Payee or holder becomes a bankrupt, the right of transfer generally rests in the assignee. At this right, as a general rule, vests from the time of the act of Bankruptcy committed. There are some exceptions to this, introduced by English Statutes. Beaur 469. 276. 028 335. 175. 107.

If however in such case the holder should have delivered the Bill to another before his Bankruptcy, but has for some cause omitted to endorse it, he may endorse it after Bankruptcy.

for this is only completing an act which was begun
before Bankruptcy— and which, in justice, should be
performed. Peck 16. 56.

On the Death of the holder, the rights of trans-
fer devolves on his personal representatives. 3 Will 1. 2.
2 Sua 127. 69. 2 131 425. 1 61 387. 1 69 662. 6. 6 111. 112.

If a Bill is made in transferred to two or more
the interest in the Bill or right of transfer is on both
or all of these collectively, not on one alone. But
this interest or right, if they are all Partners, may
be transferred by the act of one, because one of two
partners has a right to act for both. But shall
suppose they are not Partners. This is not like the
case of 2 persons drawing a bill payable to their
own order, for then they are ipso facto partners, they
have by their own act made themselves jointly lia-
tle. Then for the act of one in the name of both
will bind both. Rop. 105. Doug. 65. 3.

If a Bill is payable to A, for the use of B, the
right of transfer is in A, because he has the
legal title to B. the equitable interest. 3 Will 5.
305. 309. 2 Show 509.

When a Bill is endorsed to an Infant, by
his assignee to another, I find no judicial au-
thority, whether or not he may recover on the for
rner party. Make this a moot Question, I will reserve my
opinion, till you discuss it.
Bills are usually transferred after acceptance before payment. This is not universally the case, for it may be transferred before acceptance and after the time of payment.

And a Bill (having a solicion in language) may be transferred before it is made – or in other words: a transfer of an intended Bill may be made before the Bill itself is made. Thus if A endorses his name on a paper and delivers it to B. Now to 13. as a right to produce a bill (written on the opposite side from that on which the name of B is endorsed) for payment to B. Now the Bill is endorsed by the Payee to 13. and such transfer is good, as in reality, made before the Bill is drawn. Doug. 4. 05. 05. 14. 1763. 313. 016. 03. 19. Chitty 112. 113. K 08. 09.

A valid transfer may be made after time appointed for payment. However, such transactions afford grounds of suspicion the holder takes the Bill subject to all the equity to which it was subject, in the hands of the person proctor provides he had knowledge of such equity, and according to some opinions whether he had knowledge or not.

3 T. R. 83. 7 6. 4. 23. 1 Wils. 230. 3 13. 15. 16. 5 16. 25. 29. 45.

Still, however, the party who transfers the Bill after it becomes payable cannot avoid himself of such grounds of suspicion as to a person who became a bonafide holder for a valuable consideration. As the prior party had for the Defendant himself made the irregular transfer.
and he has no ground to complain that he has not a right to take advantage of such ground of suspicion. This ground of suspicion is, 'that by a transfer after the

any of payment, that the transfer was unjust.' [Page] It cannot operate in his favor. There may indeed be some ground of suspicion that he had received value of the bill, or that he had parted with all right to recover upon it, now the prior parties may take advantage of this, but he (the person transferring—Def. 2d is this case) cannot. The rule is laid down, it is

supra. That she can't avoid herself of this ground of suspicion as to a 3d person who becomes a bona

fide holder for a valuable consideration; but I should think the

party transferring could not make the objection to the immediate transferee. Suppose I am the holder of a bill of exchange, that has passed the time of payment. I endorse

it to you. Now, if there is no fraud between you and

me, nothing will deprive you of your right of action. I can see no reason why you should not

stand upon the same footing as a subsequent

bona fide holder for a valuable consideration. [Page 423.

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But an indorsement after payment binds no

other party than the person making it. This rule I trust you

suppose the day of payment had passed. For if the price is trans

ferred before the time of payment, the it may have been

by your part before the time, it affords no ground of suspi-

cition. Thus after payment by the maker of the bill, the

holder endorsed it over, it was determined that the sub-

sequent holder could not recover with acceptor as not

than to the drawee. [Page 426. 427. 428. 429. 430.]

But a bill payable in part may be endorsed over to the residue. 2 T. R. 238. 2 C. B. 466. H. 125. 212. 1 T. R. 65. 2 C. B. 260.

March 17, 1813. Sect. 479.

In treating of the negotiability of Bills of Exchange, we had now to explain the nature of a transferee by whom it is made. There are certain rules relative to the mode of transferring Bills.

For this mode is governed in all cases, according to the legal effect of the Bill, it is not governed by the terms of the Bill, but by the general legal effect of the Bill, and the terms of the Bill are the same. That the effects are not always the same is manifest from the case of a Joint Bill of Exchange. For such a Bill imports to be payable to bearer, but it cannot be endorsed for by the Supreme Court, there is no person in person who can endorse it. It must be payable to bearer of payee at all. The terms of the legal effect of such Billets are entirely different. 1 T. R. 130. 680.

A Bill payable to order or bearer, or to bearer generally, i.e., without specifying any particular party, may always be transferred by mere manual delivery without endorsement. An endorsement on such a Bill is no more requisite than an endorsement on a Bill payable to order, or made by a stranger. And even if an individual is named, as if it is drawn payable to A., it is payable as if it is endorsed, or endorsed, or payable at all. The rule is the same as to a Bill payable to order, or payable to A. generally, i.e., without specifying any particular party. It is not necessary as to a Bill payable to order, or payable to A. generally, i.e., without specifying any particular party.
Sec. 4.  A usable in blank is blank, but not before. In the first instance a bill thus payable can be transferred by indorsement only, but if it is endorsed blank it is transferable by delivery, because the ultimate honoree may fill up the blank with his own name or otherwise become the immediate endorser. 

The original distinction as to the mode of transfer between a bill payable to order and one payable to bearer is, that the former cannot be transferred in the first instance without indorsement, but being indorsed in blank it may be transferred by manual delivery. On the other hand, a bill payable to bearer may be originally transferred by delivery without indorsement. 17b. 18c. 606. 180b. 9. 180.

These mere casual contracts are all liberal in their interpretation, and as no formal words are necessary in the creation of a bill, so no formal words are necessary to make a valid indorsement. Nothing now is necessary, then, for the Payee to write his name on the back, this is called a blank indorsement. 17b. 18c. 606. 180b. 9. 180.

Indeed it was formerly contended that any written entry on the back amounts to an indorsement unless it expressly a refuses. But this is not true. Thus it was contended that the Payee writing his name on the back was a good indorsement. 17b. 18c. 606. 180b. 9. 180.

The indorsement may be in either of
Sec. Mercatoria. Title of each at front. Notes.

Three years plus 6% in S. Fla. or it may be restrictive. This division is illogical, for the
situation there are two forms of endorsing a Bill viz. a blank or in full, and the latter is divisible
into Endorsement or full restrictive or endorsement in full not restrictive. The different forms are
divided in the Bank & I shall therefor pursue the former division. vid 15.

As to a blank endorsement.

A blank endorsement is nothing more than the
writing of the payee's name on the back of the bill.
This is the most common mode, it facilitates the
sale of the bill by giving it a more indefinite noci-
cation, as when thus made the bill may be trans-
sferred by mere delivery to the ultimate holder con-
sidering himself the immediate assignee by filling
the blank with his own name. R. 89, Chitty 117.

It is to be observed however that an endorse-
ment in blank does not in any transfer the inter-
est, but merely gives the holder a power of con-
stituting himself the endorser or assignee by fill-
ing it up to himself. Thus if a bill is payable
to A. and A puts his name in blank on the back
this is not per se evidence that the holder has any
interest in the bill, nor can he recover upon
it, until it is filled up. The usual form is to fill
it up with these words: "Pay the Contents to A.B.
Com 114, 311. 6, 3. P 275.

An action may be commenced by the holder.

before the endorsement is made up. It is only necessary that it be done so when it is delivered as evidence of his title to the paper. He may do it at any time, but it must be done before a verdict can be found in his favor. For without it, there is no evidence of his title or interest in the bill.

A blank endorsement while it remains blank is ambiguous in its effect, or rather it has no certain effect. It enables the holder to file it up as his own, or he may file it up with a power of attorney to himself, or he may file it up with a receipt. He has a right to file it up with anything which comports with the nature of the bill. If he files it up with an order of payment to himself, he constitutes himself the indorser; if he files it up with a power of attorney to himself, he thereby constitutes himself the indorser agent to collect the same. If he files it up with a receipt, he constitutes himself the agent of the indorser, and by the receipt it appears he has paid the money over to the indorser. But for the purpose of entitling himself to a recovery of the bill he should file it up the blank with an order of payment to himself. 9 P. 426, 11 S. 163. 5 R. 471. 1085. 828. 1787.

It follows from the last rule that while the endorsement remains blank an action may be brought in the name of the indorser. The holder may give the bill back to the indorser, or at him bring the
The action of the holder may bring it in the name of the endorser, and if he chooses he may write over the name a power of attorney to show how he has the right. But this is unnecessary. The endorser, if he does not show that the endorser has parted with his right, therefore the action may be brought in his name. But after this endorsement is filled up with a direction to pay it to another, no action can be brought in the name of the endorser, for the bill when produced in evidence shows he has no interest in it. Same auth. at supra 1 S. T. 371. 12 Me. 193. 2 44. 2 Fta. 1103. Salk. 125. 128. 130."

As a pursuance of this rule it has been determined that when the holder lost the bill, and was endorsed in blank, an action of trover was brought against the payee in the name of the endorser that the holder was a competent witness. Vpr. 76. 2. T. 371. 10th. 130. I do not (says Story) discover on what principle this could be done, if it should appear in evidence that the holder had really purchased the bill, for in such case he would have a direct interest in the event of the suit. But upon the supposition that no evidence of his interest appears except that it is derived from the circumstance of the bill being endorsed in blank, he is a competent witness.

I have before observed that a blank endorsement by payee makes the bill transferable by manumitted delivery, because any holder may
file up the blank with his own name. Secondly, further observe, that the negotiability of the bill, the endorsement remaining in blank, cannot be restrained by any subsequent endorsement in full, transferring the interest. E.g. Suppose a bill is made payable to A. In order, B endorses it in blank to C, and D endorses it in the usual form “Pay the Contents to C.” Now this bill may still be negotiable with the words “or order” are omitted, or other operative words of transfer are inserted. It may be negotiated to say, because the holder may strike out the intermediate endorsement in full and file up the blank endorsement with his own name. Thus constitute himself the immediate endorser. See Sect. 16, 18, 12, 17, 219. [Note 118, 183, 201. Code 12, 253.

And on the other hand, if the Payee makes an endorsement in full, as e.g. “Pay the Contents to C or order,” still a blank endorsement by the endorser will make it negotiable by mere delivery. It is true after such endorsement in full it cannot be further negotiated but by an endorsement by the instrument. But by his endorsing it in blank it may be negotiated ad infinitum, for now there will be a regular consecutive chain of title from the Payee to the holder. Wherein he may be negotiable.

But a bill payable to order is not negotiable by mere delivery, unless it is endorsed in blank by the Payee or his endorser. It is not originally transferable by delivery unless it is endorsed.

In blank by the Payee for if it is payable to . . . B. endorses it. This does not transfer the interest, for 13 is a Stranger.

When a Bill is payable to order it is not negotiable at all without an endorsement on some text by the Payee. If he endorses in blank it becomes transferable by mere delivering, but it cannot become negotiable until an endorsement either in blank or in full is made by the Payee. (A.D. 3.)

Doug. 11th 533, 647 or 629, 17th 130, 606.

2nd endorsement in full. An endorsement in full is one which transfers the person to whom the endorsement is made. As e.g. "Pay the contents of this order." An endorsement in full of this kind contains in itself a transfer of the interest to the person named. (Sibly 118. Tch. 89. Botter pl. 124. 24.)

An endorsement in full makes the bill, in the first instance, only by the endorser’s endorsement. For as on a Bill payable to A or order there can be no negotiation but by A. So an endorsement to B or order, B must transfer it. For so long as the successive endorsements continue to be in full, there can be no transfer without an endorsement, until some endorser endorses it in blank, or that it is transferable by mere delivering. (E. 18. pl. 182. n. 2.)

The negotiability of a bill cannot be restricted even by the Payee himself if, of course, not by a special endorsement, but by words of restriction.
The mere omission of the operative words of transfer does not restrain its negotiability. Thus if a note is payable to A. or order, the endorsement to B is in full, without inserting the words "or order" or any other operative words of transfer, yet it continues to be negotiable. Com. 11, 361. R. 295. 2 Baer 126. 1 S. 37. Doug 617 p. 637.

And if the payee endorses in blank a note, and his endorsement run maps so, its negotiability can in no way be restricted by any subsequent endorsement provided it transfers the interest. This rule, I think, is the same as, or the authorities to it have been before given. (on 2 pages back at 765, 5, 10.)

3. Of restrictive endorsements. A restrictive endorsement is one containing or prefixed words restraining the negotiability of the note. If the payee endorse thus "Pay the contents to B. only," the endorsement is restrictive and B. cannot negotiate the note. Or suppose the endorsement is "Pay the contents to B. for my use," B. cannot endorse this note for it appears he has no title to it. The effect of such endorsement is to stop the further negotiability of the note. Doug 617 p. 637. Pothw. 168. Chitty 119, 120.

The payee or indorsee having the absolute property may limit the payment to whom he pleases to thus destroy the further negotiability of the note. It was formerly considered otherwise. It was once thought that if the note was originally negotiable, its negotiability could never be restricted.
But this is not now. Thus in the case of supra:

"Pay the balance to $13 for my use." $13 cannot endorse on

Bill for by the face of the endorsement it appears to

have no interest. Suppose the payee had made a blank

endorsement, it then his transferee makes an endorse

ment thus: "Pay the balance to $13 for my use." Now $13

can't by transferring to $13 enable $13 to fill up the

blank endorsement, because $13, the 2nd endorser ap-

pears to have no interest. I think you can transfer

none. He appears a mere agent by the terms of

13's endorsement. 21st of 12th. 1827. 1830. 1829. 1830. 1829. 1830. 1829. 1830.

But I conclude upon principle that if y

endorsement, the restrictive, transfers the interest, the

last rule will not hold. For my opinion is, from

analogoy, I have no authorities to this point. Thus

Suppose a bill is made payable to $13 and $13 makes a restrictive

endorsement to $13 as "Pay up the balance to $13 only." $13 endorse-

ses it to $15. Now I conceive $15 may erase the endorse-

ment restricting the payment to $13 if y' blank

endorsement to himself for here $13 is the 2nd endorser has

the interest. He can show his title by the endorsement.

The reason of the last rule does not apply here.

for in that case the endorser had no interest, he was

the mere agent of the endorser. whereas in this case

the 2nd endorser has the interest, as is manifest from

the terms of y' endorsement.

A transferee seems cannot be made after

acceptance for less than the amount due on the
Bill. If a transfer could be made of a moiety to 11. 10. a moiety to 13. on the same principles it might be divided into a thousand parts, and if such division were valid, it would subject the acceptor to two, or the case might be to an indefinite number of actions. As it is so endorsed, the acceptor is not bound by his acceptance to the holder, or either one of them, who have an interest in the bill, can even make a claim upon him. See 36, 8th 173, 460, 7th 175, 1276, 7th 177. 7th 178.

I conclude however, the I have no authorities, that an endorsement for part of the amount after acceptance would bind the endorser. The reason applying to discharge the acceptor does not apply here.

Thus the rule was to protect the acceptor from a multiplicity of actions, which would otherwise arise on consequence of a division of the interest in the bill, and to such division he never consented, but in the case the endorser is the procuring cause, by dividing the interest he will. Almost, make himself liable, and the law will not be solicitous to protect him.

As with respect to the liability of the acceptor if a bill is endorsed one half to 11. 10. the other to 13. if the acceptor it in this form, he will be bound by such acceptance — for by accepting he? accepts to such divided interest specified by the endorsement, and that I think justifies the supposition above that an endorser is bound for a divided endorsement. For surely if the acceptor is bound by his acceptance,

When the interest is divided, the endorser making it, a fortiori is bound. Beav. 366.

It seems clear from these last rules, that by joint endorsement of part to part to B. to B. the drawer can never be subjected except in the unusual case of the endorsement made before the Bearer is drawn. S. Reg. 360. Salk. 65. B. 10. 466.

And as the acceptor also accepts before endorsement is not bound by an endorsement of a divided interest, so neither is he bound by an endorsement of part to A., the other part is not indorsed at all, as for the same reason, he would be liable at any rate to two actions. But also the acceptor cannot be made liable by such endorsement. Yet after part is paid, the acceptor will be bound by an endorsement of the residue, for the note is to be paid. There is no case in law under a two fold liability. His liability is single, it is not material whether it extends to the whole or not, it is sufficient if it extends to that is due. Chitty 262. S. Reg. 360. Salk. 65.

To complete, the transferee the note is to be delivered to the transferee. This rule is applicable to all written contracts. Chitty 61. 115. 121.
March 18, 1813, Section 10th

Yesterday I explained the mode in which transfer was made - I shall now treat of the operation of a transfer.

A transfer of a Bill by endorsement is in its civil legal effect, to the making of a new Bill, by the Endorser, an almost, every respect as a new Drawer on the original Drawer. This will appear more just if you consider the structure. The original Bill is an order to pay the money to the Payee, the endorsement is an order to pay it to the Endorser. So they are almost precisely the same. See 133, 134, 679, 680, 681, 682. Story 497, 499, 500.

Add a Promissory Note: When endorsed there is a strong analogy to a Bill of Exchange. Indeed, the analogy is very strict. Before endorsement it does not resemble a Bill of Exchange at all. It is a promise by A. to pay money to B. Whereas a Bill of Exchange is an order directly by A. upon B. requesting him to pay the money to B. When the Promissary Note is thus endorsed, the endorsement is an order from one to another to pay the creditor to a third person. The Endorser is in the nature of a Drawer. The Promissary character corresponds with that of the Drawer of a Bill. The Endorse of a Promissary Note is also Payee of a Bill. Add on this principle of analogy it has been determined that a Promissary Note thus endorsed may be declared on or pleaded as a Bill of Exchange. The Endorser being virtually the

drawer.
Drawee, the Promissor virtually, the Drawer, and the
indorser virtually the Payee. 4 T. R. 189. 6 M. & W. 29.
11 T. B. 676. S. Rep. 743. 1 Salk. 132. 133.

Hence also the obligation to which the endorse-
ment of a Promissoy Note, subject the indorser to the in-
terest of the indorsee is the same as that to which the draw-
ing of a Bill subject the Drawer to the interest of the pay-
ee. A transfer by bare delivery is made for an un-
tended debt, or for a debt accruing at the time for a
valuable consideration (as for goods delivered at the
time) subject the party making it to the interest of his in-
dorsee and assigns to an obligation similar to that
created by endorsement. If this a Bill is transmit-
ted by bare delivery (as we have already seen it sometimes
may be) and it is delivered over for an unamortized
debt due to the transferee, or for one created on his
favor at the time, the party transferring it is under
the same obligation to him, as if he had made the
transfer by endorsement. 7 T. R. 64. 6 T. R. 52. Salk.
925. 12 M. & W. 294. 408. 521.

There was formerly a distinction taken on
this subject, which I will not take time here to
explain, as it has long since exploded it is not done.
For y. discern. See 7 East. 298. 6 Salk. 124. 3 Salk. 68.

The rule above does not obtain, if it is ip-
solutely agreed between the Parties at the time, that
the assignee shall take the Bill in himself as owner's
right for he agreed to take it thus. 7 T. R. 65. 6 Salk. 121.
Chitty 13. 124. If then a Bill is transferred by bare.

50x
delivery (the assignee does not assume the risk of)
the drawer, if he fails to pay it, the assignee may recover
of the assignor on the consideration of the transferee,
c. if the debt was created by the sale of goods, and
was an action for the goods sold, or he may sue for
the antecedent debt of that was the consideration
of the transfer. He cannot recover of the party trans
ferring on the bill—(as being a Party to the bill) for by
the Supposition his name is not on the Bill, this
is not a Party. But he may recover upon the under
writ or new created debt. But Subject he cannot.
recover on the Bill, for no person can be a party
to a Bill unless his name appears upon it. Mapc.
the holder. 7 T. R. 262. 6 356. 177. 2 King 223. 1 Ky. 90. 91.
And for the same reason (viz. that a party
transferring by delivery ceases to be a Party to the bill)
he cannot be liable to a Subsequent assignee—
he is liable only to his immediate assignee. For
being a Party to the Bill a Subsequent assignee
cannot maintain an action of him as a Party,
and as by the Supposition he does not transfer the
Bill to a subsequent Assignor. 3 Story 228. Earl 270.
313 in 1528. 1 Story 150. 2 Syb. 61. Chitty 123.
And further—there is still another excep
tion to the general rule, i. e. the Assignor transferring
by bare delivery is not liable to the Assignee for
transfer was (viz.) discount, by which is meant by way
of Sale. The sale of a Bill there is like the Sale of any
other article. Don Stale: the true ground of distinc
tion.
A distinction to be this—that there is no ground of action
at this time; there is no debt, on which an action can
be maintained. For if A, being indebted to B, transfers
a bill to him by bare delivery, it is not accepted;
he may have an action for the antecedent debt,
or if the consideration of the transfer was good
he may have an action for those goods. But in
case of a sale, there is no debt antecedent—or con-
comitant—or simultaneous—(for hark)—there is
no indebtedness on which the action can be main-
tained. The person taking a bill, court takes the risk
of course unless there is a warranty. 3 B. & C. 757.
15 P. R. 447. 1 P. D. 90. 91.

When there are several parties liable on
a Bill, the holder may pursue his remedy upon
one alone, or at each separately. Thus when the
Bills is dishonored, the holder may sue the draw-
er—the may sue the Indorser—all the Indorsers.
But he cannot join them in one action, the contest
of each is separate. And if in this case the holder
puruses one to Judgment it takes him in Execution;
this does not discharge the other parties or the
holder after Committing one to prison, voluntarily
discharges him (from prison) this does not discharge
the other parties—they are still liable—or if on the
taker—as e.g. the Drawer—whether committed to prison
or not, becomes an absolute Bankrupt, or obtains an act
of insolvency, this does not discharge ye others. 2 B. & C. 1235.
4 T. R. 155, 325. 2 P. D. 690. 1 P. D. 674.
If the holder of a bill, transferable by bare delivery, comes into the hands of a bona fide holder who is ignorant of the fact, and who pays a valuable consideration for it, he may recover of the person in whose hands it was delivered, the interest out of the money paid, nothing more, if he could not recover. But this occurs in case of a bona fide holder at sufferance. The bill is the same as if the bill was stolen rather than lost, if the thief in such case transfers it to a bona fide holder, having no knowledge of the fact, he may recover upon it, the thief could not recover.

But if the holder, in the case supposed, received the bill after it had become due, he comes within the rule's exception laid down, i.e. he is entitled to the presumption which may be founded on the slightest circumstances, that he knew the bill was lost, or that the transferee was unjust, and according to some opinions he is entitled to all. Equity to which the bill in the hands of the thief or forger was liable, even without the aid of such presumption. This last opinion is not well founded, for it is not fortified, but the former is undoubtedly true.

And if in either of these cases (when the bill is lost or stolen) the holder has not paid a good consideration, so that he could not recover, still he, the drawer, must give notice of the theft, pays it, the holder is not estopped from having money paid.

The same as if he had paid it to the real owner. For what does it signify knowing the holder was not the true owner? When it was presented to him for payment, there is no reason that he should raise a question whether the person presenting was a real owner or not. It is thus subject himself to a lawsuit. He is compelled to pay to the holder when the bill is presented. 9. T.C. 28. 10. T.C. 607.

But if a lost bill is paid by the holder out of the usual course of business, as before the day of payment, the drawer it seems may be compelled to pay the amount over again to the true owner. As when a banker's check was dated four years before it was paid before it was due, it appeared that it was lost, it was holder. Then the banker should pay it over again to the person who had lost it. 1869, 10, 40, 155. Chitty 13, 125, 150, 151.

The rule is the same of the drawer pays it before it is due.

If a bill, transmittable by indorsement only is transferred or negotiated by a forged indorsement the holder gains no interest in it whether he is the person who forged it or not. No subsequent holder can recover upon it. For though the bill or indorsement is authentic, a holder who is ignorant of any fraud about it, like must recover, yet when a bill or indorsement is forged the holder shall not recover, for the holder must always assume the risk of it being genuine. You were it not so,

The Mercantile Law would be instrumental of much mischief, as that by the person purporting to be the Drawer or Indorser would be made liable on an instrument which was not his act. Did they, one claiming money under a forged indorsement, proceed to receive the money of the acceptor, the latter would be compelled to pay it over again to the true owner. 1 T. R. 607. 4 T. R. 25. Doug. 670. 6 D.

It is a rule of Public Mercantile Law that if the Drawer of a Foreign Bill, whether accepted or not, is lost or delivered to a wrong person, he must give his Promissory Note, payable at some time, as that specified on the Bill, at the same amount. If he refuses to do this a protest for non-acceptance or non-payment may be made of the original time of payment has elapsed, an action by the true owner may be maintained.

This is no such rule as the above, as to Bills of Exchange, for they are governed here by the Mercantile Law of England. As they are thus. Chitty 127 b.

If the Drawer absconds, i.e., I suppose after acceptance, the holder may protest the Bill for better security. Then he must give notice to the prior parties of the Drawee absconding. He may protest the Bill I say for better security, if that is refused he may protest it for

I conclude, that the rule relates only to those cases, where the Drawer absconds after acceptance,
For it is a solicitation to talk of protesting for better security, before acceptance, for the less than he has given no security at all. If the payer, in his pl. 24, 24, 24, 24.

This better security is to be given (if any given at all) by a third person, who engages under this test to be bound as principal for the payment.


I have thus far traced the title of exchange from the act of drawing to the acceptance, through the transfer, to the various courses to be pursued by the holders or the drawer's refusal to accept. Statement of Presentment for Payment.

On this point the general rule is that the holder must present the bill to the drawer for payment at the time fixed for payment - if such time is after the date of the bill, if not within a reasonable time. I have so often had occasion to mention that a reasonable time, that a further explanation of it here is unnecessary.

I have further to observe that presentment for payment must be made whether the bill has been accepted or not, even if the drawer has refused to accept, notice of this (i.e., of non-acceptance) has been sent to the prior parties, still it must be presented for payment. For the drawer may not have that authority in his hands at the time of refusal, or there may have been sufficient reason for not complying with the request contained in the bill, but he may now have funds in his possession, or
Sec. Mercatoria. Bills Stated (Pror. 7. Nol. 1.)

since his refusal to accept he may have changed his mind & become willing to pay. 2 B. n. 1667. 11 B. 83. 585. 1 Pi. 120. 6 125. 2 170. 17 168. 2 136. C. 476.

Of course if the holder does not present for payment as the rule requires, he loses all remedy with prior parties, same as in 15 Ch. 155. 12 B. S. P. 182.

If the acceptor is dead at the time of payment presentment must be made to his personal representative. If he has any, if he has none, presentment is to be made at the acceptor’s house or last place of abode. 2 170. 17 168. 2 136. C. 476.

But a neglect to present for payment may be excused, as a neglect to present for acceptance may be, i.e., for the same causes which will excuse a neglect to present for acceptance. Thus if the drawee (acceptor) has no duty of the drawers or his hands the holder need not present for payment. So if he has absconded.

The acceptor himself can never induce on the ground of delay in presenting for payment, the prior parties may. Nor can the acceptor ever defend on the ground of indulgence (as a prolonged time) given to any of the prior parties, as drawer, payee, etc., for the acceptor is the party first liable, it is no injury to him that he has not had notice of such indulgence. Besides it is always presumed that he is the party who ought to pay. The presumption is that he has effects of the drawers in his hands. Doug. 235. n. 247. 12 B. S. P. 182.
It has been said that an action will lie on the holder or the acceptor himself without presentment for payment for that he being the first party liable he is bound to sue the holder or the holder to sue him. This is the rule of the C. L. in ordinary cases. For if I am bound on a bond to pay a certain sum of money, I must sue the obligor to pay the money at my suit. If he is not bound to sue me, but by rule as applicable to the acceptor of a negotiable instrument is very questionable, I think it is not defensible. For in such instruments transferable from one to another, the acceptor may not, it frequently cannot know who has the Bill. The may search the world over for the holder and not be able to find him. The subsequent receivers are often strangers to the prior holder as well as the acceptor. I am confident the rule of C. L. applying as to ordinary choses in action cannot apply in this case. It is the better opinion to be that the holder must present for payment and if he does not the acceptor is discharged. As to this opinion see, 10 Mod. 33. Baily 75, 108. Contras opin. see Plac 222. 12q. Poth. 140. 1 Jan. 93.

In the case of Foreign Bills of the course of the Bill has altered between the time of drawing and payment of payment the acceptor must pay at the rate of £10 when it becomes payable. For if I should this day draw a Bill on London who told my Foreigner Bills are at par, it when the time of payment arrives they have depreciated 20 per cent it is evident
that of the acceptor was obliged to pay at the rate of 5%
change at the time when the Bile was drawn, he is to lose 20 percent. You must pay them at the rate of 5%
change when the Bile falls due. Poth. 179. Chitty 133.

However, the question whether the holder in ordinary cases is bound to present for payment may be
yet when the engagement of the acceptor is to pay on
demand or after a certain time, the Bile is not presented
for payment, the acceptor cannot be subjected to any
insist on the want of presentation for payment as
a defence. This rule is well settled. Poth. 183. Chitty 134.

If the acceptor appoints payment to be made by another person, as at his Banker's office, or
all the other parties may insist on presentation at
that place, and if presentation is not then made,
they are prima facie discharged. Still if it is pro-
ved that such banker had no offsets of the acceptor
in his books, the rule does not operate. 2Bla 195. 22K 809.

This presentment for payment is to be made
by the holder or his agent. Mr Chitty adds that
the Agent must be Competent to give a legal ac-
quittance or discharge. I cannot think this is
Law. If he is to give an acquittance, it must be
by itself, it without an appointment by Deed as by
Power of Attorney he cannot bind his principal
by deed. There is no need of an acquittance for the
banker may be justified with one. The acceptor
in tendering the money cannot by Deed demand
a discharge. And if he should plead he knows the
money to the holder it would have paid it, provided he would have given him (payer, acceptor) an acceptance his plea is not good: now this is conclusive, if this State be the rule in all cases. A plea by the Debtor that he tendered to would have paid it provided the ender would have given him a discharge is no good. he has no right to insist upon an acceptance the C.C. does not compel ye other parties to give him one. Upon these principles I am fully convinced that it is unnecessary and unnecessary whether the agent is competent to give a discharge or not. Esp. P. 10. 17 B. 167. 10. Mod. 286. Chitty 139.

There is a rule laid down by Mr. Chitty, Sr. seems to apply to acceptor, Chitty 137. also Dekker 179. 180. 2. May 3, 1797.

As a general rule presentment is to be made by the holder or his agent; on the other hand, it is the general rule to be made to the drawer, the person for this is not universally true: you if the acceptor is not at home, it is in general sufficient to present the Bill at his house or place of business. If a place for payment is appointed, it is in general sufficient to present it at that place whether he is present or not. Con. D. T. March 17 P. 2. 1802 12 Mod. 241. 194 Esp. P. 3, 1 Esp. P. 572.

It is said that if the place of payment is the holder's house, an inspection of the holder's books is a sufficient demand. I do not know how this ordinarily can be very important.
Sex Mercatoria: Bills of Exchange, Promissory Notes.

I can see no need of it. If the acceptor has accepted to pay at the holder's house it is his duty to accept. If the holder is from home he may tender the money. 2 R. 133, 135-136.

If the acceptor has removed after acceptance the holder must inquire to that place he has removed to present the Bill there. This rule presumes that no place is pointed out either in the Bill or acceptance where payment shall be made. The holder is not bound to do this if the acceptor has absconded, or in such case presentment is unnecessary (because impossible). And if the acceptor has left the State or Kingdom, the holder with an intention of pursuing the holder is not bound to follow him; presentment at his house is sufficient. See 107, 1 R. 132, 130; 511, 125, 124.

March 19th, 1812, Sec. 15th

The time of presentment for payment when the Bill is payable at a certain time after sight or at absence depends on the appointment made in this respect in the instrument. You will observe in many cases of presentment for payment is not the same as the time of presentment for acceptance. When the time is not in the Bill or acceptance the time of presentment for payment must depend on the circumstances of the case. It must be made in a reasonable time. What is a reasonable time has been before illustrated. It is the same in this case as in the case of presentment for acceptance. 2 L. 133, 136, 137, 146.

I have observed that where the time of payment is appointed, that appointment regulates the time in which payment must be made. Else in this case the time of payment is not at the time mentioned, nor according to Sec. Mercatoria. Days of grace are allowed. When however a bill is payable on sight or on demand it is paid days of grace are not to be allowed to this there are contrary authorities, the latter I take to be the better opinion; so far as I have been able to ascertain the latter opinion has been uniformly followed in the United States. If these latter opinions are law the rule will be general that days of grace are to be allowed in both cases; i.e., whether the bill is payable at a fixed time, or on sight or on demand. 4 Thos. 170. Polk pl 12. 198. 172. Beavers 256. 1 Show 163. 6th 10. 193 and Col. 303.

The American Authorities are all in favor of days of grace in all cases. 1 Johnson's Cases 328. 2 Cairns 71. 343. 2 Cairns Cas. 112. Stover 175. 4 Dallas 147.

If a Bill is drawn at a place using one logical style of payable on a day certain, at a place using another style, the time of payment is to be determined by the style at of last place. For this the act is to be done. If this a Bill is drawn in the United States payable at a given time in Persia, the time of payment is to be computed according to the old Style. Beardsley pl. 281. Poohin pl. 155. Bailey 68. Chitty 59. 60. 69 53. Xth of 8th not zero.

If a bill is drawn payable at a certain
If a Bill is drawn payble at a certain time after date, or sight or at demand, the day of the date in one case is of the presentment in the other is included. If e.g. a Bill is drawn on the 1st of January payable 3 months after date, the day of the date is included. This is a rule of Law Merchant. The rule of C.Law is different, for at C.Law an obligation is payable a certain time after date, the day is included, but if payable at a given time after the day of the date it is excluded. The Law Merchant knows no difference between the terms "after date" and "after the day of date." In both cases the day is included. 5 Bay p. 250. RAW p. 252. Poth. p. 15. 10. 6 v. 13. 212. Contr. p. 128. 3 Fors. 391. With respect to the C.Law see 2 Bent 318. 310. Conf. 799. 3 Ed. 523. Lord C. House parts 443.

If a Bill payable at a first time after date, happening to have no date, the time of payment is computed from the day on which it is issued, this may be proved by parole evidence, but that date is excluded. The day after is the first to the computation. 5 Bay p. 1076. 4 W.R. 537. 2 Cow. 20. 4 Bay 18. 4 Bay 53. Broth. 781. Price 14. 1.

Days of Grace are so called because they originated as originally gratuitous, on the part of the holder. The payee is originally could not originally claim it as a matter of right, but now it can. Usage has established that it to be matter of right which was originally gratuitous. 4 T. R. 136. 2. Rep. 9. 128. 125. 120. 7. 59. 267.
The number of these days of grace is different in different countries and the law here, as the law where the 13th is to be paid, governs. In Eng., the country of reckoning of days is theirs. A day in this country because I believe the rule is universal thro' the States. Ch. 120. Becons p. 260. Lev. 29. 10.

The days of grace thus are always computed according to the custom of the place where payment is to be made. If payment is to be made on the last day of grace, if then, a Bill is drawn payable on the 1st day of grace, payment is not to be made till after the expiration of seven or obligation to pay till the last day, therefore it is necessary to present the Bill for payment before that day, and in Eng., the last day of grace here is not Sundays or Holydays are included. If then a Bill is payable on Satur-

If then, the last day of grace happens to be on Sunday, or in Eng. on a great holyday, as e.g. Christmas, the demand should be made on the second day of grace; if the Bill is not then paid it is considered as dishonored. Suppose then the Bill is payable on Thursday, payment must be made on Saturday, for the last day of grace is a Sun-
day, or what day no business can be transact. The law here now claims the same 2 days of grace, for as I have observed days of grace are matters of indulgence, it shall not be so constr.

As to gain the point in days. 2 Pet. 3: 13.
But when the days of grace are all days of business, presentment before the last is a necessity. No protest can be made for non-payment before it is made cannot oblige the prior parties. Exp. 161.

In the Law Merchant, the word "usance" is used to designate a certain period of time appointed by customs or usage for payment of Bills drawn in one Country to payable in another. E.g. The merchants in London are in the habit, by long custom, of drawing Bills of Exchange on the Merchants in Amsterdam, payable at a certain time after date (as three months I think) and this length of time has by long usage become well known by the term "usance." which has now been converted into a law term.

If thus a Bill is drawn on Amsterdam (at usance e.g.) the day of payment is to be computed according to the length of an usance at Amsterdam.

Chitty 141.

And foreign Billes are usually drawn in this manner, e.g. at usance. The length of time denominated by an usance is different in different countries. Exp. 4:

If a bill is payable a month or months after sight or date, the computation is by calling it not by Lunar months. This is opposed to the general rule of C. Law—i.e. at C. & D. Lunar months you run the computation. If e.g. a Decr. is made for a certain time as 6 months, the time expires in 24 weeks or 6 Lunar months—so if a bond is

is made payable 6 months after date. The time is computed, according to Lunar months. 12 Laws pl. 262. 6 T.C.C. 201. 6 T.C.C. 141. 6 T.C.C. 141. 6 T.C.C. 229. 2 East 223.

If a bill is payable at a fixed period after sight, the time is computed from the day of acceptance or presentation, for acceptance, 6 T.C.C. 492. 6 T.C.C. 212.

When no certain time of payment is pointed out in the bill or acceptance, the presentment for payment must be within a reasonable time. What is meant by a reasonable time, has been sufficiently explained. If then a bill is made payable on demand or sight, presentment must be made within a reasonable time according to the circumstances of the case. 6 T.C.C. 508. 11 T.C.C. 1248. 2 T.C.C. 924. 15 T.C.C. 168. 2 T.C.C. 565.

The day of presentment or being appointed or ascertained, presentment for payment must be made within a reasonable time, before the expiration of the day, or within the usual hours of business. 6 T.C.C. 916. 69. 148. Daily 59. 57.

On presentment, for payment the 13th should not be left with the Drawee until its pay it. If it is left, it is not considered that presentment is made till the money is called for. 4 T.C.C. 76. 97.

Presentment for payment should be made in general only by the owner of the bill, or his agent, and on the other hand, payment should be made
In general only to the owner of the Bill or his agent. If the payment is made to the payee at Payee
after he has negotiated the Bill, it will not void
the Acceptance, for the Payee is not the owner of the
Bill, he has parted with his interest and payee,
has been made to a wrong person. Both pl. 164 Eitty. 149.
If a Bill is payable to A on whose order of B. Payment should be made to A, or his order, or
not to B. or his order. for A has the legal interest
of B. only the equitable interest, which is not known
as regards to the Law. 2 Bell. 91. 210. 8th Ed. p. 107. 108.
But the presentment for payment is to be
made within the usual hours of business, yet it
is a general rule that when money is to be paid on
a day certain, the acceptor or the party liable is
allowed until the last moment of the last day
of grace, to pay it in. E.g. He has obliged himself
to pay on the 10th of Jan. Now if he pays on that
day, he discharges himself. The holder however may
must present within the usual hours of business
yet the acceptor can claim the whole of the last
day of grace, or within it after the payment.
This is a rule of the English Municipal Law.
1 Roll. 183. 1 Sa. 3 237. 4 T. R. 413.
The rule just laid down does not extend
to Foreign Bills. The reason is in Foreign Bills
Protest is to be made. A when receiving it must
be made on the day of payment, i.e. on the last
day of grace. If the party bound to pay could
delay until the last moment of the last day, a valid protest could not be made. The acceptance case of Foreign Bills then cannot discharge himself, only by payment of the money, it this is to be done early enough, in the day, as to leave time sufficient to make a protest. N. Y. 121, 4 T. & C. 179.

For the purpose of clearing nothing vague or uncertain on the subject, it is easier that Foreign Bills shall be paid within the usual hours of business. In case of the indorsement of a first general indorsement. The acceptor as to these is allowed the whole day to make payment, for him no protest is necessary, therefore the reason in case of Foreign Bills does not apply as to 121, 4 T. & C. 178. Daily by 12th. 140. In 121, 122, 123, 131, 179, a double is applied to the rule above, applying to

Indeed, Bill of Exchange.

If a Bill drawn how is payable in a foreign Country, for a foreign East, the value of which is reduced, it is to be paid according to the value of the Coin at the time of drawing. This rule amounts to, the one year, yesterday, C. V. drawn, 365, the depreciation of Exchange. Suppose a Bill is drawn in Denmark, payable in A. dollars, which now are of a given amount, by before the day of payment, they reduce 10 per cent. Now if the Bites is drawn for 100 A. and payable in B. dollars, the two half of the letters that is, the change of 10 per cent. changes. They both amount to, value to the in 90 A. owing to the 10 per cent. depreciation. They 27. Oct. 154.

If the holder consents with the acceptor without the consent of the other parties, these latter parties are discharged; for by complying with the acceptor, as e.g. to receive 50 p.c. on the face of the bill, he determines the liability of the acceptor. And the reason if he were compelled to pay could not recover the difference of the acceptor, and now having done this the holder cannot compel the prior parties to pay the residue. [Slates 135, 136. Coates Bank.] Dam. 166.

But the rule is otherwise if the holder merely receives a dividend, the acceptor being a Bankrupt; for this is all he can do. He does not voluntarily, make this compromise, for the law has deprived of recovering any more, i.e. out of the acceptor. And in such case it is an advantage to the Prior Parties that the holder should receive from the acceptor what he can get. [Slates 167, 168.]

It has been said that if the holder receives of the acceptor, a part first, then it is over, the not received is full satisfaction, yet if he does this without the consent of the other parties they are discharged. Because it is said by receiving a part he makes his election to receive it of the acceptor. I am unable to discover how he makes his election by receiving a part. There are very respectable opinions that this above is not so. It is true that when he receives a part it is his duty to enforce the prior parties of the non-acceptor of the residue.

If he gives this season all notice I can see no way on which the Prior Parties can be injured by his receiving a pass but the probability is it will be an advart age to them. I think the rule, indefensible. For the rule, as 1st, 2d down, see 3d, Ray, 3. 279, 276. B. N. P. 179, 271, 273, 275, 276. Ass. Bull. op. para. 315. 166, 164, 160, 164. Bank 1, 160.

It is said by Mr. Little to be doubtful, what the party bound can insist on a receipt for the money as a condition for payment. I must be constant. It is certain, true that in cases not arising under Six Mercatoria, he cannot, neither can he demand, when they do. You can call witnesses to evidence of payment, if moreover entitled to the benefit being in his possession of prima facie evidence of fact. 3d, Ray, 3, 279, 276, 179, 177, 170, 80. 2d, 179, 180, 180, 182. 1st, 177, 177, 177.

A general receipt for goods is on the back of the bill, if not naming the Party paying, is prima facie evidence the payment was made by the acceptor. The reason is the acceptor is the party first liable, if payment has been made the presumption is, it was made by the acceptor. If this payment is made by the Drawer or Indorser, the receipt should express the party paying. 2d, 177, 180, 177, 177. 1st, 177, 177, 177.

If payment is refused the houres must protest the Date of Foreigner, whether Foreigner or Inhabit must give notice of this fact to all parties.
to whom he intends to resit for payment, and if he does not take this course, the prior parties are discharge; you as they are discharged by want of notice, of nonacceptance, or also if the holder might give notice of non-payment he can have no claim on them. Act 155, 20.

The rule in case of notice of non-payments is the same as that of giving notice of non-acceptance, mutatis mutandis. The form of protest for non-payment is Ch 150.

If part only is paid the Betc is to be protested. If Foreign for non-payment of the residue paid, or Foreign or inland notice of the refusal is to be given to the prior parties except when notice is waived or received, & for the purpose of ascertaining that it is waived or executed by the rules it is authorized for this done in case of non-acceptance.

In certain cases under the Stat. 1839, William 3. Inland Bills may be protested, but this is done for the purpose of enabling the holder to recover interest & charges as well as the amount of the Bill. The effect of this statute is only to give the holder an accumulative remedy. It is not necessary for him to protest the Bill in order to subject the party to the amount of the Bill, for so far he was liable before the statute was made, but if he would recover interest & charges also, he must according to the statute protest the Bill. Stat. 1839, 215.

28C = 489.
Protest for non-payment of a Foreign Bill must be made on the day of refusal, or the notice must be sent to the Drawee Party by the surest and surest conveyance on the next day. If protest is not by the surest conveyance made or otherwise. 4 T.R. 390. Reg. 43. Sec. 2. W. & M. 568.

In the case of an Irish Bill however, it seems notice did not to be given until the day following the day of refusal to pay, and indeed if the acceptor insists upon his right to delay payment till the last moment of the day, it cannot be given. 1 T.R. 168. 189. 4 T.R. 170.

Notice however in this case should be given on the day following if possible, otherwise the surest conveyance is sufficient. Notice of any refusal must be given to the Drawee Party as soon as may be. 7 T.R. 168.9. Doug 168. 266. 568.

When a Bill Foreign or Irish is dishonored payment before protest may be made for the honor of the Drawee in an Indorse, you would think this might be done on a case of non-acceptance, so also when the acceptor refuses to pay, payment before protest may be made. Brown 3rd, 3rd, 183. 113.

But if the Drawee has once accepted, according to the law, he cannot pay before protest for the honor of an Indorser. For at that time, the acceptor is bound by his previous act of acceptance. Brown 3rd, 183. 113.

But
But if the acceptor has no right to the drawer, he may alter an acceptance, according to the terms of the bill, protest it. I think, pay it for the honor of the drawer, it by so doing the acceptor acquires a remedy on the bill. For as between the drawer and acceptor the question depends upon whether he has a right, or not, but the want of right cannot vary the liability of the acceptor as between his and drawers. Suppose the drawer he is bound by his acceptance.

Mr. Tellly says the payment is as such case is to give the acceptor a remedy to the drawer. But this is not the case, for he has a remedy vis-à-vis whether he (ye acceptor) pays the bill according to its tenor or whether he pays it supra protest, for the honor of the drawer. If he pays it according to its tenor, his action is indebtedness upon part; if he pays it supra protest, his remedy is on the bill. So that in either case he has a remedy, the only difference is in the manner in which it is sought. And further, the acceptor by paying the bill supra protest for drawer's honor, divests himself of a presumption that he is indebted to him, thereby throws the onus pro causi on the drawer, whereas if he pays it according to its tenor, this presumption lies upon him, for his (ye acceptor) is the burden of proving the fact to the otherwise. Rep. 153, 155. 1 Den. 2, 139. 15 T. 269. Beavers 342. Cap. 16. 113.

The rule as given in the Books is that the acceptor may alter his supra protest, provide

If a person does not have a right to receive the bill, he cannot prove his paying the bill, supra protest, if he chooses. Chitty 164.

Generally, payment should not be made for the honor of a party, even after protest for nonpayment.

For without a protest, the party paying acquires no right to recover on the Bill to the prior parties. Beausire 53, Chitty 105, 115. The undoubted fact if the drawn having no right of the drawn, pays the bill for his honor but without protest, he may recover for money laid out for drawers use, as he cannot recover on the Bill. LeF. 155, 155. Chitty 165, 191. 208, 305.

And I must that a stranger, i.e., a third party, who has before accepted supra protest for the honor of a party, may afterwards recover on him for money laid out for his use, if the Bill is not protested for nonpayment. True, he cannot recover on the Bill, because he is not a party to it.

I add that as a stranger may accept for the honor of the drawn or drawer, so I may pay for the honor of either of them. If having paid supra protest, he has a remedy on the Bill to the party for whose honor he paid I against all the prior parties. Chitty 164.
In my last lecture I concluded the observations I had to make on Bills of Exchange, except a few on the remedies on which I shall now treat.

A Promissory Note is a direct engagement in writing to pay a sum of money to a person, or to his order, or to bearer. It is, in other words, a direct engagement to pay a sum of money to a person named, containing operative words of transfer. 2 O. C. 1467. 2.35.1. 50. D. 165.

A Promissory note is somewhat in the nature of a Bill of Exchange drawn by the maker on himself. The analogy between the two does not, however, arise like the note is negotiated. When negotiated it resembles a Bill of Exchange. The maker of a note is like the acceptor of a Bill. The maker promises to pay, it is the party first liable, the same as an acceptor of a bill of exchange. It is hoton that a Promissory Note is not negotiable at B. E. that it contain operative words of transfer, i.e., when payable to order or bearer. Sec. 5 at B. E. a Promissory Note is not an instrument on which an action can be founded, but mere evidence of a prior promise. So that if A. gives a note to B. B. sues his recovery with as at B. E. he relies upon the Promissory Note, as for goods sold to C. The note is good evidence to support the allegation in your Declaration. 2.35. 2.9. D. 10. 1520. 4.5. 16. 1541.
But Notes made payable to order or bearer are put upon the same footing as Inland Bills of Exchange by the Stat. 4.15 An. made perpetual by statute. In other words by the former Statutes Notes were made negotiable if containing operative words of transfer to other persons of a good negotiable inland Bill. They were by this Statute converted into legal instruments on which an action might be brought, 10 P. 157, 2 El. 4.

In case we have a similar Statute recently made, by which promissory Notes payable to order or bearer for the sum of 50£ or more, are made negotiable, the same as Inland Bills.

Now as Promissory Notes are put upon the same footing as Inland Bills of Exchange, the same rules mutatis mutandis as apply to Inland Bills regularly apply to Promissory Notes. It is therefore unnecessary for me to go over the grounds against which the rules before given.

It is now settled, the formerly considered otherwise, that days of grace are to be allowed upon negotiable Promissory Notes as upon Bills of Exchange. When I speak of Promissory Notes, I am to be understood as meaning Negotiable Promissory Notes, unless I express the contrary. 4 T. K. 182, 8 B. B. 274, Doug. 61, 63, 10 T. 167, Chitty 169.

A Promissory Note when endorsed bears no more title than a bill before observed a strict analogy to that of Exchange. The drawer of the Note, is as the acceptor of the Bill, the indorser of the Note, is as the drawer of

of the note, the same is the
Page of the note. 183 & 676.

Bankers' Cash Notes, are in reality nothing more
than a species of Promissory notes given by Bankers.
Nor were they intended to be negotiable, like some of
the State of New York which made all notes negotia-
tible the troth that time they were issued. p. 99.

183, 182, 676, 193, 29, 39.

Bankers' Cash Notes being payable on demand
are treated & considered as cash whether payable a year
or sooner. This by the consent of the merchants, too.
They constitute a circulating medium. 182, 99, 183,
676, 193, 29, 39. 23 Dec. 1819.

This Banker's notes as they are regularly tran-
sferred by delivery are as I just remarked treated
as cash. If they are endorsed they may be declared
upon as Bills of Exchange. 182, 99, 183, 676, 29, 39.

Bank notes again are really nothing more than
Promissory Negotiable Notes issued by a cor-
porate banking Company. They ore than original
the Statutes incorporating Banks. They from there
are nothing more than Negotiable Promissory Notes
yet

they are considered as money. 
A B can purchase a gold
coin etc. As if a man should devote all his pro-
pery to A, these notes will be included in this descrip-
tion. They are not actually money but for most
purposes they are treated as such.

Thus, Bank Notes are generally payable.

In some cases, the same as bankers notes, are not generally considered as securities for money merely, but as money itself. 15 Ves. 657. 3 T.R. 554. 4 T.R. 555.

But the bank notes are considered as money for most purposes, yet an action for money had and received will not lie. 21: the finder of bank bills will, as he has received the money on them for this action for money had and received, lie only for money properly so called. 2 Bl. C. 227. Scott 197. 1 T.C. 259. 2 T.R. 1269.

5 Ves. 2555. 8 East. 189.

Bank notes are not a lawful tender, provided the debtor objects to them at any time on account of their being bank notes. But if he does not object on this account the tender will be good. 3 T.R. 554. 16q. C. 317. Doug 662. 2 T.R. 332. 5 T.R. 528.

So particular form of words is necessary to create a Promissory Note. Any writing in general containing an express promise to pay money or also the proper words of transfer is a promise, negotiable. A note. Hence a promise for value received to account to A on order for a certain sum, operates as a Promissory Note. The word "account" is used instead of the word "Promise." 3 T.R. 362. 3 T.R. 362. 8 Ves. 786.

2 Ray. 1396. 15th 32.

But the mere acknowledgment of a debt without words amounting to a Promise will not operate as a Promissory Note. Thus the whimsical memorandum as Sir. 3: to evade the Stamp duty consisting of the letters "T.O. U." non servit. men.

non servit.
evidence of indebtedness but it is not a promissory note.

And the same requisites are necessary to be

notices in money + money only it must be payable

at all events + not excepted contingency. The same rules

as to Bills of Ex. apply as to Promissory notes. 1 Bl. 323. 567 B & B. 243.


If an instrument thus containing a promise
to pay, contrary either of these requisites it is not a

negotiable Promissory note. It is evidence of a casual agree

ment to pay, as between the Parties, may be declar

ed as a Promissory note. 7 T.R. 243.

By a late Statute in Cor., no action can be

brought on a promissory note, unless within 6 years

from the time the right of action accrued. This Stat

in this respect is the same as that of 21 & 22. 25 Eng.

As to Bonds the limitation is 7 years. The Stat. provides

that the time during which the maker is out of the

State is not to be computed as part of the time.

It is unnecessary for me to pursue the subject

of Promissory Notes any further. I shall next consider.

The remedies the holder may have upon a

Bill of Exchange or Promissory Note.

The usual action brought on a note or promissory

note is that of Superpet. And this is said to be taken

to remedy where there is an immediate prior breach

of promise as between the parties. A promissory note.

The holder may maintain this action. Where
the parties generally. The cannot join the different parties in the same suit. The maker and indorser of
Promy. Note cannot be joined any more than the
maker endorser of a bill of exchange. They
may be all liable to all at one and the same time.
Yet their liability is not identical, the cause of ac-
tion is not the same. Each party makes a distinct
contract, therefore there can be no joined of them. U. T. R. 477.
Thus the action of the acceptor lies on the ac-
ceptor or indorser, it lies for the indorser of the ac-
ceptor, or drawn a bill, or, as it lies to all third parties
when the assignee by delivering. But the assignee
cannot maintain an action as any person whose
name is not on the bill, except as the person whose
he received it, and in this latter case he cannot main-
tain the action on the bill, but on the consideration
of the assignee, as if the consideration was goods sold
the indorser he may sue for them. No person you
cannot be a party to a bill or by third parties
is upon it, except the holder. Suppose A draws a Bill
is drawn upon B. It is transferred to D. by endorsement,
I
Transfers it to C. by delivery, no action can be main-
tained by B. on the bill, or in favor of C. for B's name is
not upon it. C. may however recover on his consid-
eration of the transfer, as for goods sold, labor, and
so on, but suppose C. transfers the bill to D. by first
delivery, now B can't maintain his action on C.
on the bill, but he may on the consideration. But.
D. can maintain the action on B. He cannot.
maintain an action on the Bill for his name is not on it, nor can he maintain the action on any consideration, for as between them there was no consideration. No indorsement is moving from B to D, 7 T.R. 64, 5 R. 88, 3 T.R. 12, 2 H. 265, 234, 485, 521, 46, 509, 576.

I observe the section might in general, sustain the prior parties. For, if the action may be maintained by the drawer or the acceptor of the acceptor refusing the drawer is compelled to pay, because the acceptor is its true indorser, the acceptance furnishes a presumption that he is indorser to the drawer. No Chitty has on this subject a rule which is incorrect. He says the drawer may maintain an action on the drawer for refusing to accept. This is not clear, for before the acceptor even he is no party to the bill. The drawer refuses to become one. Even if the drawer has ability in his hands, he cannot be compelled to accept the bill. So the drawer can remove them out of his hands. And it would be a strange doctrine to make him liable for refusing, in case he has no ability. It is clearly absurd. Chitty 166.

And in general, any party having been compelled to pay the drawer may maintain this action against any prior party. By prior party is meant any one whose liability is prior to his own; for this ground it is clear the drawer can remove the acceptance. The above rule presupposes the drawer's name is on the bill, for otherwise he is not a party. 7 T.R. 64, Chitty 166.

If one accepts for the recommendation of the drawer, by which is meant that he has none of the

Drawers are not obliged to pay the Bills he may receive at the Drawer's instance. Nor can he maintain it on the Bills, unless he accepts supra protest; he may recover the amount out of the Drawers, the money paid out and expenses of his own. If he accepts supra protest, he has a remedy on the Bill for the money by so accepting, he becomes a party. 1 P. 316, 317, 13 T. C. 107.

This action will lie for a stranger who pays the Bill supra protest, as the party for whose benefit he paid to all the prior parties, and when he pays supra protest he may have an action on the Bill, he then becomes a party. 1 P. 316, 317, 13 T. C. 107.

It is a general rule that an action will not lie, where the party became a party to the Bill after the present holder. Thus if A. the Payee of a Bill, endorses it to B., and B. endorses it back again to A. A. then recovers against B. for his loss, not recovering the same back, but after 2 years suit, they stand as the goods, 4 T. R. 170.

But this rule (supra) can not hold in favor of the acceptor in drawer in any of the prior parties to A. (as in the case above). Indeed to its terms it will not hold as to the Prior Parties.

The action will not lie, as the party from whom he received the Bill, unless he paid a valuable consideration, the reason was given before. The rule has been shaken by a decision in New York, but it is the rule in England. 1 P. 316, 317, 13 T. C. 107, 12 D. 371, 370. 1 B. 417, 531. 11 B. 417, 531. 2 B. 417, 531. 3 B. 417, 531.
If the holder makes the acceptor his executor, and dies, the right of action of all the parties is extinguished. 8. Law. 184,123. 26th. 299. 264,277. 311. 123. 51. 8. 26th. 277. 299. 311. 123. 51. 8.

The reason of the rule supra is that by the holder making the acceptor his executor, the primary liability is discharged, of course the secondary must be. If the other parties are liable only in case the acceptor fails, this is discharged, they are of course besides the transaction destroys the claims of the other parties on the acceptor. The acceptor superseding the debtor and creditor the right only rests on the creditor himself. This by the way is a rule of law. In Equity, where the justice of the case requires, he may be considered as the creditor for the creditor, at may compel him to pay.

The holder may at the same time commence an action upon each of the parties on the bill. If he obtains satisfaction of one, the rest are discharged except for the costs which have accrued on their own suits. They cannot be compelled to pay the whole again. 5. 26th. 299. 311. 123. 51. 8. 26th. 299. 311. 123. 51. 8.

If there be an action on the drawee in favour of the drawee pays the amount of the debt to the best of that particular as action to himself. the court must stay proceedings against him, how many other actions there may be pending against others. 5. 311. 123. 51. 8. 26th. 299. 311. 123. 51. 8.

If however an action is brought to try acceptor and all other parties also, there will be no stay of proceedings.
in the action, as the exception can help to pay in addition to what is due on the Bile, the Costs of all the other
suity, for his Creditibility is primary, this is the first
default. The others are said to consequency of his neg-
ligence; he must therefore pay all the Costs.

With respect to the former rule (as to drawer
in Insolvency) I do not see why that last rule should
prevail in relation to those practices, (i.e. in relation
to drawer in Insolvency) when they are said whose liabil-
ity is subsequent to theirs. (Drawers in Insolvency). So e.g.
it is the duty of the drawer to pay when the accept-
ar party is negligent. Now I would suppose the drawer
ought to pay the Costs of the Insolvent actions, for the
Insolvent liability is subsequent to his, but it is only
after the drawer neglect to pay that the Insolvent
regularly becomes liable. The rule does not however
seem to extend that far. same with.

But the the holder may have several ac-
tions on the prior parties who are liable on the Bile
it may pursue them all to judgment, I take the
Execution on the persons of all; but he can have
not one first facias. This is an Execution vs. the
goods of a person on which the money is to be saved.

As if after he has obtained complete rates
execution out of one, i. e. £2, he proceeds to take out Execu-
tions on another, he pursues him to recovery etc. he had already
received from a former party, this other may be recov-
ered by an Andes Receiver.
The Declaration in this action of Affrmed in may in general be founded either on the Instrument itself or on the Consideration of it. Thus if A draw a B for Goods and it is dishonored by no person taking on the Bill or on the Consideration of it and he was previously indebted, or if goods were sold to B by A for the previous debt or for the goods which were the Consideration of the bill. In the former case the \[ ... \]

In the latter case, i.e., if he sued on the Consideration of the transfer, he recovers on what are called the "Commons" County, as good goods sold and delivered, labor done, services rendered, money had and received, or money laid out and expended, on all almost as these actions these Common County are inserted for the purpose of settling the rights upon, and in case the \[ ... \]
Merchant, this is unnecessary. The plaintiff only
when he declaired upon a Bill or Note to set out the
Bills, merchant, which governed his particular case.
The word is too that by the happening of such act
(as e.g. the drawing, accepting or endorsing of
the Bill) the Debtor became liable to pay. But it is
now unnecessary even to refer to the Customs of
merchant. The Law Mercatoria, is now the common

In dealing upon a Promissory Note however
it is usual in England to aver that the Debtor became
liable by virtue of the Statute of anne. Now I can
not discover where is the necessity of this form. The
Statute is a Public statute, and there is no necessity of counting
upon a general statute, unless it is a penal one. The
reason why this form was originally adopted was
I conclude, out of the hound of caution of lawyers to show that the plaintiff had not
within that statute. As that statute gave the right
to sue. This is the only way in which I can account
for so unlawful a form as a proceeding 1. Pitty 185. 246.

In counting upon an instrument itself it is unneces-
sary to allege a consideration, for the law implies one as in
case of Dec. 185. 247. 22. Bell. 175. 23. 48. 201. 2. 440.
And in declaring on a Bill of Exchange or Promissory Note it is
not necessary to plead the same with pretext for it is not necessary
generally. It is so far especially that the debt presumed to
consideration. 1. Bell. 286. 401. 338. 1542. 293.

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When a Bill or Note cannot take effect according to its form, the most proper way of declaring upon it, is to state it according to its legal generation. The existence of a Bill payable to a fictitious Payee is illustrative of this. For in such case the Parties must act as on a Bill payable to bearer, but it is proper to declare upon it as such a bill, and then the Special facts as to the Parties who know it was fictitious shall support the document. 3 T.R. 173. 232. 431. 643. 176. 445. 313. 389. 236. 194. 218. Chitty 48. 185. 186.

And when a Note is payable "to the order of a certain person," instead of being payable to "A. or order," the plaintiff declines upon it as a Note payable to himself, for its legal effect, it is the same as a Note payable to A. and the it is proper to be payable to the order of A. 2 T.R. 389. Chitty 403.

In actions on Bills of Exchange, it is not indispensably necessary, the it is usual to allege a promise to pay. It is sufficient so to describe the bill as to show how the description of the Defendant become parties liable to it by fact the Defendant's liability. This how can is not the usual mode, i.e. to raise a promise, but is unnecessary. Ed. Holt says "drawing a Bill of Exchange is equivalent to an express promise to pay." The ground on which it is held due to be unnecessary to raise the promise is that the Law itself is controlled by the Custom of the country. Chitty 309. Falk 126. 129. 185. 338. 187. 194. 218. 281. 282. 283. 284. 285. 286.
And whenever a party shall become a party by procuration, i.e., by the act of his agent, it is not necessary, the it is usual to state he became a party in this way. It is unnecessary, for if the Bills alleged to have been drawn by A. and it is proved to have been drawn by B. who was his agent, it is sufficient support of the averment of the declaration that it was drawn by A. according to the well known maxim, qui facit facit per alium facit per se.

175. 1 B. & C. 313, 175, R. 259.

The drawee may declare at his immediate indorse as on a bill of Exchange drawn by the drawee to pay to himself, because it is legal that the indorsing a bill is equivalent to receiving the bill. The rule is laid down as above in the Books.

But I have no doubt but any subsequent indorser may so declare if the indorsing name is in blank, because he may fill it up with his own name and so constitute himself the immediate indorser. The rule, as it stands, is, that the indorsee may declare as the indorsee as drawn. Now this would seem to imply that if the bill is delivered over to a subsequent indorser that he is not bound to deliver it (the first indorse, as drawn). But I conceive he may, if his name be endorsed in blank, for the reason above.


This however is not the usual form in which an indorsee is sued. The is generally sued as the person, in the party status as they are. This Colvin is to
safe way, because it saves the question.

In an action on the claim or promise, the 
Plf. must generally allege presentment for payment 
and as the case may be, presentment for acceptance. 
So as the case may be. A mere presentment for acceptance is not enough. He must allege it. 
But he must in all cases allege presentment for 
payment, also allege a refusal, that regular notice was given to Def. unless as such case when 
the Plf. is excused from giving notice. Doug 385 Case of Dudley 21. To Senate 3 Bar 760. 10 R. 792. 10id 591. 
Chitty 185. 189. 282.

I observed in my morning lecture that it 
was usual for the holder to declare not only on the 
instrument but on the common course, the reason 
of insisting these course was explained. Now, in the 
common course the instrument itself may be intro 
duced as mere matter of evidence. E.g. the Plf. 
could not support his action on the Bill he may 
introduce the Bill to support the common course to 
the Def. may make the evidence. The instrument is 
thus a piece of evidence only is liable to be rebutted 
by opposing testimony. Doug 322. 17 Ch. 642. 16 R. 243.

In some cases the holder of a Bill issues 
the common course alone without countering at all upon the instrument. He has a right to do this, if 
without the Bill he has sufficient respect to support his action. But this is not usual unless the 
instrument is defective, as by want of stamps. But
As in a prosecution as a sect of the Law, it may be
concerned to prove or support the common cause, as it
is in such cases evidence of the indebtedness. In such cases,
the party is to rely altogether on the common cause.

3 T. R. 179. 2 Exch. 591.

In the common cause, by the way, it may
go into proof of the consideration by parole, or
this show his right to recover. He is not obliged to
prove the consideration by the 13th sec. He, there
not merge the indebtedness, as a bond does. But in
the bond bound to produce the Bille, or the bond
he is not bound by it, but may introduce other evi-

Now where one takes a Billed from another
he cannot pursue this course. The Law will not per-
mit him to prove by the Billed as an upon the considera-
tion of it, for it is merged. But, a Bille, though effect-
sively does not merge the indebtedness.

If just described the instrument, may be a
of an evidence in support of the money common cause.
There are some distinctions to be observed in cases
where the Bille may declare it may not be used as evi-
dence, which I will exemplify.

In an action by the Payee to the Drawn
of a Bille on another of a Bille, the instrument itself,
may be introduced as prima facie evidence of mon-
cent. If then the Payee brings his action by Draw-
ner in the action for money lent, he may without les
any notice of the Bils or Note, in his declaration, produce it to evidence. It is prima facie evidence that the money was lent. It is presumed when the Bils is produced at trial, that the Defed paid the amount of the

Bills, therefore it is that the Bils be prima facie evidence of money lent to the amount of it. Tews p. 125. 2 May 935. 12. Mo 376. 5. Bus 1516. 1225. 6. 66. 225.

The rule is the same where the action is but by the Insurred to his intromisee. Insuree, the action may be introduced as prima facie evidence to support a Court for money lent, for the intromisee furnishes a presumption that the Insured receiv'd the amount of the intromisee of the insured, therefore that he should pay so much back again.


As it is paid that the Bils or note is also prima facie evidence of money paid by the holder to the use of the Drawn of the Bils or maker of the note. Daily 95. Chitty 191. I believe this point has never been judicially decided, but, I see nothing in it unreasonable. The holder has paid the Insured money, the Insured has paid the Drawn party the reason party pays the Drawn, the Drawn has the Bils against the Insured, the Insured pays the Drawn, the Drawn pays the Insured, the Bils against the Insured, the Insured pays the Drawn. Here withoutclaiming stealing the presumption that the holder has paid the amount of the Bils for the use of the Drawn, at least he himself did not pay it. We paid him to pay it more and 13 paid 1/2 of Drawn. The exception of wrong pay the Drawn having in the benefit of so much money
it may be considered as having been paid to his use by the Holder. It is on this ground I suppose the rule is given. It may however be considered as questionable by some on the ground that there is no priority between the Holder and the Drawers.

It has also been said that a Bill accepted as evidence of money paid by the holder to the use of the acceptor, is the consequence of the holder paying an action for money laid out to a person for use of the acceptor. This doctrine is denied by Sir J.D. Yeo, on the ground that there is no priority between the Holder and acceptor. 1 Tuck. 602. Bailey's Ch. 191.

The above rule is then to be considered as questionable. Again, the bill is said to be prima facie evidence of money paid by the acceptor to the use of the holder. I am not aware that this is settled. It is true there is no immediate priority between them, tho' the obligation is not so strong in this as in the last case. The acceptor is presumed to have given the effect of the drawer. He is presumed to have that fund on which the Bill was drawn, on the holder is presumed to have paid the value of the Bill on the credit of that fund, (not exclusively on the credit of the fund, for there must be a personal credit between. That consideration is immaterial here however. The is presumed to have these effects for the purpose of paying the amount of the Bill over to the holder. In this point of view it is not extraordinary that a rule like the above should have been introduced.

If it is correct, it follows that the holder may bring indictment against or the acceptor for money he has received, so that the Bill was used with prima facie

If the drawer, not having effects of the drawer
pays the Bille, the Bille in his hands is evidence of
money paid.  Laid out, it is given to the use of the drawer.
Of course the acceptor may recover on Indictment
against the drawer for money paid to his use.
The Bille is evidence of this fact.  You observe it is
an ingredient of the rule that the drawer has no
interest, and this fact he must prove, having proved
it, it is then evidence at supra.  If A request B to
pay money for money for him, it is not indemnity
complaisant with the request, now it is evident that
money is paid to B, to the use of A, and this is the
precise case contemplated in the rule.  Vll. Bk. 264.
4 Th. 376. 1 Esp. 22. 252.

1. Bille or note is also prima facie evi-
dence of money paid to received by the drawer or maker to the use of the holder. No one questions this rule. The process by which the rule is proved to be well found is simple. The drawer is presumed to have received the amount of the Bille, the drawer transfers it to another for a valuable consideration, the
drawer refuses to accept a pay.  By the supposition
then the drawer has received the value, it is liable
to the holder. It was done under an obligation to pay.
Now the same value is due.  the Bille is dishonored.

The money, the he has received may be considered as received for the use of the owner of the holder of the bill. If such be may recover it out of him. Saltz. 253. rim. ab. tit. Void. A. 13. 36. Bom. 1516.

It has also been determined that an acceptance is prima facie evidence of an account stated between the acceptor & holder. That a balance due to that amount (i.e. the amount of the acceptance) appears to be due from the acceptor to the holder; for the acceptor is presumed to have been how much was due to the drawer, & by the acceptance he has agreed to pay the balance over to the holder. The holder may then declare on interest computed upon an account stated, & the acceptance is evidence of it. 176. B. C. 252. Chitty 191. 192.

With regard to the evidence by which an action on a bill or note is to be supported.

The evidence in this case in all other cases, is governed is governed by the pleading. That is it necessary for the holder to allege all his declaration is necessary for him to prove in evidence. For as a general rule, in fact the whole declaration is issues he must prove the whole. He must state all that is necessary to his right of action, & prove it. But he is not bound to prove more, than what is necessary to his right of action, for he is bound to prove no more than he is bound to state. What is necessary for him to state, you must collect from your pressing rule.
It may be observed with some more particular caution, that the notion of the one who drew on the other, must from the bill was made that the bill is such an instrument as is described or its legal operation is the same. He must prove the Defend. became a party to it for as it is necessary for him to state the Defend. became a party to the must prove it. Conf 600. Doug 667. 3 T. R. 173. 135. 643. 4 St. 67. 611. 1 Bost. Rul. 7.

When the holder draws the acceptor, he must prove the Defend. accepted the Bill. If the acceptance was by an Agent that the Agent was lawfully authorized to make it. 1 Esp. 12. 14. 15. 6th. 24. 200. 201.

If the acceptance was conditional the p[pl] in an action to the acceptor must prove the event on which it was to be paid to have taken place, as the condition performed. 3 A. 12. 505.

In an action to the acceptor, proof of his concession that he did accept the bill is sufficient. But this concession is no evidence in an action by any other party. He has a right to confer it himself but no third person is to be injured thereby. 1 Esp. 10. 15. 5th. 648. 1051. 12 Mod. 389. 1 Esp. 12. 14. 2. R. 13. 136. R. Parker 14.

This rule indeed is generally applied to all the parties. If an action is brought by an Indorser, his concession of his endorsement is good evidence of him, but in an action by drawer or other party this concession is no evidence...

In an action to the Drawer in favour of the Defendant hand writing or other of his authorized agent may...
Sex. 9 Hereinafter, Bills of Exchange, Notes also be proved. This rule is not at all peculiar to actions on Bills of Exchange; it is of universal applicability, for when a person is sued on a written instrument, the execution of it is to be proved. 5. Ray 1376. 1542. 2 T. R. 300. 609. 3 N. S. 307.

In an action for a party transferring a bill by mere delivery, the holder must prove the Defendant delivered the Bill to him—the in general, the production of the instrument is sufficient evidence that it was delivered—unless the contrary appears. 7 T. R. 84.


And where the holder received the Bill under suspicious circumstances, it may be required of him to prove the production of the instrument, or the receipt thereof. E. & S. 311. 420. 421. Add the case of the holder receiving it from a stranger upon valuable consideration, cases of this kind have sometimes arisen, as where the Bill is produced by a stranger who has pur chased it for cash. Now if it is proved to have been lost, it may be required of the holder to prove that either he or some intermediate holder gave a valuable consideration for it.


If an action is brought by an indorser or acceptor, or by drawer, the plaintiff must prove the handwriting of the first indorser, for otherwise he shows no title to him. Suppose he brings his action to the acceptor, it proves his (acceptor's) handwriting, yet this proves no title in himself; i.e. that the indorser was paid with his title. The must then prove the Bills to have been indorsed by the payee who is the first indorser. 12 T. R. 220. 223. 6 Esp. R. 130. 137. 2 D. 634. 630. 3760. 75.

March 23, 1817.

I observed, that in an action to be brought by the
Assignee vs. the Drawee, an acceptor, the hard writing of
the first endorser must be proved, for if the Payee has
never endorsed, the holder has no title to the bill. Further,
when there have been two endorsements, the first being
in full, (i.e. not in blank) the holder must, the second
endorser (i.e. the hard writing of the second indorser) as
well as the first in any action either set that Indorser,
or the maker, or the acceptor, in any prior endorsement.

176. 606. 7. 585.

The reason of this is manifest, if you trace
the progress of the bill. It is made payable to bearer;
den. It endorses it in full "pay the contents to C." Bodes
as it to D. Now no endorsement not being in blank
C. cannot fill it up by inserting his own name. He
must then prove the endorsement of D. for no person
can get a title, but through D. An endorsement must
be proved to show that D. had a right to endorse, and
no endorsement must be proved to show a full indorsem-
ent. The same rule holds as in all the successive indorse-
ments when they are in full. As if in the example above.
C. endorses it to D. in full, D. to E. Now E. must not only
prove that D. endorsed it, but that D. to E. super-
past the same rule holds as in all the successive indorse-
ments when they are in full. As if in the example above.
C. endorses it to D. in full, D. to E. Now E. must not only
prove that D. endorsed it, but that D. to E. super-
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ments when they are in full. As if in the example above.
C. endorses it to D. in full, D. to E. Now E. must not only
prove that D. endorsed it, but that D. to E. super-
past the same rule holds as in all the successive indorse-
ments when they are in full. As if in the example above.

show that the Bearer was made a party, but it is not necessary to prove any endorsement by the Bearer in the present holder. If on the other hand, since the first endorsement is on blank, it is not necessary to prove any subsequent endorsement, provided the action was not brought in the name of the drawer, nor the acceptor, because only the endorser of the instrument and his successor in interest is thus relieved from the necessity of proving all intermediate endorsements. In such cases the holder ceases the intermediate endorsement, which is blank or in full, falls off the first with his own hands, so that by proving the first hand writing he shows a title in himself. If however, he wants to prove any of the intermediate endorsements, he must prove his endorsement and that of all parties prior to him. Doug. 077, 530. Cold. 976, 114. 17, 18.

If a Bill is payable to a fictitious Payee or order, it is not necessary to prove any endorsement. The rule that regulates the rights of parties in such a Bill will point out what is necessary to be proved. In the nature of the thing these cannot be endorsements. It will operate as a Bill payable toBearer unless the Parties who have the Payee to be fictitious. It is impossible to prove an endorsement because there is no paper on which he can endorse it. Such a Bill should be declared upon as a Bill payable to bearer. This is most convenient in appropriate cases. The Def. to be sure may state that the American party, that it was payable to a fictitious Payee, but that it was
Lex Mercatoria: Bills of Exchange & Promissory Notes

To him the drawee well knowing the bill to be payable to a fictitious person g. 3 T. 3. 178. 180, 431. 1767, 37. 312, 315, 582.
S. 174. 288, 177. 580.

When the drawee or indorser is sued, it must
prove that he did due diligence to obtain the money from the acceptor or drawer. This time this requires of him, that he has not done all that the law requires of him, and is liable to recover as the other parties. Then the holders cannot obtain of the acceptor their
privity of necessity. Indeed their implied contract is not binding, if the holder has not used due diligence to obtain the money of the acceptor or drawer. Com. R.
579. 5. B. 2. 740. 740, 95, 12. 70, 1712.

Now this due diligence on the part of the holder, is de minimis above. Consistly principally in three things, presentment for acceptance in some cases, presentment for payment generally, and in other cases for non-acceptance or non-payment. Notice that the bill has been dishonored, must be given to the party to whom he claims, within the time prescribed by law. It follows necessarily that when an action is taken of a drawer or drawer on the holder, much in some cases, as where a bill is payable, such a time after sight, from presentment for acceptance. When this is necessary to be proved, you will see by referring to the former rules I gave on this point. R. 57. B. 117. 12. 1858.

In the same principle, that an action is not
of the drawer or indorser, the holder must prove presentment to the drawer for payment, and this is
regard to be done. Whosa the drawer accept the bill or not? As this is an essential part of the holding duty, so he must prove it to have been performed. 2 T. R. 581. 2 S. R. 680. 4 T. R. 107. 1 D. R. 1007. 4 T. R. 470.

And in both cases, i.e., where presentment for acceptances is necessary or where it is unnecessary, and presentment for payment was unnecessary, the holder must prove notice to the drawer or indorser. As he must think to do it is a part of his duty to give notice, and this notice must be given according to law. It is generally to be given in a reasonable time, and what is a reasonable time shall be settled. 5 Barr. 2670. 1 T. R. 712. 15 M. 45.

And in case of foreign bills in an action, if the drawer or indorser the pay or proving notice to the holt must prove protest for non-payment, as these may be given acceptance. As to foreign bills, protest is a necessary part of the notice. 3 T. R. 399. 1 M. & W. 680. 3 T. R. 229. 1 T. R. 1201.

But when it is said a protest is to be proved, it is not to be understood that any thing more than proof of the protest is required. If it is for the protest, the holt may prove it to be so, but proof of the production of it is sufficient. 2 T. R. 643. 2 T. R. 297. 15 M. 47.

I will barely observe, however, without going into detail, that these proceedings required by the rules now given, on the part of the holder are neces-

sary or dispensed with in certain cases, as where the drawer
had no effect of the Drawer, and no notice is necessary. At the same time it is certain cases where the holder is estab-
lished for not presenting for acceptance, where notice of such cases is rendered hereon to the indorsers, and
where the presentment is unnecessary, it is not to be procured. It was formerly held that different
action in the drawer must prove a demand on the draw-
er, thereto is no aid of it now. It is necessary to prove a demand for payment of the Drawer, for his lia-
tibility is primary, but it is not necessary when the In-
dorsor is sued to prove a non-presentation of the Drawer. The li-
ability of the Drawer and Indorser is coordinate, there
is no priority of liability on them as between them or
the holder; the same as between them or
between them
between them.
The holder may recover of the Indorser with-
out making any demand on the Drawer, though the
Indorser may have his remedy at the Drawer to recov-
er of him the same amount. So a D. indorser may be compelled to pay if the
he may recover at the first
Indorser or Drawer. For? For whom? See Salt 151, 153.

If an Indorser having paid a B. to said the
acceptor, Drawer or any prior Indorser he cannot prove that
the D. was returned to him at that he paid, go without
proving this he does not right to recover. If he has
unequal money the accepted ought to have paid e. he
cannot subject of Drawer or Indorser to a responsibility to
oil drawn to a


demonstrate it? If this is not then can the businessman
can dispute, he may recover of the former parties.
The rule is the same as to the drawer when he
was the acceptor, he must prove that the 
Bite was valid in
him, that it failed, if he has paid voluntarily,
he has entered with the duty of the acceptor. He
If the acceptor of the Bite, since the drawer paid
money he was paid, he must prove not only the draw-
er’s handwriting, that he paid the money himself or
was anything equivalent as if he were paid to him in cash.
but also that he had no copies of the drawer in his hands,
because the presumption arising from the signature
in his name, that he was indebted to the drawer or had
of his, if the one proves that he was paid, the other, he had
in effect, if the drawer paid or him. 3 S. 18. 1753. 2 T. 611. 303.
In the other hand, if the drawer having paid the
Bite, pays the acceptor, he must prove the acceptance,
and an act on the acceptor for payment or his refusal to pay.
I also that the Bite was returned to him, that he has,
ch. 10 M. 36. 37 1735. 183.
But in an action brought by the drawer on the ac-
ceptor, the owner need not prove that he has paid.
in the drawer’s hands, for the one proves that he had no
money or on the acceptor. The acceptance furnishes a presumption that
he owed the money. This rule supposes the Bite to have been ac-
cepted. Simply for if the drawer accept by open protest, the pre-
dumption of his having failed is rebutted and the one proves
it shifted. 1 T. 1. 406. 407. 5 T. 182. 2. 76. 326.
In the case of Walton v. White, which is a leading
important case, it was cited merely as a rule of evidence
by ch. 10 of 183, that anyone who was a party to a Bill

It cannot be introduced to impeach it, even in an action vs. the other parties. As e.g. the holder brings an action vs. the drawer, the drawer offers an answer to prove that the Bill was drawn for an nugatory consideration. Even if this be the fact the holder cannot recover of the drawer, the of the issuer he may. This question has come up 2 or 3 times on Bank, but has never been decided; it went off on some other ground. It has been settled differently in the different States. I would propose this as a Rule for your decision. The Rule, and Ex. 303. 364. 286. 376. 476. 818. 208. 289. 332. Pless 16. 52. 229. 40. 163. 325. 476. 128. 129. 208. 289. 332.

However, this Question may be, it is settled that in an action vs. the maker of a note by the Issuer, the Issuer is a competent witness to prove payment. This does not go to impeach the validity of the Bill itself and has nothing to do with the Question above. If supposed the evidence is consistent with the instrument or goes in avoidance of it only. There is no objection to his admission on the ground of interest. The rule is well settled. Pless 16. 38. 17.

As also in an action vs. the drawer of a bill when no notice has been given, the drawer is a competent witness to prove he had no notice of the drawer's dealings to show no notice was necessary to be given. There is no interest here to exclude him. Pless 8. 332.

In an action vs. a Bill the Def. must generally produce the Bill itself, so if it is lost this failure
be proved or rendered probable, by any evidence whatever. Sworn copy or proof of evidence is not necessary. This is what is called secondary evidence. The rules of practice as to the secondary evidence relate to the variety of qualifications with which these are in common. Considered thus under the division of Proofs by way of the Actings, 2 St. 4, 731. &c. 4th Ed. p. 309. Part 2. 165.

In an action by the Acceptors of a bill of exchange, if it was drawn (which is almost always the practice), it held in the drawer, at the time of acceptance, the production of the bill, is sufficient evidence that the drawer drew it. This, subject to the necessity of proving the handwriting of the drawer, for the acceptance, as above amounts to an implied admission that it was the drawer's handwriting. See 44 S. 643. 416. 35 B. n. 1354. 35 B. n. 399. 3 St. 4, 744. 33 B. n. 129. 75 S. 649. 612.

If then the bill was really forged, or at least the drawer, having seen it, accepted, this forgery cannot be proved to defeat a bona fide holder. In an action by the Acceptors, because his acceptance has constituted the impression. He is supposed to know the handwriting of his correspondent, when he accepts, the holder may rely on the genuineness of the bill. Supposed untrue, known of the forgery at the time of receiving it. 3 St. 74. I am, &c. 3 St. 74.

But the rule does not hold if the drawer accepted the bill without seeing it — no such implication as in the above case. The acceptance on the supposition.

That there is a genuine Bill, but does not undertake to warrant its being genuine.

The same distinction holds in an action of the

as it does in the case of a bill having been given it he cannot

subject to it as a pretext to defeat a true title to the same.

When a person, sued upon a Bill brings the money

into Court, the defendant himself signs the Bill by the act.

The defendant himself liable to the amount of money he

brings into it. This proceeding amounts to a Tender.

Something more. 3 Bl. 2637. 2 T. R. 775. 4 Esp. R. 347.

1 S. R. 664. 2 H. B. C. 574.

When the holder presents a Bill transmissible

by mere delivery, the production of the Bill alone, is

in general, sufficient evidence of his title. This is however

an exception to this rule. When the holder took the

Bill under suspicious circumstances, as when the bill

was lost. In such cases the holder is bound to prove the

holder may be compelled to show that he or some in

immediate holder received it bona fide for a valuable consideration. Chitty 207.

Thus when a Bill is made payable to bearer it is not incumbent on the holder to prove that the

Payee endorsed it, or that any other person endorsed it

for no endorsement is necessary. But where a Bill is

transmissible by endorsement only, as when it is

payable to order, the holder must prove it. But when

it is payable to bearer he need not prove of whom

he received it. This proposition is in general sufficient.
evidence of his own right to the Bill. So is his refusal evidence. 

If an Acceptee having paid the Bill inproperly, pays the Drawer for the Money, the acceptance or 

prima facie protest is prima facie evidence that he has no copy of the Drawer in his hands. For this acceptance or pay 

ment excludes the presumption that he had it in his 

hands. Cl. T. 162, 265. 215.

In an action on a Foreign Bill at the drawn

place, the protest is sufficient evidence of present 

refusal, there is no need then of proving present 

ment or refusal. The protest mentions both, and obvi 

ating made by an officer knows an American by 

absolutely no country in itself. It full evidence is to 

given to it in all Courts of Justice. Barron's. 220. 

B. N. P. 270. 4 T. R. 175. 295. 179.

Now independently of the observation that this 

Protest contains nothing in it, that full evidence is 
to be given to it. Sir Joshua observed that there is no 

rule or question in the Rule; for the Bill being drawn in 

one Country to be accepted in another, or refusal the 
action is to be tried in the Country where the Bill was 
drawn, and the Protest was not evidence at all. The 

precedent would be obliged to procure witnesses at that 
great distance, or get a commission to have deposition 
tings taken, which is attended with much trouble as 

Depositions not being allowed at R. B. Cannot be taken with 

out a commission. This is one reason why this species of 

proof (Protest) is allowed.
Lex Mercatoria. Bills of Exchange (Promy. Notes.)

The production of the Protest does not dispense with the necessity of producing the Bill itself. The protest does not prove that the drawer or indorser's handwriting was genuine. I have already observed the cases in which the production of the bill may be excused under particular circumstances, as where it is lost. (R. N. T. 370. 271.)

That a letter containing information that a bill was sent to the Post Office or left at a drawer's house is sufficient evidence of notice of this fact. This evidence can not be lost in the absence of notice to thedrawer to produce the letter or to send it if produced it will speak for itself. If the drawer will not produce it, the letter may prove its contents by a woman's copy or otherwise that it was sent at the Post Office or left at the drawer's house properly addressed. 2 H. & C. 889.

Thus far of evidence. The only remedy I have hitherto considered is a Sum of money. I have a few words to add on another point of action.

The action of Debt will in some cases be as between some parties more on a Bill of Exchange or Promy. Note.

That is debt on simple contract, with sometimes lies for a debt or note is not so especially. The action of Debt on simple contract was formerly much used, but was afterwards disused on account of the weight of law in the Debt. This allowed Debtor because in this action the debt was bound to prove the exact sum laid or he could not recover at all. The weight of law has caused that it has long since been settled that debt may be sworn in debt life then the debt was laid. These difficulties being removed the action has lately been revived in circumstances
It is not the ordinary remedy on a Bill or Note, but as between some parties it is one which may be had. 1 East 249, 2 Bl. 1221. Doug. 6703 note. 1 H. 249, 356.

It has been held, that debt evidence, on a Bill in favor of the Payee is the acceptor, because it is said there is no privity. 1 Witty 185.

There is indeed no actual privity, the payee or holder may never have paid the acceptor, but yet this seems to me to be privity enough; his liability is primary. This proposition seems to be questionable, because the acceptor owes money to the promise to pay; therefore, I think there is privity sufficient.

S. Kingsley 36, Chitty 13, 220.

It has been indeed decided, that if money is delivered by A to B, & C by him delivered to C, that C may maintain Debt & S. B. for non-delivery. There is no privity between B & C. This case is stronger than the one above, in that the Payee & acceptor usually do meet each other; in this by the Supposition C.以上的 have seen D. Cozol. 55, 67, G. 43, 24, 37. Note 441, 597.

There is no doubt, but debt exists, & on a Bill or Note as between the parties is immediate privity. For, as to how the rule seems clear, that whereas the common law assumption, raises a duty, debt exists, I think this rule is broad enough to include the case of Payee & acceptor, papers. But, however that may be, it is clear that debt exists, & between Parties is immediate privity, as e.g. Drawee, and Acceptee. Payee & Drawee. S. & E. 57 220, 221. Cozol. 386, 56, 38, 35. 60, 38, 38. 60, 484, 484. Con. Di. Bille A. 680.
Sex Mercatoria.

of Bottomcy & Respendentia Bonds, Charter-Parties, Shipowners, Seamen - of the doctrine relating to Partnerships and the several aspects Trucks distinguished from other Agents.


With it make some introductory remarks to founds on the topic of subject of Insurance.

It is the Common Style to the Bonds to speak of the Law Merchant, as the customs of merchants. That was a language formerly in use, for practice; it was treated as a Custom. But it does not at all partake of the nature of a Custom. A Custom is the law of a particular place, i.e., it is local. But the Law Merchant is not confined to a particular place - it is the general Law of Commerce. Nations. A Custom must be proved and the judges are not bound to take notice of it unless it is proved. But it is not so with the Law Mercatoria; it must not be proved only from the Elementary writings and authorities of the subject. But proved as any fact, by the mouth of a merchant. The Custom is bound to notice the common ways of the Country, exactly as are the laws. If unable to notice the customs of merchants and the presumption that it is the Law to govern the contract is shown - as by proving a custom.

The Law Merchant is a general Law, but it may have Customs, of these are the customs at E. Paris. What the Common Law is to any country, subjected to
particular customs springing from the fear of danger. Law, absolute or relative. There must be customs in different countries, for regulate the rules in each country. As in all countries, the Mercantile Law may be altered by legislative acts, as it respects that country. When there are more ordinances by the ruling power, the more the sovereign, that alters the law, acts to that country. In such cases the Common Law of that country is different from what it is in the other countries. What is no precedent in ruling it the Custom of Merchants, but in some respect it differs from the Common Law. I repeat a Custom is local it must be proved. But the judges must take notice of the E. C. for it is as general as the C. L. and to be proved by authorities the same as the C. L. It cannot be proved in any other way any more than the Custom of Nations can be proved by authorities. Whenever there is a Custom of the E. C. in a particular place different from the General E. C. that Custom must be proved in the General E. C. will prevail. As e.g. if a party would avoid himself of the Custom of Liverpool this court in the C. L. Westminster Hall on a contract which was made in Liverpool he is bound to prove it, else no notice will be taken of it.

We shall now mention on what respects the Roman law differs from the Common law.

There are certain points on which the E. C. and this entirely on the Common Law. When it speaks of the Common Law, for in the E. C. it is upon the authority of precedent of our country, so far as is not contradictory of provisions of our own.
Six. Merchant.

You it is a remarkable principle of the law of this country to perpetuate in some States where they have a system of law which is not precisely identical to that where two persons are joint tenants or real or personal, that as the joint tenancy prevails, the right of survivorship takes place. You will observe that, speaking of joint tenants, it is not of land in common as in the other States, as no such law. Either of the joint tenants might own the property in which it was of real or personal property in his own lifetime or as long as he held jointly, one dies the joint tenancy prevails. You have no such accruing in common law. We have no such thing. The subject of it is by usage. Some of the States they have abolished it by statute. And in such cases they have gone so far as to say that there shall be no right of survivorship and the enjoyment of property, and it is the same as to what it is to be a joint tenancy. This joint tenancy is wholly unknown in S. C. If a joint tenant marries, let there be no joint tenancy. It shall, after payment of debt, go to his wife. It is to be of full representation, as is any other case. I only mention this as an example. As S. C. the right of survivorship takes place in all cases, except to the stock of a farm, where two persons have been joint farms. This is a solitary exception.

Another thing in which S. C. and S. N. differ is this. Fraud is voided by the S. C. in some respects of joint tenancy, and what it is at S. C. at S. N. fraud is not. The construction of a contract does not affect it. You are entitled to your reopening on damages.
Sex Mortalium.

Suppose a man is cheat'd in the sale of a horse, much property of the house, notes in the purchase, the contract is good. If you have given your goods, you are liable. Now, it cannot depend on it on the ground of fraud in the consideration. To be sure you are entitled, if your action on Damages of this is all. But in the other hand, if the fraud is in the execution, you may impress the contract, for it is then utterly void. This is when a man extorts to one contract when he thinks he is coloring into another. E.g. in a contract with a blind man, he agree to give a note for 30 £. if you give it up with 3000 £. the security of the fund is impaired in the execution, the note is utterly void. This is bad a note for one thing when he supposed it was for another. But if you agree to give 3000 £. for a tract of Western lands, which were represented to you as free land, and will make land, then it amounts to a contract. The contract is void if the consideration is not void, void in such case is in Damages. Again, one step further. The law is a C. of City, is a fraud in both cases. Whether it is personal, contract, if there is fraud, it wil not interfere, but leave the party to his remedy as all of law. But if the Contract is respecting Real property, there is fraud, they will enforce it, and the contract is on the same as above of the Western lands. The City will rescind the contract, provided the deeds be mere returns, they say the contract is fraudulent. To that, whatever there is fraud in the consideration of a contract at law. In the contract stands, the remedy is on Damages.
La Circulatio.

If the party to the Circulation has contracted to sell a
the contract is about Real Property, the difficulty can arise if
it be in the Consideration or Execution, any concealment
of facts which is honor ought to be disclosed vitiated the
contract. This goes further than mere Silver frauds, as
lying, but any Contract entered into, in which there has
not been a full and fair disclosure of every circumstance
which would have had an effect on the Contract, is not
rightfully have prevented its being entered into, under the
contract void. You cannot avail yourself of any cir-
cumstances within your knowledge not known to the
other party, and this must be no equivocation, or
Material Reservation. If there is, the contract is unen-
deviable. Is suppose you wish'd to get a Ship insured,
the general impression was that a Declaration to that
would be made. If you provided A to insure her, and be
this time was ignorant of the fact, do you not
inform him of it? the policy is void. If you had,
been ignorant of the Declaration of War, the
Policy would have been void. But the distinction as
to this subject is, that a man is not bound to disclose
his own political Speculations, but shall he is bound to
disclose. These Speculations are as open to an Insurer as
to you. If you were to go to an Insurer to get a Ship
insured on a voyage to India, you are not bound to
inform him that at certain seasons of the year the Monsoon
Winds blow, for the Insurer is presumed to know all this
already.

But
First Recital.

Yet there must be an establishment of forts by any practical declaration. As suppose your ship, has been out for six months, if you expect her return in months, suppose in six months, she insurance only. Then here you tell him you have heard nothing of her for six months. She is assured him. If you had previous knowledge by another ship, that they had left her in any dangerous situation—all hands on the Pamplona only been before. Here the Contract is void.

So at this it is impossible except to lay a man and an obligation, as to make to him liable, in an action for any Bowels you may have prepared for him, with this may be cause when the time imposes a duty on a man, if he should neglect it, you perform it for him he can be made liable. As suppose giving his wife or doors, if you suppose him, or if he is so cruel, that she or his children should be compelled to fly from him, if you suppose him, or these, as in the case, it is the duty of the husband to support his wife and children, he may be compelled to pay you, for performing his duty. One suppose, you should that at the book of having a man or property, which you furnishing, he the law pays the owner tinder an obligation to have the property, if you cannot by this means compel him to pay you, for your trouble. A common example of Books is, when a man's servant was going over the road, he was arrested for a debt, he owed, to a person, which was upon the suppression that the master would the other refund of the debt they any thereby. Now this was a different question, I shown how the principles of
Hence there might as well be a mark at one, at least at two of the last, yet at three he cannot be subjected. If the Master had requested it, an action might be sustained at his, but as in the above case, there was no request no money could be had at his, either in law or equity. But if not so in E. A. I should then say another will bind the latter to pay a reasonable compensation, i.e., if a man should do an act for another which is for the benefit of the latter, and without request the latter is bound. As when a Bill is paid for the honor of the Drawer. This subject has been treated of, it is unnecessary for me to repeat the law. I say that the Drawer would be bound as above, if the case is the same, in every mercantile concern, as if property is in charge of life on a hooten or paists from a breach of trust, the without request from the owner, stake, he is liable to pay the value of the county... See at C. S. This of a fact, were not as it is, much property would be lost on the property because no one would volunteer their services in a line of danger without a prospect of recompense.

I beg to remark on treating of fraud in the consideration that is Bomei, we have entered here E. A. with the C. S. If the fraud is clear that eventuates the contract is void at the party, my finding it paid. As e.g. you were well acquainted with A. So to my horse, very frequently wished to purchase him, I take some to you I tell you, you may have my horse at the price you offered me for him, if you pay him the money without going to inspect the horse, so the fact is States has done you a dead horse. This is clear fraud and contract, the contract is void.
Another thing is which £M. differ from C.C. At c.o. if you have a debt to two or more. Say you debt or c.o. if you imprison one voluntarily release him from prison, without any security for the debt it operates as a release to both or all. There is no sense in this rule. I grant, but it is an established principle of C.C. It is not so by £M. By the £M. if you imprison one there a good security to another, I find that you cannot obtain your debt of the one you have imprisoned, as if he is a bankrupt, you may release him, I thus pursue your remedy as another, to imprison him, if he will not pay without. It is no objection that his co-obligee has been released. The first decision on this point was by you, it was a mistake, no doubt. There new supposed to according to C.C. the release of a man from prison was a release to him of the debt. You may release him if you take a security, but why should it discharge him when you find he is a bankrupt. To renew to get your debt if you release him from prison. I speak it across this way. I speak of a Release properly so called when it is explicit under hand to seal. Now if A&B. are joint debtors to C. and C. releases E. By course is related for the release puts a presumption that C. has received his debt if C. Now when one is turned out of jail this is called a Release. But the two releases are not at all similar. They are both incomplete release by a syllogism they may be made out. But they are not the same. The latter is not a Release properly so called.
Suppose a. T. I will suffer a voluntary escape, this is called a
release of the T. I. premium, often called the prison. Is
this a voluntary escape in the creditor, it is not so. the
T. I. is bound by his oath to keep the prisoner in
prison, if he releases him he breaks his oath, but
where the creditor releases him it is different. The
two cases are not at all similar.

The principles of C.D. appear to accord with
the common denominator - the creditor may discharge
from prison to pursuing another. Inc. at C.D.

Another small difference is - the C.D. requires
something of Calendar months, but C.D. is complete by calling
in more. Again if the time of the life of a contract
happens to fall on Sunday, at the end of an 
Thursday it is sufficient, because the debtor is not bound to 
take to the contract becomes due. But by C.D. which
aims at great punctuality the business of each case
must be made on Saturday. The difference in this
subject arises from the great punctuality required
by the C.D. in commercial concerns.

At C.D. a close or action could move in both.
It was a doctrine of adverse suit legal claims. But it
was not so in equity, here the claims of the purchaser are
protected, but the suit was still to be brought in reason.
Of the original promises of course the creditor could
release or discharge the promises. No: 9: a bond must go
into the judgment to C.D. now what itפע compte: he
was obliged to bring the action in the name of the T.
Sex Mercatum.

could at any time, release it. But equity says you shall not discharge the bond, you have sold your interest and have no right to release it. And this also says the obligor you shall not pay the money over to the original obligee. So far goes equity. But by the C.B. theory, certain instruments were negotiable, though some put upon them the words were made negotiable by the Statute. I think the Statute was only to affirmance of the C.B. Act, i.e. that "Notes payable to A or order were negotiable by C.B.A. I have always viewed the argument of Mr. Chipman (of Vermont) in a little book of his, as conclusive, viz., that without the Statute notes payable to A or order were negotiable. Whether the Statute of Frauds made a mercantile or affirmed the old does not concern us here. It is however generally believed that Strong Notes were made negotiable by the Statute. In Brown, we now supposed a C.B. Note could be so to date a late Statute was made allowing it. At C.B. law choses in action never can be assigned, so that the assignee had the legal interest, but equity will interfere to protect him at home. But at S.B. the suit may be brought in the name of assignee.

At C.B. when you have sold as a man the goods you give an order, as e.g. Howard, a sum of money + 13 cals, or A for payment. It says I cannot pay you the money, but if you will take in order or C. she will pay you now if B. agrees to take this order or C. will not pay him. Same is compulsory to pay, provided it gives a reasonable notice of C.'s refusal, but there is no proof of not in many cases. In S. it is principle is the
same, but this notice must be given in a particular manner, as thro' the medium of a Notary Public &c. (See "Bills of exchange"). If the party has not this regular notice, as you can prove, he knew the fact, the notice is considered as wanting the is not bound.

Again at C.D. if a contract not stated you may go into the consideration, unless there was none. But of the contract is stated it is otherwise - it is then a speciality. But by the C.D. if it is different - if the instrument has been negotiated, you now can go into the consideration, as it was only in writing, not sealed. It has since negotiated all its privileges of especially - as e.g. an accommodation Note. It is a very common thing for a man to give a note to another for the purpose of lending the latter to raise money. (By the Supposition the Note is given without consideration.) Suppose A gives B such a Note, now B can sell it. But suppose B, instead of selling it pays A on the Note, B cannot recover one farthing. But if he negotiate the note to C, A can never question the consideration in an action in favor of C, as a subsequent holder. But as between A & B, the privilieg of the original contract, A may defeat a recovery in B's favor on the ground of want of consideration.

By C.D. when you make a purchase of a man's bargain, he closer the property, only in one of the money in the other. E.g. A says: "B what will take for your house? 3000." B says: "1000." A lends the money to B the house. The property vests, it neither of them alone can destroy the contract if an alteration. Concerns there are cases where the
Insurance.

A contract of Insurance is generally entered into to indemnify one or certain persons to which he or his property is exposed, as Fire, Water, etc. But since the contract would be an insurance from the not, so private, from what is called, in the beginning of an event, a birth or marriage. It is as much a contract of insurance as to ensure a policy of a Birth, or a marriage, as to ensure a Ship.
See Memoranda.

...to call a Policy of Insurance. As this terms not to
mentioned at present...

It was formerly a common practice to insure any kind of cargo, such as Marriages, Goods, or in which they became heirs of interest, it was also a common practice to insure Ships on which the borrower had no interest. This practice does not wagering it was a wager, and wagering was extremely detestable, and injurious to community. This was not the object of insurance. In England, by Statute... declared that all the insurance is utterly void unless the party has an interest in...ing.

An important question arises whether the contracts are not void without act... I believe myself it is the opinion of most persons, it is almost all countries that such insurance was void by the Statute, without the aid of any Statute. The question arose in this way. In England, common wagering Contracts were held good but laid the foundation for action. Now it was asked why not allow a wager concerning a Ship? Wager on Ships became very frequent, were the source of much litigation. The use of insurance was to divide the loss. But it was not lawful to encourage a man who had no interest, to insure, therefore a Statute was made prohibiting it. I must say I think such Contracts were void in all countries where such practice of allowing wagers obtains. The laws of every Country say that such wagering Policies are void, as a fraud on society.奔走于该之 wager of any kind is of necessity public...
Sex Almacetum.

they are all 68 sound policy, and I do not believe the 68
is contrary to the 68, as that by it any thing policies
would be allowed. As this as it may be, whether we can
be recovered or not. There is no doubt but that the British
State is in a democracy of the 68, and under this.

Of course at times have gone out of use in the land
I have never obtained here. If they should ever be a

I heartily wish our E's will always prove so as before.

Insurance of fires are with respect to Egyptian

good, for the parties have an interest.

Lecture 2
March 24th 1833

What Persons may be Insured.

There is no mention but what every person, whether
religion or alien may be insured, except, as the history
whether the property of an alien enemy during a time of
war can be insured, so that the insurance is void, has
been a subject of conflicting opinions in Egypt. But it is
not a Rule in Italy. It is settled by the Code, to be illegal;
not binding on the insurer.

Some eminent characters in Egypt thought it good
Policy to allow such assurances, because it justified
To adopt they got the Premium, but the Insurers had
money by it, it was thought, convenient, other things
otherwise. The Code was, what was the Code? No doubt
many alien enemies had recoveries of English Assurance.

The Code was raised on this point... and the thing proposed
for deliberation. Still there was no Decision in the Senate
saying such insurance was illegal. Dr. Marfield has

In favour of it, but he inclined to give a decision...
Sax Abceralorue.

settling the doctrine but chose not to give it himself.
It never was decided.

In 1748, in the breaching out of the war of State,
was made for dividing it, as bad policy. It was because this
State was made for dividing it, it is said it was lawful
before. The case with us is different admitting it to be
so. We have no State in the U.S. for dividing it. When
our ancestors emigrated they brought with them the
English customs, I adopt to their E.S. But with respect
to the S. No it was different. We are to enquire what
the S. No is on the subject. We shall, Stand, find no
Station, but Eng. who ever held that such insurance was
good, so in Eng. there was no decision upon the real
whether such insurance was lawful or not. When the
war was at an end the old practice was revived. In
juries of an alien having property, were made as
where a loss happens the Insurers paid without any ques-
tion. In the beginning of the present war (with France
Supposed) a Stat. was made declaring that such insur-
ances were illegal. Marshall 31, 7th 1640.

Notwithstanding the Court have never decided
the question directly, yet they have decided in another
way on other grounds which show that it is useful
and even to maintain the doctrine that such insur-
ances are legal. The principle is you cannot maintain
an action on the contract allowing it to be divided.
They have decided that no suit can be maintained
on alien slavery in line of 1820. This is universally admitted.
It would be bad policy, for it would be with drawing
property out of the country, to carry an Enemy. There was an attempt to be raised in a case before Dr. Blaxland (1 T. R. 39). The action was brought by an underwriter, to recover the Premium. It was not paid. The Ship was in fact, a verdict was given in for Eff. He recovered the Premium. Defend. alleged for a New Trial on the ground that the insurance was illegal, as it was made on an Alien Enemy's Ship. But it was not granted; it was insured as a Neutral Prize. They wished to shew that the property belonged to an Enemy, but the Master did not admit the Proof of this, because on the face of the Instrument it appeared to be Neutral Property. Of course the law (as to legality of contract) was avoided & not decided in that Case, for I see no reason why the evidence might not be admitted.

So is a case that came up before Mr. Kenyon (6 T. R. 23). This was a Policy entered into in time of peace. Of course it was a valid Contract. But before Eff sailed, War was declared. The ch. held no otherwise than determine that the Contract was a valid one, but they held that no action could be maintained upon it because the Eff had now become an Enemy. On the ground the Eff was an Enemy. This did not go at all to decide the Question, but went to shew that as long as the War lasted, he could take no advantage of the Policy. Now this is considered a principle more important than the evils arising from prohibiting an Enemy to maintain an action when the respective Countries of the Parties are at war with each other. It would use...
Sue Mercatoria.

were not sometimes to allow and action to be maintained as Suppos, the case of a Ransom Bill. E.g. A Ship is to ten at Seo, the Master hands him, for 10,000$. The may be worth 20,000$ but the Captors are willing to take this rather than run the risk of taking him to Court. 

Now it is advantageous to allocate the means of recovery, that this contract should be binding; a recovery be allowed upon it. But no principle warrants a right of recovery in this case, and no nation did ever allow a recovery on a Ransom Bill, and they suffered it Sub silendo. Other nations take hostages to the Ship of the Captured.

In a Manuscript Case I have seen it was decided that no action could be maintained on a Ransom Bill. In another case (1692 1734) E. Manuscript held that a contract made in time of war was void. The action being brought upon it after the restoration of Peace. This opinion goes as far as this that a contract made before a during the War can be recouvrir upon during the War - but if it is the case a recovery may be had after peace is restored. But this is not the Law of Nations. This decision would embrace an instance if there was no State. The action cannot be maintained on a contract made before a during the War, while the War lasts. But the Law is an action be maintained on a contract made during the War - but on after a Peace. It is generally true, that a recovery cannot be had on such a Contract, for it is repudiation. But there are Exceptions to Cases of this kind which are
Sex Moratoria.

admits, is why should not the Roman Bill be one? It is different from going to trade with them. This is injustice. But it is really dangerous to allow this Roman 1st 297. I think that opinion that this ought to be an Exception, disagree with him. But there is an established exception standing on another ground, viz. suppose there was an Englishman in France at the time was treated out of his property, may he not bring it away? Yes, may they not secure it? It is my opinion they may. If I possess a France, I am not being safe, surely, may he not sell it? Yes, he bring them before the War was declared. He could not go from Egypt, after the War, have these privileges. This depends on the personal status of the Party who may property of the case.

With respect to the contract of insurance, has anything to say, whatever may be the opinions it is void. But with respect to the Penn of the Roman Bill it is wholly different. Though you cannot (as a principle) in force, during the War, yet it is a contract of novelty. It is useless, I do not partake of this 19th century, this will other wise be the case the Contract Act considered.

It has been said 297. 298. that an action could not be maintained on a contract of insurance entered into after 29th of November (Liverpool) have been taken but before the Declaration of War, the said upon after the restoration of peace.

Another Penn. has been made on which I think all except the right which 299. to convert it was this in effect that the Bill had settled the point, that there could be no insurance of any property, whether the property
Sex Mercatorum.

of a neutral residing in a foreign country, domiciled there, could be insured. The case was this, An American was in France, residing there, but did not take the oath of allegiance, he was not naturalized. In the time of the war he got his property insured. Is the property insured? Is this the property of his, or whether this was to be considered as French Property. The case was not within the meaning of the statute. Certainly it was not within the latter part. The property was not the property of his, nor property of his, but his propy was insured. The question came up in the strongest manner, for he was in partnership with a French Citizen, but by the Policy of insurance it appeared he was not his individual, property, his own share only what was insured, not the Frenchman's property. 6 T. 166. 473.

The amount then is, that the Contract of an Insurer shall not be enforced, unless there is no doubt but a Covoy was not void or a Contract, made during pax, etc., after the close of it. So that the Contract was not considered illegal, as in Case of a Reasonable Time, this was correct owing to the uncertainty of the Case; the on a contract of Insurance no recovery would be allowed, the reason of the distinction I have explained it is founded on policy.

Who may Insure.

Not being independently of the Eq. That with which we have nothing to do, as we have no similar Stat. and any Company, as well as any individual may insure. A may insure 100000 for 90000, and 00000 they are liable in proportion. Any individual may cause the change made only does not affect individuals, they may insure as formerly. But they have of late taken away the privilege of insuring
From all Companies except two which are called the
Lloyd's and the Royal Exchange. London Insurance Co. This monopoly led
to a great increase. The reason was, that these last were poor
of large capital, and it was dangerous to allow small Co.
be insured, as they might often become Bankrupts. Its other
reason has more weight with a monopoly. The Stat. vesting
right in these two Co.'s was made in 1698, leaving it open
for individuals to insure as formerly.

As to the manner of Insurance. If you go to a Co. to procure
it, they consider as a Co. But when individuals insure, they sub
scribe their names for such a sum, each one for himself.

In this Stat. there have been some Cases. One we
state, some of them for the sake of the principle, there have
nothing to do with the Stat. itself. E. g. A. B. are traders
on Co. It was the ostensible trader, A. B. a deceit Partner;
A insured to a loss happened. No doubt but A. should
insure for himself individually, but on the happening of the loss he called
on B. to lay his part of the Company insurance. B brought
in the ground of his being vs. the Stat., being illegal. The Co.
decided that A. must recover of B. The Law is not stop.
to adjust a person breaching it. It was compelled to pay
the whole. So if B. had paid A. his part, the Law for
the same reason would have him no aid to recover it back
again. 2 N R. 379.

Another Case. A. B. were Partners, in a
Case. A. caused a loss happened. B honestly paid on his
share of the loss to a Brother who was to pay it over to A. It
sent the Brother to recover the money out of his hands, but
the last decided he could not maintain his claim. The now
For Mercantiles.

want to your mind, in he could not have recovered it, and therefore they hold that he should not recover of the banker. I think, it carries the principle too far. The banker may be considered as the agent for both. If to have paid all he did not recover it, but again, for of the bank after he had paid him the money, not because the banker has any to it, but because the law will have nothing to do with any of them. 

In all these cases the Insured cannot recover of the banker, cannot take advantage of his own illegal contract to defeat the interest of his right. The principle is, no man shall be allowed to make use of his own turpitude or allege it to defeat the recovery of an innocent person. 6 Ch. 405.

On what this Insurance as loss is to be made.

The Ship is the principal subject of Insurance. The goods or Merchandizes may also be insured. The Freight, or what the Ship and cargo may also be insured, is also by Policy of Bond. Notice has just observe what is meant by Policy of Bond. A man (without Capital) is willing to trade, and gives a trading merchant (or another person) his money, and it is lent to him, or Policy of Bond, which is, if the Ship returns he shall have his money returned to him with interest. If it does not return he loses all. By this means one without Capital may trade. He is not using for there is a hazard, a bona fide risk.

Now the lender of the money may himself be insured, i.e., he may go to an Insurance House as insured. This is what is meant by insuring Policy of Bond. The lender as well as the voyage, whether he is a loss or gain.
Sex Pericatunia.

There are articles which cannot be insured. If they cannot be legally insured, of course the insurance is void, recoverable can be had. The first principle is that in the case of smuggled goods, by which is meant the contraband or importation of goods forbidden by law to be imported or exported, e.g. wood or coal cannot be legally insured. I do not mean here a prohibition byエンルー. But in almost every country certain articles are prohibited by law for being imported or exported, the motives of policy. The insurer or any of these prohibited articles is void.

It has been made a question whether the insurer would not be liable to the insurer if he knew the goods he had insured were prohibited by law. As if a goods to get certain articles insured & he knew they are forbidden, would he be liable? He has been called that he is not liable for all illegal contracts should have a hard one. Can you wear them? They should be suppressed. One for this reason & I have paid the Premium & he could not recover it back. In Confess that all these points are settled.

There is another Dec. of greater importance because there are different opinions upon it. Is an as a Leg to know what is the & the subject. It is this Wheter is insurance on goods in a Foreign Country where the loss occurs or such goods was made to be unprofitable, would the goods, or in other words whether the insurer will be liable to pay on an insurance of goods in a foreign country when the value was known to be unprofitable. Some cities say it is not subject to a breach of morality, it is not liable to be recovered. There are different views on the subject.
Sec. Mercatoria

But the English Authors have settled the doctrine, that no Insurance is not void, if on the ground that the country to which the goods are carried, do not make the article contraband of war. Indeed, if it be the case that it is not so in the United States, the French & Italian writers express the rule differently. See that it is to be found on the subject is in the Case of Blank v. Hettard & Money. The LG on Eng. Considered that they ought to pay no regard to the Revenue Laws of another Country, if that thing is not done. The insurance does not void the law contrary to the Laws of the Foreign Country. I am at a loss to say what is this of the general & all or not. I think it would be more reasonable to pay some attention to the Laws of the Foreign Country. It is best to conduct as uneventful. It would be pleasant if a Country like this or be established between two lines - the greatest commercial nation in the world (Eng.) were not consent, it cannot be, quite to the others. Eng. has established the rule, I promise our own defence, we must adopt on these principles.

Insurance on articles, during a War, which are contraband of War, is an illegal Insurance, the contract not binding. As e.g. the war is in progress. Insure Nations have a right to carry on a boat, with such without inspection, except on certain articles, forbidden by the laws of Nations. These articles are called "contraband of War." It has been a law in Eng. how, this right of neutral is, may be exercised by them, as to resuming insur, If they are strong enough they do.
not sometimes put up with any thing. Power is with
ure them. Indeed, Britain has because she had the power
over the laws of Nations in many instances, as
other Nations have done the same. But, still, there is
a law of Nations which gives the Belligerent power
to prevent certain things from being done. This was
many writers on this subject they generally agree
upon. What articles are contraband of war? The prin-
cipal writers are English, French, Swedish, and Holland-
er, they all agree. Articles contraband of war, are:
Arms, ammunition, and the stores of every kind, and
every thing necessary to the equipage of a belliger-
ent as French, Turpentine, Tobacco, etc. No neutral can carry
these in time of war to a belligerent. They are always
liable to be seized. Contraband. Now an instance
on these articles is illegal as contrary to the law
of Nations. There are some articles which at sometime
are contraband of war, but at others not; as at certain
times Horses are not. Contraband of war. They are in-
numerable; animals, as much so as ships, but yet, they may
be contraband, if the Enemy want them to mount
their cavalry. It depends on the circumstances and nat-
of the case...

As provision contraband of war. It is well
that in ordinary cases they are not, tho' one French writer in
capitalizing upon the subject says they are. It is not so. How
many other states or provinces it is, except in a people has a law to make
any others. See Pollio's Book 5, Chap 1, Epitome, viz. that battle
Chap. 1, is as of right authority as any modern writer on subject.
Sir, Mercatoria.

Now all this matter may be regulated by Treaty, do so that we are to look. If the Treaty allows it, the insurance is good. If the party not takes it by violation of the Law of Nations or the rights of neutrals. Then both into court, speaking of cases independent of any Treaty, but the Law of Nations is always subject to alteration by treaty. The Law is thus regulated between than 4 they cannot affect the rights of persons, or matters of Nations.

Certain articles cannot be carried to a different by reason of something which has taken place as if there is a blockade or siege of a place, a property there is liable to seizure, but from this it does not follow that the Insurers are cleared. In cases of articles, treatise of war, these are all known. But in this case, if blockade, the parties may be wholly ignorant of the fact. The insurer may not have the means of knowledge because perhaps the notice of the Blockade may not have reached him. If the insurer knew that there was blockade and did not inform the Insurers he cannot recover in the contract of Insurance. But when he was ignorant of it, it is otherwise. If the Port is blockaded after the insurance is made, if any loss happens, the Insurer is liable. To be sure the Ship is not liable to capture, until after notice of the Blockade has been received, She should in the first place be sent back, but if after this she attempts to get into Port is taken, the Insurer is not liable.

If both Parties know of the Blockade at the time of entering into the Insurance, no money can be
Sec. Mercatoria.

has...it is in such cases an illegal contract. With respect to (blockade or siege the doctrine has long since been settled). You must avoid going there. But it has long since been settled that practical considerations might be declared to be blockade; the theory exists not. If you hear it. This principle has been admitted publicly. E. g. the Empires declared the Port of Malta in a state of blockade, without keeping a ship near it. No doubt but this is an infringement of the rights of neutrals. But they have allowed it. or rather they have been silent on the subject...Then the acquisition of the Nations of the World have agreed to such a blockade. It has been applied to other Coasts. Are they not allowed it? It is on the same principle that this is an actual blockade. It is said there are no ships of such blockade—that is true—but the reason is that writing or an object never contemplated such a thing. When speaking of blockade or siege, they speak of an actual blockade or siege. This has grown to be an evil growing condition.

With respect to the next Question, which is the Right of Search, I have a remark that it is sure to appear even without difficulty. If there is no right of search, then is the benefit of the law to contain certain goods. Admitting this. E. g. the right of search must be allowed. Of course, I have all commercial nations who have it so. If by the Law of Nations arms ammunition cannot be carried to a conflict. if the right of search is prevented, this is done always in carries. This right of search has always been admitted.
Sex Mercatorum.

There are usually Treaties regulating the manner in which it shall be made. Caitlin, Ch. 2.

Conveying any of those contraband goods by another citizen or subject of one Country to that of his Enemy, is Treason. If a Neutral carries them to a belligerent, it is no offence to him; he runs the risk of being taken, but if he is fortunate enough to get in, it is no offence. The insurance however is void. Ships of war cannot be searched; it is owing to the dignity attached to their character. If then a Neutral carries on a clandestine trade, in contraband goods with a belligerent in the Onset nation has no means except by declaring War. It is however an infringement of the Law of Nations.

Insurances are often made of Embargoes in Foreign Countries, or any restraint imposed by them. Such insurances are good. But an insurance in the Country where the Embargo is laid, is void, the Insurers are not liable, for it is illegal. No person can insure an embargo of his own Nation, but to foreign Embargoes he may.

The Supreme Power of a State have the right of imposing or laying Embargoes. They have always this right. In Eng. the King has the right of laying an embargo, in time of war by Proclamation, not in time of peace. But in time of war he can lay it so that it can continue only by the a Meeting of Parliament. 1. - Rash. 23d. Doug. 23d. Johnston & Tatum.
Commence of any kind with an Enemy is unlawful.

Of course an insurance on such commerce is void, and not binding on the Insurer. I think yesterday what I supposed might be an exception to that case. There are two decisions directly opposed to each other in this result, but not in principle. The first decided in one case, that it was trading with an Enemy. Bost. 261. 265.

In the other case the Ct. considered it a matter of necessity. I conclude that both cases go on the ground that trading with an Enemy is not admissible, and the insurance is not binding. Suppose the Question is this - A purchaser goes to an Enemy's Country in time of War, but he was residing there in a time of peace, it was in trade and had debts due him there. After peace was declared, he received property in satisfaction of the Debt, and the Question was whether an insurance on such goods was legal, or is this included in that the act of trade forbidden by the Law. The Ct. decided it.

I think correctly that such commerce is legal, and the insurance good; binding. Bost. 261. 265.

The next case was upon the same Policy of Insurance, but as another consideration, in this case the Ct. decided the policy was void, they have said that trading with an Enemy was illegal. In Ct. 261 both these cases held that in ordinary cases trading with an Enemy was unlawful, but that there might be some exceptions to it. 8 T. R. 348.

The whole thing is this - of the judgement of the Ct.
Sex: Mercatoria.

The case in Part I is correct. There may be cases where an insurance may be made on property bought in an Enemy's Country. But, will be cheaper, and this is perfectly reasonable. There is a man residing in an Enemy's Country at the time of the Declaration of War. Now he can have his property insured there, and if it is not for the advantage of the owner to transport his property home, he may sell it, than to convert into Cash—this is a species of commerce. So when he has debts due him (at rates) he may take property to secure himself. Then are the Cases in which a Commerce with the Enemy is not unlawful, because an insurance is good.

The next species of articles which cannot be insured is that Captains, Mates, Seamen cannot insure their wages. The principle is this, it is a prominent feature of the Law to distribute the Loss per Peron equally on all. As if a Ship is in Danger of Life, one man has $10,000 in Bills, another $10,000 in Brandys, now the Brandys may be thrown overboard to save the Ship; this is thrown over to be equally borne by all according to respective interest in the Ship. So in every case this is to be an average of the loss. On this principle it is that Seaman's wages cannot be insured. If she is lost, if she performs the Voyage on which she sets out, the Seamen get no wages. The reason why they are not allowed to get their wages insured is to create a greater interest in them to save the Ship. If they understand their wages they would not be prompted to so great exertion, thus for it is the policy of the Law not to
The principles in case of sailors, is not extended to anything but their wages, if they have goods on board, they may procure them insured, and so they may their friends, etc. 1st. Comment. 238. 1st. Comment. 235. 1st. Comment. 236.

The insurance of the goods may be the freight, that is what the cargo will earn. But the circumstances under which the freight may be insured must be mentioned. I think of the general rule. It is not the practice in every case. Freight cannot be insured in France. The risk must to begin to be run. If the cargo be ready to be put on board, laying on the wharf, i.e. not on board the ship, it is lost in the harbor, the risk has not commenced. If the insurer is not liable. But if the goods are on board, no risk of any part of them are on board, the insurers are liable for all the goods even during voyage, for the risk in this case has commenced.

Further. Suppose the ship has got the cargo on board, but has failed to receive it at another Port, in going there is lost, the insurers are liable for the Freight, the sum not having on board. But if the ship has been lost in the Port before, she failed to take her cargo at another Port. One did no part of it on board, the insurers would not be liable. Comment 235. 1st. Comment.

It is a question, whether the profits or goods may be insured? What the profits will be is more conjecture.
Sex mercatoria

Now I take the general rule to be that the future
contemplated profit, is not of itself an insurable interest.
The rule has always been, the Prime Cost of the goods, i.e.
which is added all the duties both here and in the Foreign
Country, together with the Premiums. For all these the
Insurers are, by the C.C.R.I. liable. In some Countries
Profits are insurable. But I take the general rule to be
that they are not insurable. This is so in
France, so there it is settled that profit cannot be insured.
Now is this in Holland? And it is somewhat remark-
able that there is not a decision to be found in any English
Books, leaning to yr doctrine, except one which is in Part 2 of

We have had one Case before our Ct on this
point, & they decided as they understood the 2nd. Let it be,
viewed that the contemplated profit, is not an insurable
interest. The case a Bank was not an insurance of
me a Deed in the profit, but with these it the Prime & Goods,
likewise insured, it was not expressly on the Profits.
But the insured always more than the Prime Cost
Duties +Premiums, & therefore the surplus must have
been on the profit. The Policy was a valued one.

I will here explain a valued policy. There are
two kinds of insurance viz. a valuable policy, & an open
policy. A valued policy means this—a man goes &
insums his Cargo for a sum certain as £100,000. An
Open policy is when a man insures his goods such as they
are, as £100 Bales of Goods to add on this latter policy,
the party receives the Prime Cost. Premium + Costs
In the case of a valued Policy the parties have
Sex Hewencoria.

Let us first have a close view to show that the profits
are insured, then to remove it notwithstanding the pol-
icy was not a violation. But the main purpose is then con-
trary to any enquiry into a violation policy, such cases
are a total loss. This is the only instance in English law,
where profits have been allowed to be insured, they are
not mere insured as before. Now it has been seen that
this was an insurable interest. But if not so, the
whole course of English decisions go to shew that there
cannot be an insurance of profits.

At the Policy is a valuable one, when the part
of not to receive a particular loss, it is immediately trans-
ferred to an open policy, an enquiry into the same is
as to the value of the life. The rule of damages is the life
cost, the duties of the Premiums. But when the life is
lost, the policy is not carried on a value into an open one.
There can be no enquiry at all there.

It is clear that unless there is an interest to be
insured, the insurance is a wager. Now it is an impor-
tant Law in our Country to ascertain, whether a war-
gaming policy is a good one? There is no Law in Eng.
because they have a Stat., declaring such policy
void. Proceeding to the Stat. the first decision held that
these wagering policies were void. But by a course
of subsequent decisions, they were held valid. The
mischief of these later decisions became obvious
and produced the Stat. Thus these later decisions went
on the ground that they considered these as wagering games
were valid. But admitting wagers to be valid, there is
Lex Mercatoria.

to my mind a wise difference between a wagering policy to a wager. A wager is always to gain something. A wagering policy is always to lose as a loss, not for gain. You may appear to me that without any that a wagering policy is not. There can be no indemnity where there is no loss. It cannot be a loss where there is no loss. But a wager is to gain something not his own. Policy of Assurance is in its own nature an indemnity to self. But there can be no indemnity as there is no loss.

The very form of the instrument proceeds on the ground that there is an interest – to save property and not to save its loss. The insurant profits to be a very different thing from a wager; namely...

But wagers themselves are not valid in my opinion. I believe it may be supported on legal principles (not by Eng. precedents) in all the Courts in U.K. that no wager is a valid contract. A wager necessarily can be had on them. I do not mean by this but that there are Eng. cases allowing a recovery on wagers for they do allow them in all cases except when they are not sound policy. I am not arguing on the grounds that the Eng. precedents have been made me out of my opinions for they, contrary to it. The first case, in 11 Co. 876, where it was decided that no wagering contract was valid. The Dw. was again decided in the same way in 1 Sir. 90. I recognize to 1 Dec. 3 Dec. 2802.

Subsequent to this period, it's looked upon wager...
with a jealous eye. They manifest a dislike to them, and state were unable to get over the precedents. But yet they said of the wages is at sound policy we will hold it to be an invalid contract. 1566, 56.

From this I conceive no wages are good as they are all not sound policy. 1566, 56. Comp. 19. 24. 610. This is no decision however as allowing wages which are not contrary to sound policy. You may be a case in point, when it was held that an innocent wages was valid: the court disapproves of wages of every kind. In one of the cases Justice Ashurst concluded, by much that our spirit was given to a wage, as wishing they had now been established, but said that he could not break down the precedents. 156 Justice Bulle was of the same opinion. I went so far as to say "it is never too late to assert to principle," the was of opinion that no wage was good, but the majority of the judges were of the opinion that it was now too late to consider innocent wages valid, because the course of decisions were of so long standing that it r. be dangerous to overstep them. This is correct.

State decisions is one of the most important maxims in the Law. But how is it in the U.S.? We ought as a general rule to be bound by precedent, but when we find a course of decisions which are evidently repugnant to the principles of the C.S. we have in courts of their own absent judges, and we have no precedents of our own, we ought to pursue a different principle. I am not aware that any
In the Union there has ever settled the doctrine, that in a Course of decisions, if not in the duty of the judge when the ca. arose to decide that no wager is good.

But in wagering Policies, I thinck, are certainly forbidden by the general Common Law. But if it will be used as an argument that because Eng. has passed a Stat. and France, Sweden & Holland have passed ordinaries (which are of same as Stats.), then Laws were passed declaring this void, from this, no wager is good. The argument is drawn that this was good before these Stats. & Laws were made. This does not satisfy my mind. If the Cts. of the U. S. should support wagers we ought to have a Stat. prohibiting them.

I will now state a course of decisions on this subject. In Eng. 1719. you may see one in 2 C. 1091. in 1 Show 104. The next year there was another decision, it was a wagering Policy at the Cts. of Cby. declaring that the Policy should be given up 2 the Governor's back, see 2 Show 289. In the year 1718. an action was laid in the Cts. of Cby. & this was the first case when in action was maintained, 2 Mod 27. The Cts. again came up. In 1716. a by. Cts. considered it void. 2 Show 710. That was the next year; the Cts. of Cby. sustained then validity.

In 1720. it was found that the Cts. of Cby. has supported an action in 2 C. 1250. The decision in the Cts. of Cby. was cause of general alarm as the court had gone beyond conclusion; but, since then nothing was a fine upon the subject the 1719 to 2. See 2 C. 175 & 175 283. And this case, a very important case in a Cts. of May 5. out 25.
Sex. Monocatonia.

The Stat. or Cui is altogether Contra to Ships of War, where the Insurance is on Foreign Ships the englishmen, young Polishers will supply it if necessary. Doug. Philpott to Kitchin.

(And this is yet more important. De or Eng)

Shows what I think of the Superiority of the Stat. or Cui of the Stat. or Cui of the Stat. or Cui.

As far as objection is the Abolition of the Stat.

If it is the Stat. or Cui, that all Wages are paid. If it is established that wages are paid, then that wages are paid, that wages are paid, that wages are paid. If there is no certainty, then there is no certainty, and then that the Stat. or Cui is only so much by it, that they found it necessary to pay a prohibiting Stat. And that may be said as in respect to the Stat. or Cui from whom we derive our, the Stat. or Cui is whether we have the Stat. or Cui, to adopt the decisions of the old authorities, or the subsequent ones.

With respect to Persons who may incur. I can hardly point out the Stat. or Cui subject at chatain without going into Question which cannot be disputed at present. So that what I now say will not be of the Stat.

For I cannot enter into the Question as to Bol
cowing Trade here. But I can go so far as this, that who
even has an absolute, i. the person has a qualification in
us, who has the legal, or he who has the equitable, the
may occasions. It is not a double inconvenience, hen.
A living in Petersburg, said Mr. London, the shi
goods to pay the debt. This I state the same possi
e Petersburg. Then B. has the legal, the equitable,
Lex Mercatoriae.

Thus is a species of estate depending upon event or uncertainty, which is an absolute interest, for the latter he said to own a legal or equitable title to anything. It is a practice in Europe that often taken by the Kings, when certain circumstances, all the property, it is the Crown, yet the usage is to give the whole up to the captors, so they expect it as much as if it was expressly granted to them. They have no right to it; it is a mere matter of grace. Now it cannot be said they have a legal or equitable right to a captured Sloop, for they cannot enforce this right in any court. But stated and property may be insured for the benefit of the captors. The principle is that where there is a just substitution that the property, it will be theirs (in this case, language has given reasonable grounds for expectation), the property may be insured. Means that I mention this to you, as it may apply in other cases.

Persons who are Trustees for others, i.e., those to whom goods are assigned, agents for parties may insure. They have not a real interest, but it is considered as done for the principal, according to maxim juris pactis, non actu juris jace fortasse. 3 T. & C. 13.

It has been made a rule, whether a trustee's trust is secure. Whether it did not belong to a person.
To Mereatricia,

Having the interest of the above referred to, I find it has been decided that the existing sure trust may insure. 

Bos. 622. 35. Any person who has an insurable interest may insure. The person having the legal title will perhaps refuse to insure, in such case the existing sure trust must be allowed the privilege. If both, about insurance there cannot be a doubt.

**Bottomy Bonds** are otherwise an insurable interest. Can the goods bought with the Bottomy money be insured? I find in the Books that they may be insured. But can any writers explain themselves properly, that in many cases they say they cannot be insured?

It is true, only the value of the goods over the amount of the Bottomy Bond, or in the rule of recovery. A small interest over $1 above the sum insured is not regarded. As of a man insured $9,000 for it appears that the bond was about $9,000 to insure. The bond is not taken into the subject with eagle eyes. But seems when it is a man covered for everything as in the case of the table before mentioned. - Bald, Case 2. N. Y. Cons. 583.

It has been attempted to be shown that an invalid Policy is void, since the 524., as it open a door for waiving. The lots have however devised a method of getting along with the subject, by looking to the Policy to see whether it is a reasonable one. But they are not open to appeal to see whether it is or not. So that when an insurance is in reality meant for an indemnity the lot must be examined with eagle eyes to discover the volition.
Les Meunieroces.

If there is a total loss, the sum mentioned in the policy will be paid. If the loss is partial, an inquiry will be made in March.

There may be what is called a Re-insurance, and this is not a double insurance. It is when a man insures property as an insurer, and then gets his own risk insured. It is not when a man gets his property insured, and then gets it insured on again.

A Re-insurance is allowed by the State, but the State have prohibited it by Statute. They consider it an evil. They will not allow it by the Statute, except where the former insurer becomes Insolvent, or bankrupt, or dies, in such case his Executors may insure. Why is this allowed? It is undoubtedly for this purpose — viz. the first insurer finding himself insolvent, or bankrupt, or having received the premium, he will know he cannot pay the insurer in case of loss, if he could get his own risk insured he could pay if a loss happened, and if he did this his Executors did it for him. On this ground, in Eng. they allow a re-insurance in the above cases, except in the Statute. It is re-insurance. It is allowed in these cases to protect the insurer.

When the man dies, in order that others may not lose out of their own risks, the Estate, is sold, which is often a great loss to the time — they allows the Executors to insure.
Double Insurance is a very different thing from Reinsurance. Double Insurance is when a proprietor of the ship or goods, or owner of the freight insured more than once, at different offices, or by different underwriters. The object of double insuring was no doubt to recover losses. But the principle here is similar as at 6th. It is no matter how many insurances there are; they are all legal, but you can have but one satisfaction. If you recover to the amount of the insurance to one at one office, you cannot recover to another. So in case of underwriters when one insures $1,000 and another $1,000, you can recover to one only, if you recover the value. There are different actions to be brought to the different underwriters, as you may resort to either of them you please. But those who do pay have a right to resort to the others who have insisted for their respective proportions of the insurance, as e.g., A at Bradford insures $2,000 at 13 of A, I do know for the same sum. So A has the goods lost, you may recover of B. the $10,000, and A may recover $100 of B. So that one insurer may ensure for this purpose of dividing the interest. Because Sect. 243.

I am particular on this subject because formerly the cases were otherwise I believe. But the cases in Brown are according to Cons. Black. The cases in Black are according to Brown. The Brown is said that above it subscribe just was first table, whether the insurance was made by officers or individuals.
Lex Mercatoria...

and then the others had to pay back the Premium. Whereas it...omitted from this case, as shown, till the Cases, in Blackstone, the elementary writer considered as the Law.

With respect to the Deo, when different persons have different interests, the case is that subject does not seem to accord with the equitable principles of the Law. I write it, I have no doubt but it is the settled Law. As in this one may have an interest of one kind, another an interest of another kind. As...A merchant being indebted to a merchant in London, Consigned goods to him in the nature of a mortgage.) After he has done this, he gave a merchant of Pitsburgh a Bill of Sale of the same goods. Then was no paid in this transaction. The last merchant was to have only the surplus which remained after paying the Consignee merchant. The merchant at Pitsburgh to insist the whole of the goods to the London merchant did the same. The Ship was lost. The English Merchant held the legal titles to the Russian merchant the equitable interest. The Deo was what a how was to be the recovery? At first view, that the recovery $25 be according to the interest. But the rule of Law is that both of the merchant recovered the amount of the goods involved. 1Bun v. 89.

This is not according to the equitable principles of the Law. It is so contrary to the opinion of the...Mansfield that I am sure the doctrine did not have proceeded had not the law been considered as well settled. This you must observe is not a double recovery.
Sex. Mercatoria.

By a Double Insurance is meant the same property insuring twice, but here there are two distinct owners.

The first thing I shall notice is the Voyage.

It may be an unlawful one, if both insurers are void, the voyage is a different thing from the Commerce. The voyage may be illicit, although the article might be carried, as if by the Laws of the Country. The voyage may become unlawful, not on account of the cargo, but on account of the circumstances of the time.

The Voyage is the passage of a Ship from one Port to another. The voyage may be illicit, and the Commerce at no time allowable. Where Laws of a Country forbid navigating to a certain Port or Country, then the Voyage is unlawful, or where the navigation is monopoly, as if the voyage can be performed only by certain persons, or some others who were licensed by those, as e.g. the East India Co. Now a voyage by a Foreigner on such case is unlawful to the insurance on such a voyage is void. In the case of the monopoly Affranc, no one can trade to the East Indies without a license from the Company.

A Deed of some magnitude in point of property, principle hereunto. In the Treaty of 1795 there was an article admitting all American Vessels to trade to any port in the East Indies. The Deed rose on a question whether a circumventing voyage was within the meaning of the Treaty. The Americans had no right to engage in the boosting trade of the East Indies. The case was this. The Ship was not going direct to an Island.
Sex Mercatoria.

In 1826, Lord Byron, under the guise of a merchant, went to Europe with a large cargo of French luxury goods. His vessel, equipped with the latest navigation equipment, was lost at sea. In the case of his loss, it was determined that the insurance was lawful to the Assurers liable, S.T. R 31.

The same case gave rise to another. In 1784, one of the Proprietors was a native Englishman domiciled in America, and at the time when he was included in the Treaty, he was in the opinion that some other American might trade to the benefit of a Treaty as if he was a native born citizen of that country, i.e., for the purpose of commerce. This principle is laid down in Bell's. An Englishman was not here at the time of making the Treaty, his insurance was held good to recover the

Of Risks.

The insurance may be at any rate or rates, to avoid the policy terms to include all risks incident to a voyage, subject to certain exceptions. Some of them you have seen.

No insurance at a mutual or misconduct is valid. If the insurer is ever found enough to insure to the knowledge of another, he will not be bound by it. Nor is insurance good on any prohibited cargo in illegal voyage. That is heavily nothing else but to cheat an insurer may be made.

You may know your policy as you please.
Sex: Mercatoria.

In the insurance of any goods on or at sea, the risks are those, and perils of the Sea, Men of War, Fire, Famine, some of these terms are improperly ascribed to the risk of goods. For instance, when we speak of "Lloyd's Risks," we mean the goods on board a ship, "Fire," when we speak of "Fire in Lighter," the risk. Letters of Marque, Captured Sea, Arrears, or any restraints, as by Embargo, Warrant of the Master, or the owners (which means the misfortune of the master); plus a perishing clause, inserted "to all other perils, except misfortunes." This will include everything as while an insurance can be made. It will mention as they suppose the insurance is made, as the perils of the Sea only, not of capture. Suppose France lies at war with each other, if the ship is sailing on the coast of England, it is driven by storm of weather on the coast of France, it is then captured by a ship of war. Now is this a loss by one of the Sea or by Capture? This is very frequently discussed. The decisions are always governed by this. It is not a cause pro parte, which is to be considered the cause of the loss. The remote cause is laid out of view. Therefore it must be from your storm of weather, she would not have been captured, yet the immediate cause of the loss was capture. And this is the leading principle that must govern in all cases.

We had a case in Conn. of a very singular nature. A person in New York owning a schooner and hisiscoil of New Haven at one or two perils, one of which was as fire. A this boat of the Sea. The fires were there. She was taken by a French privateer they
Lex Mercatoria

...strip, when it came to a case between the parties, as this did in this case. The case was not about the Capture. The owner claimed that the insurers were liable, as it was left to him. The insurers claimed it was a loss by capture. The owner contended that the Capture was the remote cause of the fire, the proximate cause of the loss. But the insured said that it was a loss by capture. They went upon the ground that the insurer did not in any way join in an agreement to set fire, nor was it a loss which might happen by accident of fire. The setting fire to the barn was a continuation of building of the privates. I remember that on the Trebizan Capt authority was introduced to show that where a risk was intended as fire, the assurance included a fire happening by lightning. There are all questions. I do not know as there have been a clause inserted in a policy of insurers and as lightning it may be included in the ...
Sex - Bernardia.

quite by the mention. If the loss is total, there is to be no recovery. In other articles there is to be no recovery unless the loss exceeds 50%. The memorandum specifies corn. This means all kinds of grain. Fish, Salt, Fruit, Flower & Seeds. If there is a partial loss, there is no indemnity. For the loss is general on the Ship as stranded. See third to a partial loss of corn & there is no recovery. If the loss is total, they pay the whole value.

In other articles there can be no recovery for a partial loss, unless it exceeds 50%. If it does exceed 50%, the Insurers are liable. These are Sugar, Tobacco, Hemp, Flax, Seeds & Sheep. In all other articles there is a partial loss, no recovery can be had unless the loss exceeds 50%. This means changes the operation of the policy. As that if the policy was not made thus, would always be a recovery for a partial loss, unless it did not amount to 50%. This is an exception to this. If the loss is general, a partial loss is to be recovered on corn, Fish, Salt, Fruit, Flower & Seeds.

By a general loss is meant, that lots while the different persons have got to pay according to their respective interests on board. E.g. A man has on board a quantity of Fish (which is a heavy article) & another has a Trunk of Selks (which is light) & some of the heavier articles are thrown overboard to lighten the Ship. The man has a partial loss, but this partial loss is general for the owner of the Ship may call on the owners of the Selks for his share of the loss. So on other partial.
Sir,

You mention that it may be necessary for a person to pay according to the value of his property, or so on.

In the first place, you cite remember that on the application of the ship is stranded, in the ship is stranded. Now in such case if there is a partial loss, the Insurers are liable. What is meant by the ship being stranded? But if this has grown a notable dispute. Does it mean that it is a condition that the ship is stranded, a partial loss happens, or it happens how it will, the Insurers are liable? Is it if the partial loss happens 2 months before the ship is stranded, are the insurers liable for it? Because the ship was stranded, the loss happened in some other way? Or does it mean that loss occurred by an event that happens in consequence of the stranding? The first decision was by Chief Justice Wright, the understanding is that if the ship was stranded, the Insurers were to pay for the partial loss. If you it would. Chief Justice Buller understood it differently. Mr. Baynes had submitted it to the opinion of Chief Justice Buller, & decided as you described. Now if there is a stranding, the Insurers are liable for a partial loss. Since the point had been

The whole subject is this, before the stranding, there was a partial loss, was recoverable, if it occurred in part. By the addition of the words, been, Feb.
Sec. 58.

The law of the sea, being a code of the policy, entitles the loss of the ship as a general rule. The ship was stranded. 36 F. 2d, 1046. The law does not provide for a partial loss unless it exceeds 10 percent. If in all other cases, there would be no recovery for a partial

loss unless it exceeds 10 percent. Suppose the loss is in the vessel, unless it exceeds 10 percent. No doubt, but they would be bound by it. Custom has established the principles as it is, but no doubt that principles may alter its in the courts. I state those facts as I pleased, let it be binding.

There is another set of cases, where no not at all is to be done by the Insurers. It, when the loss has happened, there is misconduct of the owner or master in causing the casualty or discharge. Suppose the insurance is not at the discretion of the master or? There must be some misconduct, of a loss that has

been in consequence of such misconduct, by whatever cause that caused. But it may seem different in case of goods, because, the owner of the goods has his remedy as the master or owner. This is not strictly purely of the law. But suppose the reason of the loss was that the vessel was not seaworthy, this is misconduct in the owner or the insurance and is changed. Yet this even the the owner did not know that he was not seaworthy. For there is no such case an implicit engagement on the part of the owner, that he is seaworthy. If the policy did not contain

a clause, the insurance is discharged, but the seaworthiness.
Sir. Marcario.

In the case and the Conrags 380.

Suppose the loss happeneth by the fault of the master in management, or negligence or ignorance of the master or the owners are liable. To the ship, the master is liable for his own negligence. But not for that of his mariners, tho' the owners are. In what cases? Why, suppose the loss happeneth this want of careful durance. If the owners be liable. Or suppose the master leaves the vessel on a Harvey course. Suppose to those or sails in a Hurricane, or on whom nobody else would, in such case the owners are liable, if the insurance are discharged. The principle is this. The loss happeneth thus, the fault of the master or owner, to no this, it is understood there is no insurance.

I will take notice of a case, which is frequently mentioned as opposite to the latter. The case was this. A number of fellows went on board a ship, calling themselves a press gang, having possession took this opportunity of robbing the ship. The owners were called upon to answer the seamen, which was done. The measure of the Co. determined that the seamen were liable. Now it was said, this is carrying the principle too far; farther than is warranted by law. You know that a Common Carrier is liable for every accident or loss, except it be occasioned by the act of God, or public enemies, or by the act of the Perish. Hence the law, was that the decision was made on the ground that the vessel lay within the body of a County, therefore being within the demarcation of Common law, and, who was governed by the Common law, by the Common law.
Six Barcelona.

The case was decided on 6. W. principles, which explain it. The usual carriage prior to the war was mere liability as a common carrier, at law. It is not founded upon the L. N. there is no such principle in the L. N. For here, if the owners are not liable for notorious faults, there is no opinion or decision of this case, is the history of the L. N. at it is, at supra. 1780 1790 1790. supra. 1780 1790. supra. 1780 1790. supra. 1780 1790. supra.

The same principles apply to all kinds of goods, whether they are lost, i.e., the master seaward, or are lost or not, liable? This depends entirely on the case. Are the losses happen thus the negligence or misconduct of the master or a mariner? If it did, the owners are liable, if the insurer not. But if the loss happened otherwise, the respective account, as of the boat was good, a degree care was used, commensurate with the nature of the case in a loss happened as by a sudden gale of wind which capsizes the boat, the insurer are liable, and the owners are not. The insurer liability commensurate that of the owners entails.

By the English Statute the owners cannot be obliged to pay more for accidental injuries, than the value of the goods at the time. This regulation exists by Stat. or that Stat. is not binding on us in the U. S. The L. N. is different.
Sec. 2. Periculosa.

Lecture 5th March 1808.

It is not to charge the Insurer with loss, but a more frequent question during the continuance of the risk. From it is necessary that I should notice how long the risk lasts. If the Insurer is to be limited in time, there is no difficulty, it lasts just so long as the time specified. But the Insurer on Things and Goods is different. It is a common thing to insure property. It is very common to insure "at home," sometimes "from" not at. The meaning is taken accordingly.

I shall first notice to you the risk of goods. When there is an Insurer on a Thing at a Place, the risk on the Goods commences when the goods are put into Boat to go on board, and if a person insures his Goods. It is often said the risk commences when the Goods are put on board, but this is not the case. By the Law, if the Goods are insured at a fixed Insurer, then nothing more is said, the risk commences from the time of putting on board. If the Boat is not at the time of loading on board. If the Boat is not at the time of loading on board, the owners are liable if the damage, but if the loss happens by an unavoidable accident the Insurers are liable. The policy ordinarily runs their loss, they insure the Goods from the time of the loading on Board until they are safely landed and discharged. The moment they are on board (of boats 7 8) the policy attaches to them. But they are insured like they are safely landed and discharged. Suppose they are put on board they at Charleston. None of the goods
Sex Mercatoria.

are necessarily removed from this ship to put on board of another for the convenience of the proprietors, the insurance of these is discharged, for they continue on board of that particular ship only. The insurance does not include any other ship except that on which it is made, nor a clause to the contrary is inserted. If any incident or damage is absolutely necessary to remove the goods on board of another ship, in such case the insurers are not discharged as if the ship springed a leak, or is disabled from making the voyage; this is put back to the merits of the ship, or joint the goods on board of the latter, the liability of the insurers continues. The insurers are discharged in those cases only when the goods are absolutely removed to another ship. If the policy provides that they may be removed to another ship, it is good, if there is a removal the insurers are liable for loss.

There was a case of this kind - a freight was insured in the goods on board, from Liverpool to Bordeaux. In coming to another Port, there was a change in the policy that when they arrived at Bordeaux they might send the goods by another ship to the other Port, or their arrival at Bordeaux, they found no ship on board of which they could send the goods, if they put them on board of a Stone Ship or the Kutter - which is the usual custom - these small ships are for the same purposes. Some on board. The goods were lost while on this other ship by accident. The Ins. was not the Insurable. It was returned or they covered: the CC decided upon the
For Mercantilia,

proves that the losing in a ship going to the port where the cargo was destined, it became necessary to put them on board of this ship, which was the common practice, unless in all such cases. 

What is the duty of the insurers to point out, when the ship shall be laden, i.e., in what part of the harbor the loading shall be? If the subject of goods are lost in the harbor, the insurers are liable, i.e., the insurers liability continues till the safe loading of the goods, i.e., till the insurers receive 1850 days of delay. But if the master delays to land the goods for a long time, they are lost, the insurers discharge. The conduct of the insurers or master in this respect must be reasonable. There has been some, but, on this, no singular law distinction has been drawn. The owners of the goods must see the loading or point out where it shall be or the distinction is that if the goods are put on board of boats belonging to the ship, if they are lost going ashore, the insurers liable. But if they are put on board of a lighter belonging to the owner, if they are lost before they are landed, the insurers are not liable. 2 Feb. 1296.

A Question: Whether this is now law, the distinction has since been narrowed down, what gives you my reasons. The practice has been to help public registered lighters or every port a harbor, if goods are lost on board of these, they become not discharged, nor does the insurer come into his goods on board of his own lighter of
Sec. 16.

So doing, he would discharge the insurers who, by putting the goods on board a public lightship, the insurers not to be discharged. For one reason or the other, that believes when the insurance comes, it would be over too late. Marshall 166.

The landing must be in a reasonable time. But this is a custom in some places allowing men longer time to land than in others. In some places, the custom is never to land the goods at all. (Whose in lands 82.) thus make themselves acquainted with the particular customs of different places as respecting landing of the goods. As in trading on the coast of France, it was the custom to trade from the ships. The goods come seldom landed except by degrees as they sold them out in small quantities. In this way they trade along the coast from port to port. Now the insurers of such a voyage would be liable, the great length of time 82. elapse beyond the entire landing of the goods, because the presumption is the insurers are acquainted with the course of such trade. It receives a premium accordingly. The case in Park 814 was this, the ship arrived, it might have landed the goods a great deal afterwards was captured. The insurers claimed that they were discharged. But the case decided they were not on the presumption that they knew the trade if. Park 314.

So likewise the Fishing Trade to Newfoundland is of the same kind. Fishermen go out with their ships to insure it, but it is never landed. It is sold without landing.
Let. Mercator.

Regarding any case as they want it, there is a case of this kind called the Salouder Case, which shows that there is no necessity that the usage should be of long standing. If the trade has been carried on only a short time, the usage in that time is sufficient. But in ordinary cases, on the part of the Insurers, they must prove to have the goods taken on board.

Of the duration of the risk on Ships.

If the insurance is for a limited time there is no difficulty about it. If it is from a port where the ship sails, the risk commences at the time she sets sail, but, if it is written back, or detained by contrary winds, then it is "at or from," the risk commences from the time of the subscription of the Policy. But if the voyage is given, or is subject to voyage or unreasonable time, the Insurers are not liable for the entire time. And another it appears that the ship is not going to the Port to which she is consigned, the Insurers are discharged. As if she is consigned for Lisbon, to loads with a cargo, for China market, whereby it is evident she is not going to Lisbon, the Insurers are discharged. Wherever risk is run the Insurers must give up the Premium.

How long does this risk last? If the time she is at sea is clearly. But after her arrival at the port of destination, how long does it run last?
This is generally regulated in the Policy. But taking
in the particular case of a vessel going to London by
the "Nestor" if any other words can be used in the Policy, as was the
case in the original policies. It appears by the entries
that if they did arrive at the point, unanchored safely
within it, the policy was complete, whether they
arrived at a port or point of departure. But if the
ship was on her way from London, being safely at anchor 24 hours,
the policy was not complete till the ship arrived at the point
at once. The insurance on the goods may
last perhaps longer. But if insurance was not entered,
Part 35. Some Questions have arisen under this as
to what is meant by "being at anchor 24 hours.
This was the case. The ship arrived, she was there
anchored more than 24 hours. She was then:
the ship was confiscated as the master had been smuggling. The con-
sumers were held not liable. 1322 260.

As analogous to this was the case of a
Ship insured for a limited time, say 3 months and
3 days before the expiration of the time she struck
a Rock, but the crew kept her afloat while the
ship was unanchored, for 3 days after the expiration of the time. This insurance
was discharged, for she was not lost till the time
for which she was insured had expired, although
she received her death wounds before. 1322 260.

The words of the Insurance are "an anchor
in good safety." The two cases above are considered
as "in good safety." But there are other cases under
these words. viz. The Ship arrived at any hour but by
for the 24 hours has expired she was allowed to pro-
from Greenwich. Now was this arriving in good
safety. The Ship was in 24 hours in the port before
she was insured out. it would have been anchoring 24
hours in good safety. But here she was insured out in
for the 24 hours expired if she could not get out. It
is held that the Insurers were liable. as she has
not arrived and anchors in good safety. And it is a rule
in all cases, that the the Ship gets into port in safety
yet if she is ordered out before the 24 hours have ex-
pired, the Insurers are liable, as she does not, in fact, get
out, till after the 24 hours have elapsed. 2. Sta. 1216. Patt. 1211.

With respect to a general insurance without
a clause of "having anchored 24 hours in good safety" I
have to observe, that the general L. No. 8, the moment
the arrival anchor'd. Here are cases of this kind. a
Vessel is insured from London to Jamaica without
mentioning any port (there are many difficulties in
the Islands), or from N. York to Martinique. The
clause of 24 hours is omitted. How then is the safe
port of the Goods are to be delivered at one port, port
at another. Dependence at a third. Does the risk con-
tinue till the arrival at the last port? The Insu-
ration has been settled that if the arrival at any one
port in the Islands of Jamaica, it remained than the
hours in good safety the Insurers are discharged.
This case came up in this way. A Vessel is insured
from London to Jamaica the anchoring 24 hours in
Savonarola.

good safety. This is secured by a special condition of the
shippers' receipt which has been signed by the
insurer. If the goods are lost or damaged, the
insurer must pay the loss. But if the goods are never
recovered, the insurer must pay the value of the goods.

This is a common practice in the insurance
business. In this case, the insurers are

This is an insurance distinct from the
ship's insurance, which is on the

ship's goods, while the insurers' insurance is on the

ship's provisions. The insurers are responsible only for

the goods lost or damaged on board the

during the voyage. The

coarse, while the insurers are responsible only for the

ship's cargo. However, in the

case of fire, the insurers must pay up to $200,000

for each ship, and the insurers are entitled to

a portion of the proceeds from the sale of the ship.
Now if there is a particular custom of trade, entirely different from the general usage of trade, it must not be mentioned in the Policy, for the Insurers are presumed to be acquainted with it. It is a common thing to insert in the Policy, inserted for such a Port to such a port, "with liberty to touch at any trade on the voyage" not designating any place. By this, at least, is meant any place on the course of the voyage. If a stop is made at any such place, it is no deviation. This is the general rule, and there are two cases, while one takes the distance and risk is agreed to both, the Master may take which if them he pleases. Doug. 3 April 1793.

But the trade to India, both of England and the U.S. is to send the Ships back and forth on intermediate voyages (as when they arrive at Calcutta, they send the Ship to Madras) is not in a direct course. Now if the Ship is lost in such a voyage, during that time, the insurers are liable, for the insurers receive a premium commensurate with the risk of the custom (at supra) they will know. The insurers may place the insurance for a limited time.
This depends on the usage of the imaginary
place of a Custom different from the guards.

Thus it was "in the Policy of Insur-
ance" was from such a port to such a port, with
liberty to touch at another certain place, the
word "trade" (which is usually inserted) was left out,
whiter by mistake, or not does not appear. The
ship was at such place; trade of the insured was lost.

It was supposed to be in consequence of
the policy by the stoppage of trade, it was holden
that the Insurers were not liable, for it does not ap-
pear that the Insurers extended the insured trade, but
only stop for accommodation to. There was a case
of this kind in Court. The subject was how with
consent to go to Baltimore with liberty to touch at
Norfolk, & she stayed there so long that the warm
weather damaged her cargo. 1800000 for expenses
of the duration of the risk on Freight.

I have before been obliged to mention this case.
It commences when the Goods are put on board. 2. The 1st.
It lasts equally as long as that on the Ship.

This is in the instance of discharge from his liability or
the Ship, he is discharged from his liability on the
Freight. There is an Exception to this when the Ship
days from one port to another to take in her Cargo
at the latter port, if she is lost in the voyage for
in Cargo the Insurers are liable for the Freight, if
she, and no Cargo on board. 3. 183. 362. 6 of R 473.
Tax Assessor.

Further, there is no such thing as transferring the risk, without consent of the insured, as any such thing except in case of necessity, and the majority will prevail. But otherwise, the risk is not to be a third. I would mention a strong case, to I very much doubt whether it can be supported. It was this: - a vessel was insured to go from one port to another, it being in line of coast they found it difficult to find sailors; for the purpose of procuring sailors they took out Letters of Marque, never intending to use them, nor did they use them, but took them out for the purpose of decaying sailors: as many would go out when they had an expectation of getting prize money which they otherwise would choose to remain on land. They went direct to the Port, it is clear by having Letters of Marque, the risk was not increased; it did not increase if it meant to defend themselves. But the insurers were dissatisfied, as it laid a temptation for the Captain to deviate in pursuit of prizes. 5 T.O. 580.

Now it is a principle of the Law that the strongest intention to deviate, shall not discharge the Insurer if there is no actual deviation. Hence I think the above case cannot be supported.

There was another case as strong. Determined the other way, the insured took out a Certificate of Letters of Marque as above, it was for some purpose with no intention of ever using them. But the next day, took out a Certificate for
the opinion of Government which was necessary, in order to make the Letters of Marque legal. The ship sailed it was lost, & the insurance was held to be liable. at the 379. Now how does this differ from the former case? The letter had not legal Letters of Marque, but in the former case there letters were legal. When the Letters of Marque, the insurance was discharged. Secured where illegal. So that it seems the law of making the Insurers liable depends on the legality or illegality of the Letters of Marque. This case was decided on two grounds: the one I have mentioned at supra, the other was that a person may get insured as the Barbarey of his own Captain, in this case there was such an insurance. What is Barbarey or the Captain? Any misconduct on her, whether was misconduct on the ship to create an insurance above. It appears the so. Create, for the met with an American Ship. I plundered her, & the owners were made liable to the American, the other (the enemy) took a suit as the Insurers for the misconduct of the Captain, & which they had in mind. And on this ground to the insurance being liable.

Sect. 6th. March 29th 1813.

I shall now treat of the instrument called the Policy. It seems this is an Italian word signifying a "Writing of indemnity to a Life," and you will observe that the contract contained
in the policy, es to ele in the part of the insurer, which contains nothing to be done on the part of the insured. There are engagements made at the time on the part of the insurer, which, if not complied with, will discharge the insurace, but there is no report of the insurer. And the consideration is always acknowledged by the insurer, whether received or not, as called the Premium. It is a lot of justice, it cannot be made a basis, whether this has been paid or not. Now, if you will understand by this that if the premium is not paid, the insurer cannot recover it. What I mean is, that in any part of the policy, the insurer is precluded from saying he has been received a premium. But when the insurer fails for the premium, his acknowledgment in the policy is no evidence that it has been paid. It is only evidence (and this is incontestable) when the same is on the policy. As e.g. in the case of a 10,000 $ insurance for 10,000 $ acknowledged the receipt of the premium in the policy, the policy is lost. Now it is seen that under the policy it cannot deny the payment, for this would destroy the validity of the policy. But if it was not paid I may sue for the whole, for the policy is no evidence that it has been paid.

As Policies were formerly, the form was either of no interest. This was the practice, 3 then a recovery could not be had whether there was an interest or not, i.e. when wagering policies were allowed or recoverable. But now, this impression arose no function. The it usually inserted the form if
Sex Mercatoria.

For if there is an interest, it is a good policy that it is not expressed. If there is no interest, the policy is void.

If not expressed, there is no presumption that there is no interest. I have already mentioned, there are two kinds of policies — open and valued. I shall now explain them.

An open policy is an insurance on the goods such as they are, so many baht, so many dollars. To express the value in this policy, the rule of damages is only agreed upon by the parties in case of loss, but the insurer enters into the exact amount of it upon enquiring. This is the Prime Cost, that is, the Premium, as I have mentioned.

A valued policy is such the parties agree upon a certain sum which they say is the value, or in case of a total loss, no enquiring is made, but the damages are entered upon according to the sum agreed upon as the value. When the loss is total, this valued policy is in the nature of a liquidated damages.

It is evident, this opens a door for wrangling, and no doubt many of these valued policies are worse.

But this fact is subject to enquiring, if it affects the policy it voids. If there is a real bona fide interest, but valued too high, the court will not be summons.

palous about it. But suppose there is an interest which the owner states to be worth $10,000, that the insurer enters into a valued policy for this sum. When his Premium is accordingly, but turning out the inside of the insurer did not exceed $4,000, it is said was well known

to the Insurer. Now the insurer has a strong temptation.
to have the subject settled that she may be lost. To practice some other fraud upon the Insurer in order to recover the whole Policy. Public moral requires that the transaction should be considered as disregard of Insurers. You will distinguish between this case of a wager. Suppose B comes to A and says, D I have got Goods on Board worth $20,000. I wish to know if you will insure for $10,000. This is a wagering contract. But suppose he gets $10,000 insured without giving the Insurer knowledge that his interest on board did not exceed $4,000. This he knows himself, now no man would do this unless he had some fraudulent object in view. It is, I say, considered as evidence that the Insurer intends to commit some fraud as to the value of the Property or surplus on this ground that the Insurers are discharged, though it is not a wagering Policy. But the Policy is often valued too high, so you cannot infer a fraudulent intention from the disparity. The disparity is not so great. In some cases there is no fraud except there is a great disparity, in those cases the evidence is good. If a man in the U.S. has property in the E. Indies and he insured in N. York, I make his calculation as to its value, as near as I can, the Insurers trust to him to have estimated correctly Insure it. from the E. Indies to N. York. It appears there was great disparity between the Premiums at the value of the property, but not the least indication of fraud. Now this was a fair bargain of hazard, I many times pay for hazard and fair insurance.
Sex Mortuaria.

As an old man gave me 810,000 £ to give you on one
security. Now the interest of this money is £50 per year, the
bargain, if you will spare me the money I will pay you
an annuity of 1200 £ per year. Now this is a bargain of
bargain for if the lender dies in a short time the borrower
makes an excellent bargain; for in his death the
whole sum falls to the borrower. But if the lender
should chance to live a long time, he would receive
his 1200 £ per year, which in a long few years would be
paid the same, and 40 tins become a great gain.
It is thus a fair bargain of hazard, it depends on a contingency, the uncertain life of the lender.

This is a Strong Case of this kind as the Bonds,
a young healthy man had a quantity of cash, he
proposed an annuity, I procured one as above it
was drawn on the next day it was a fair bargain of
hazard. So in this case of the insurance it is the same,
but there have been cases where the deficiency was
so great that £8 of this have interfered greatly
with it. But it must be on the ground of some great
mistake. As a general rule they will not interfere. Nov. 17.

As has been before there is no difference in
being a policy on a fine policy with the life of
parties. It is not a very uncommon thing for the
Policy to take effect through the insurer's disease, but
it is usually done thro' the medium of a Brother. The
insurers commonly look to the brother for his premium
and the insurer to the Brother for his life. The brother is
an of a life usually recovers or the policy, but the
Sec. Itercatoria.

is not always the case in B.Ns. It does not follow that the insurer cannot recover his premium on account of the insurer, or the insurer recover of the insuror the Policy. This is by the C.B. Ns. But in great Commercial cities, as in London, it is the practice to do all the business thru the medium of a Broker. The insurer does not do it. See by the C.B. Ns.

There is frequently another Agent. It is a very common thing for persons living at a distance, to argue with the Broker to employ an Agent who is acquainted, thus that the medium of an Agent the Broker is employed. To explain, it is necessary I make a few observations with respect to Agents. A man who is an agent to employ a Broker must have an express authority to employ him. But a Broker not have an express power to make an assurance. he does it by virtue of his officers, it is his business, if he has done it it does not lie in the name of the insurer to say he had no authority. 5 Feb 1777

There are certain cases where a man must ensure as an Agent, when the is so directed to do. It stands upon distinct grounds from cases at C.B. There are 3 cases: 1st. Suppose a person abroad has affairs in the hands of a Man in B.N. who has done business for him, and is his agent, who gives directions to him to ensure, how at C.B. If, for example, a man has money of another in his hands, the creditor directs him to lay it out, the Broker is not obliged to follow his directions, for it is sufficient
If he has the money ready for the creditor. But the present case stands on a distinct principle; it is a question of Commerce. He is the Agent of the principal directs how (e.g. to insure his ship from P. to Q.) by which he (the Agent, is bound to procure the insurance) if he does not, he is liable. You are not to understand by this, that the principal has a right to direct all who work for him to do this. The person directs must be one who does business for him, that is an Agent.

The Second Case is this: An agent having an account, has been in the habit of transacting business for his principal—sometimes having others to do it also—but there has been a course of dealings between them. Now suppose the principal directs him to do it; since he is bound to do it, the he is not entitled to the principal, unless he has notified him that he would transact this business no longer. The rule goes on the ground that, he has done the principal's business (though he may never have insured for him) as an agent, if the principal relies on him to continue in the employment, if he refuses to continue, e.g. when directed. Notice has been given to the principal that he will not continue to transact his business, the principal might be misled. Suppose, the principal is solvent, is the agent bound to continue? No, suppose not, that would be a good excuse. 2 T.R. 188. 17 H. 22.

The Third is a case of this (not a common agent to transact your business) who you make you.
Lea Mercatoria.

agent for this particular purpose, as by sending him the property & endorsing over the Bills of Lading to him he directed him to insure. Now he is not obliged to accept the agency he may refuse. But, if he does accept, he is bound to insure as directed, as liable to the insurers. The acceptance is an implied agreement that he will do as directed.

This agency whether or not cases where the cases of agency by express contract or general, or by great responsibility, or of those in any cases he is bound to indemnify, on negligence, or want of due care, the rights to insured the insurances to case himself in

formed, as e.g. if the agent is unable, or unable to the charge of all cases. Cases the insurers are discharged he is liable. There is a strong case of this kind. A man was employed as an agent. He went to a Broker to get the Ship insured, & the owner had written to him in a letter that the Ship was this thing, the known dangers of which place or, & hence the Premium. The Agent negligently neglected to inform the Brokers of the state of the Ship. The insurers were discharged on the ground that there was not a full disclosure. The agent was liable on the ground that a full disclosure had been made to him. The information he neglected to give to the Brokers, & the Broker did not forsake the insurers of what he himself was ignorant. The ability to

look up the Agent did not recover. He lost by the Broker to Insurers. 27 T. 90, 1855. Hadley v. Dustin.
Let Mercatoria.

In this Calder case, a singular law arose, which in the original was called for the benefit of the insurer on the first action, e.g., in the Suit by the insurer to the insurer on the policy. The defendant was not liable, but the ground this took was that the insurer knew the fact that the agent had not made a true disclosure, this they knew at the time they acted the insurer, there was no need of making this additional suit, for they might have known they did not have a record. This was the principal, undoubtedly, of the insurer had been ignorant of the fact, that the agent had neglected to disclose all the time of the risk, as the insurer had been obliged to pay the risk of that action, the defendant would be obliged to pay it. In this case the fault was to be solely his own.

There has been some Res Judicata to a person in the matter of, not to do a thing or neglect, by which another is injured. If this is the case, it's in a promise to do a thing or a performance. But, by the promise, the person may be many cases. When he would be liable, as, e.g., if a man having settled his affairs, is going out of town, he cannot wait to insure, another a person's gratification to choose to get the insurance. The case must do it. But the casedoes not prove that fully short it does not prove it. In this case, the man undertook gratuitously to insurer, but transferred the business to another, that the policy was not valid, it's a proof that must, that is so at C.S. 1825, p. 28.
Suppose a man promises to a merchant that he will transport a Table of Vains for nothing. No action will lie on the promise for a breach of his promise. But if he has undertaken to transport it, then he is entitled to receive the compensation for it, and yet he would be liable for all lost accidents, precisely as great degree as he would provide he not a valuable consideration. The same above cited to prove the principles of De Meer? provernothing more than the C.E.

The real point of the agent must affect the in- 

sured, as much as if the insurer himself had been guil- 

ty of it. Thus can be no recovery in such case. 14 T. 12.

The rule of Damages when you recover as the 

insurer, is the same as it is to, or as the insurer, for 
in both cases you recover your Costs. Next case. Sup- 

pose the insurer does not recover as the insurer, because 
suppose he himself has made a false representation; or this case if the insurer were the agent for any thing he 

has done (as if he claims the common recovery of the insurer 
or account of the misconduct of the agent) the agent 

shall have the privilege of taking advantage of the 

insurer's misconduct to the insurer (as reply to the abo- 

ve only, owing to your own misconduct, you have de- 

fended yourself of your right of recovery as the insurer) 

then the life does not depend upon the fault of the 

Agent - 17 T.R. 157. For the case supra see Park 1303.

It is a very common thing for the Agent oc- 

cur to insure at all, when directed to. In such cases the 

agent ensures himself, being an insurer. The crisis
Let us consider that the subject is insured at a certain premium. No policy is made up if a life happens to pass the money. Suppose he refused to pay. This is no policy or claim to bring the action. The principal may then sue him in England for the policy (for his own letters of knowledge of what he has a policy, he may state that he procured a policy at a certain office, but he does not know what office—the agent cannot say there was no policy. Damages are the same as if there was no policy at all.

This is a common practice.

In Policies of Insurance it used to be the practice in some States to in some Countries, to draw the Policy to insert the name of the insured at all, so that anyone who afterwards became owner of it might put it up in his own name. The case was to enable the policy to be an instrument of traffic. Some evils growing out of this practice, in France they have made a decree, in England Statute, that the Commercial List of Holland has been allowed to do it. By all laws the name of a person to the policy. It sounds by the C. O. K. this is no necessity of inserting the insured’s name, but this is considered important in most Countries. I do not know whether the C. O. K. are obliged to insert the name. I can see no reason why the C. O. K. it seems to me and not.

The ship must be named. Specifically, if it can be, the ship insured it must be on that ship. As other, the C. O. K. must be on the goods on board that ship. This on the ground that the Insurers know that it is not. But necessity forms an
Sex Mercatoria.

exception, as I have already mentioned, as e.g. in a gale the Ship is crippled, it is necessary to remove the goods on board another. The goods of the case is the Insurer as an exception to have in view that particular Ship I know its strength of. Thus the reason above

But in some cases it is impossible to insure a particular Ship - as e.g. a man in U.S. has property on the East Indies, he does not know on board which Ship or Ships his agent may send it. He procures it in Dublin here. The insurance is then made on the Ships or Ships which will bring the property here. This may be said to be an exception arising from necessity. This insurance reaches any Ship -

The Species of the Insure. Whether Brig, Sloop, Schooner to, ought to be named, as it may alter the risk. One species of property may be safer than another. But if there is a mistake in the error in describing the Species of the Insure, the Insuring are not discharged, if the rate is not increased. This is the rule of the Letter, Enumerated 184.

In case of Ships exposed liable to be taken as Letters of Marque, which are merchant Property, this ought to be named, otherwise the Insuring is discharged. The risk on these is much greater than on common Merchant Ships. 

It has been a Dr. whether the manor of the Master ought to be insured. No doubt but U.S. are insuring it. But they have avoided it by certain

Let Abercatoria.

When you go to an insurance, do ask a good man who is your captain? You answer: "Captain White." Now he is a good man with white. It is well to insure, knowing him to be a good sailor. But your intended seadog's ship, his ship, I hope this insurance knows this he would not have insured for the prime premium as I had seen it is not a good captain. So that, according to Dr. II. the captain's name will be inserted. But the practice now is to insert in the Policy "Captain White, or any other captain who shall happen to go." Thus this decides the whole. Thenceforward, if one of the policy is thus done away, but if the name was any intention that White shall go, but his name is inserted merely for the purpose of getting the insurance to insure, it is a fraud in the policy. For any such clause of fraud will vitiate the policy. It must be like Caesar's wife, so that she cannot be suspected.

The subject matter must be named, but must not be specifically set forth. "Goods of merch. and c. as good." is sufficient. If of Fright, "Fright: don't." But Bottom's Bond must be insured: economic. They are not included under any other terms. It was necessary to "fright" or name the goods, but if they are named, the insurance will attach to the other. As in a case where a man insured goods to a certain value which he paid more tortoise shells. "Fright: the insurance will attach upon them only, other being none of either on board, the Insurers were discharged.

Cromer, 1793. That Bottom's are not goods, 6th June 1794.
Lev. Moratoria

Now in this case of Dot Bonds as in all others, the
usage of trade will make a difference. It has been the
usage of the Insurers to ensure: Dotting Bonds as

Further, there are certain articles which must
be named. The reason is, they are not in one description
and are not liable in the same way. And some others
stand on different grounds of reasons. The Master, Clerk,
the Proctors of the Ship may be insured. But they
must be specially named, for they do not fall with
the denomination of Goods. So by the English Law which
is agreeable to the Georgia Law. goods lost on the
Deck must be named, for otherwise the premium is greater.

Now in this Country the practice is to insure
works not known in the Eng. Policies. In one trader
the Indies, we insert the word "Cargo on Deck", in a
Bond Cargo. This is considered as giving the Insurer as
much notice as if an-insurance "Goods lost on Deck".
But the Specific articles on Deck, as so many hogsheads,
and not be named. As to the Law, whether Foreign Goods
leave to carry out in the bottom, fall under the de-
nomination of Goods leaves to much and say (i.e., Cargo)
the rule of this. They are included if they are carried out
in the junction of commerce, the least the Insurer will
be, as far part of the Cargo. If a loss is occasioned by having the
name goods overboard to lighten the vessel to some of these and
contradict his part. But if they are carried out as indivisible
party, the same is to count. They are not considered as part of the Cargo.
if lost the insuring are not liable. Month 1926.
Sec. Abercatoria.

The voyage must be accurately described. The place where the ship begins her departure, the place she is bound to... the place may be greater at one time than at another. If the insurance does not describe the voyage correctly, the insurers are discharged. This was a case where the insurance was "from Jamaica to London." What do you understand by this? I agree that the goods were to be taken on board at Jamaica. It was described right, but the insurers were discharged. You think there was difficulty? Why she took her cargo on board at Elizabeth. She perished 2 Clays than 2 months, and the goods being perishable were lost. The policy was held void, for the insurance supposed at the time of making the insurance that the goods were to be taken on board at Jamaica.

The insurance of a Letter of Marque raised this In... She was insured to carry goods 6 weeks. The ship went out 2 weeks, then returned. She stayed in Port. Some time 1 then went out. She was 2 weeks longer, returned 1 then went out. She was 2 weeks longer. She made up her ship. In her last trip she was taken, it was determined that a policy of insurance to carry 6 weeks, means 6 weeks successively from the commencement of the voyage. Going by Lyres to Brogade...

This was a case of this kind. The insurance was at $ per ton, Baltimore to London. The vessel went out for Falmouth in Eng. It was taken before they got out of the Chesapeake Bay. If course, before she came to the dividing point. Now how do you know the
was not going to leak? It was concluded there was only an intention to deviate, but no intention to deviate will not vitiate the Policy. The consent of there is no actual deviation. The Court said there was no intention to deviate, for there never existed to go to Calcutta at all. We are able to ascertain by his clearing out where the intention to go. The Court took this distinction: when there is an intention to prosecute the voyage, they intended to deviate from the direct course, but no actual deviation, this intention will not discharge the Insurer. But if she is insured on one voyage and that has no intention of pursuing it, but sails upon another, the she has before the archives at the dividing point. If the two voyages, the insurers are discharged. Woodbridge to Bombay to Egypt. Suppose she had been insured to Plymouth, cleared out with an intent to deviate. To go by Ceylon, if you are not on the dividing point, it was captured, the insurers not discharged. 2 Bac. 342. But in the case of Boston, this voyage was always intended to Plymouth, there was no deviation or intention to deviate, the the Court declared as they were on the ground that the voyage was incorrectly described. This will give you the distinction. See also 2 Bac. 88.

There is one singular case where liberty was given to a policy to touch at a certain place but the Master did not. He sailed past it was lost. The insurers contended that this was a contract to touch, that it had not touched, they were discharged. But the Court held that there was no such Contract, but
Sax Mercatoria.

merely a liberty to touch, if he wishes, yet if he do not
touch, the rest was not increased. The insurers were
not discharged.

Sec. 037. April 30th, 1813.

It frequently happens after you come to a cert
ain point in a voyage, different courses may be
taken to the same place. If the course is not point
3 to one the Master may take which course he pleas
es. As in going from

to Jamaica, there are 3 Courses. In time of war some one of the Courses may
be made the safest, as privates may be injure
ing both the others. From with respect to this it is
a principle that the insurers are entitled to the dis
cretion of the Captain, if the Master has priva
t instructions from his principals, it does not make
then known, the Insurers are discharged. LORD 76.

I have a few observations as to the words

lost or not lost. They were formerly introduced in a
Policy on a Ship at Sea at the time of the insurance
to provide for a recovery or case she was lost before
the date of the Policy. These words can have no
signification in a Life at Sea. An insurance of this
kind is good. It is a fair bargain of hazards. If the
owner tells the truth, there is no fraud in the con
tract of the Insurance, no concealment or suppression
of material facts, the Insurance is good. But if
there is any misrepresentation or concealment of
any fact or facts, which if discovered would have made
a difference in the contract, the insurance is void.
Dear Mr. Jemal,

There is another clause inserted in the Policy empowering the_agents_ of the Insurers to do many things in case the Ship is lost, the expense of the Came, or the Insurers discharged, but under the clause above the Came are not beyond their duty in saving the property, either Ship or Goods. This will explain a difficulty which may strike your mind, when you see cases where the Insurers had to pay more than the whole loss. This happens under this clause. The Came has been totally, or almost totally, great damage, or the Came is not to save the Ship. Now they are (under this clause) agents, acting for insurance, and the Insurers must pay them. This case is very beneficial to Insurers. If the Came

Please note: The text is slightly cut off. The message appears to be discussing clauses in a policy, particularly those empowering agents of the Insurers to take actions in cases of ship loss or discharge.

Sincerely,

[Signature]
In this Policy the receipt of the Premium must be inserted, not that he has at first received it, but because, outages to have received it, under which the Policy can now say the Premium has not been paid. But when he comes to sue for the Premium, the Policy cannot be introduced to prove he has received it. It proves no such thing. Immediately after the Policy follows the Memorandum.

By this memorandum, as I mentioned before, there is no liability for part of the certain articles, as Glass, Fish, Salt, Fruit, Wool, Hides, with an exception which I mentioned. In other cases there is no liability for a particular sum unless it exceeds 5 per cent, these are Sugar, Tobacco, Hemp, Flax, Furs & Things - in all the articles there is no liability for a particular sum unless it exceeds 3 per cent. Now instead of reducing the Policy by altering it entirely, or embodying the memorandum in the Policy, the instrument remains just as it was 200 or 300 years ago, but it is accompanied by the memorandum. If there is no memorandum attached to the Policy, there must be a recovery of the loss exceeding one per cent. But the memorandum is now always inserted. You could not perhaps find a policy without it, in such case the recovery is at supreme justice. The Policy & the memorandum together form the instrument.

A Policy like other instruments may be treated by the intervention of a mediator. When a mere take has actually been made, this doctrine is laid down as if it was applicable only to the specific case, but it applies to other cases. A Court may be attending some case,
Sue Manciutius.

...Chy will not allow testimony to prove that the

slumber was not written according to the intent and

agreement of the parties. But cases of this kind

have been miss listed. In all my practice I have 

never known but one instance when a deed was 

factually in the personal

occupation of a Deed. A case of this kind arose about 

the persons had his instructions before him to make 

a mistake in it among the Deed, by leaving one of 

the eight lots (of the ten or twelve) out. He made a 

quartering of the ten or nine 30 Aces. When the parties 

had only bargained for 17 Acs. Chy directed the Deed 

to be altered. It was evidently a mistake. 18557. Oct. 8th.

It is then your one main thing to say that a Chy will 

allow parol evidence to be introduced to show that 

a mistake has been made 9606 on a Deed, if it is 

true that would seem it to be certain.

Another De. arises, can parol evidence be 

introduced to control a written instrument. In 

principle it is clear that parol testimony can never 

be introduced on a Deed to control a Deed. But 

it is if it can be done in Manciutius, transactional 

value of 77 Acs. I am very confident this is no such 

principle on Deed. It would be a most dangerous 

theme. It is denied by Manciutius, the city several 

times to effect in the Constitution of Manciutius 

that some Deed could say it can be done. It would 

a principle productive of much mischief in any 

generally now in Manciutius transactions, than in 

any others. I have looked this all the decisions in a
Sax Abercatoria.

Thus is that one solitary case of holding the doctrine. I suppose there is no such practice. This case has never
something of a figure as it is reported by half a dozen
different authors. Often those lawyers say there are half
a dozen such cases but in fact it is the same case
reported a number of times. You may see it in Surry.
It stands alone: unsupported by any authority. There
was a practice of the kind another before no one
Sequent to this decision.

The next thing is what is done by the court
at upon the point of

Warranty.

The policy is the contract of the Insurer, & by
at the instance is not bound to do any thing, but there
are warranties on the part of the insured which in
their nature are such that they are not the founda-
tion of any action. As such, they are engagements
which if not complied with, the insurer are
discharged. They are all in the nature of positive
precious—that is to say, the policy is binding on
the Insurer, if the Insurer does his duty, but it is
not binding, provided the warranties entered into are
not complied with.

These warranties are the law and this subject
is very interesting as there are more cases arising
under this than any other branch of Equity. There
is no end to it. The court makes warranties often a thing
to be this or that. The implicit warranties, by implication
of law from the nature of the case.
Sen. Henderson

are thus void of indicia (as if name only on both sides).

Again, this is to be taken strictly; meaning is made as to the liability being greater on the risk being increased, if the warranty has not been performed; the injury or the discharge of the recovery can be had. The warranty is a condition precedent. Now in case of fraud by misrepresentation (not warranty) it is different, if the risk is not increased, as, e.g. to say that the risks would sail by such a line, it being in time of war, that she has on board 10 fust sail, or 6 Bays, it turns out that she has got out sail of 10 Bays. Now this was a mistake of the risk is not increased by it; the insurance is not effected, but remains good. But suppose she is insured on the engagement that the Ship shall sail with so many or such (supra), which amounts to a warranty, if she does not, the Insurers are discharged. You will understand that all such warranties are attached to the Policy.

Again, it is not matter of any consequence whether the loss happens by the nonfulfillment of the warranty or not; for if the warranty is not complied with, the policy is void. To explain when the risk, e.g. the insurance warranty the Ship shall sail by the first of August with convoy. She does not sail by that date, why? Because she was stranded, etc. She did not happen because she did not sail with convoy. The insurers are discharged. Then, even was any
For Acreton.

...ability attached, to cause the vessel back at the time.

Again, the property is warranted to be innocent, it was not so, but the vessel was struck by lightning, the loss the result of the property not being innocent. The insurer is discharged, the insurer need not, propy, if or not being so, the insurance was void ab initio. Keep this in mind, that no liability can attach to the insurance void ab initio.

A Case. A vessel was warranted to sail from Liverpool, with 50 hogs. She had 16 hogs on board, & now a few miles below it came a fair wind & the officer sail. With the 46 hogs & in the course of an hour or two two of her other 6 hogs. After this the ship was captured, the insurance was not liable. It was urged that the non-compliance was no injury to the only sailed a few miles along the coast & then, pursuant to your, consequence of the ship having but 16 hogs, the ship sail. But the answer to this was, your agreement was, that you would sail from Liverpool with 50 hogs, as you have broken your engagement, of course your is charge from mine. 15. 70. 39.458.60.

This warranty to make it such must be the face of the Policy, or more generally, or back go. If it is written on a separate piece of paper, & ever attached to the Policy it is not a warranty. It is a representation. If it is false, it is a false representation, the remedy on what will be mentioned.
Six Mercatoria.

henceforth. To make it a warranty it must be written on the same piece of paper, to be part thereof. 1st. That there is an express warranty, that the vessel shall sail before a given day. Now, if she does not sail before the day, nothing can make the insurers liable. There can be no coming off in the part of the insurer or the ground that he was not in fault, — or suppose an Enlargement was laid, and she could not sail, the insurers are discharged. so, on payment of the Insurance is, that she shall sail before such a day. Suppose the engagement is, that the Ship shall sail on such a day, owing to a Storm, or because an Enemy was at the month of the Harbor she does not. These reasons will make the insurers liable. The engagement must be performed, else the insurer is discharged. 2d. If the disaster had occurred in the Storm, or knowing that the Enemy was at the month of the Harbor, or the Ship was lost, would not the Insurers be discharged? 3d. But on another ground. They do not to discharge, if they lose, insurers by the want of the Master.

Another case, where the engagement was that the Ship should sail after such a day. The reason of making an agreement, of this kind is, that in certain climates there are prevailing hurricanes, storms, at certain seasons. In this case, the vessel was insured at Martinique.
was to sail after such a day with liberty to touch at Guadaloupe it was going to some place in England. She sailed before the day to Guadaloupe, but not with an intention of going on her intended voyage to Eng. She meant to return again to Martinique if she sail on her voyage after the given day. She arrived at Guadaloupe spending sufficient time there to make up her cargo, having remained there till after the day she was to sail from Martinique. She sails directly on her voyage from there and not return to Martinique. Having it in his light, there is no reason why the Insurers should not be liable. The vessel safe at Guadaloupe, she did not sail from there till after the given day. But the Co. had the Insurers discharged, for the engagement was not to sail from Martinique till after such a day if this contract was broken.

It has been contended that there is a decision opposed to this doctrine. But I think otherwise. There is nothing in it that mars the symmetry of the law. It was this. The ship was to sail on or before such a day from Jamaica to a particular port you will observe it comes post in Eng. The actually sailed from Jamaica on before the day. But she did not sail on the voyage. She sailed to a different Port on the Island out of his course to Eng. with an intent to sail from the latter port instead the day. But there was this in the case when she sailed from the first port, she had no idea of commencing her voyage. Her object in going to the
other part was to join a convoy which was to start from the port before the day fixed for her to sail. But when
she got there she was detained by an embargo till the next day. She finally sailed 2 days after the expiration of the time. did the
Inspectors were holden liable? Now I conceive this case is not opposed to the doctrine I have laid down for it is a principle of
law, that you may sail out of your course to join a convoy. It is no deviation. She sailed when she started from the first port, on her voyage
to the 

by as if she had gone direct from that port. for She arrived from the nearest course to join a con
voy, as this she has a right to do. The warranty she was strictly complied with. If she had sailed to the
last Port with any other view or for any other pur
pose the Insurers pronds have been discharged: and this the Court themselves say. So that she did not first
set sail on her voyage from the last port, but she
did from the first. And therefore there is no reason for why the Insurers pronds have been discharged. (See 184 69th 60) Parke 326. Doug. Halsey v Ferguson. Ne. Burd. Harb.

The next warranty is, sailed with convoy.

Nothing into excusa it, like the other. If there was no con
voy about it is no excuse. This contract is to sail with convoy. What is a convoy? besides it to under the protection of a Mean of War? This is not the mean
ing. it must be a regular convoy appointed for that purpose by order of the government. It is not material whether this convoy goes the whole distance or not, so that it only went as far as appointed by government
sex mercatoria.

I am the first words. Then you see it is no matter how great the convoy if it is not sufficiently ported, how long prior, it is if it is appointed by persons. 1 T. 34.

This convoy is not to be from every port. The convoy meets in a certain place, as e.g., at the head of the ships which are bound to that port, which comes in which the convoy sails, meet the convoy at the place of rendezvous. Now suppose the ship does not sail with convoy from the port when she is instead it is lost before she reaches the convoy, in the insurers liable? Yes. The to sail from the place of rendezvous with convoy. 1 T. 34.

There may be two convoys for the same island. In this case, it is the duty of the master to sail by nearest convoy. If on her arrival at the nearest rendezvous she finds the convoy has sailed; she may pursue her voyage to join the other, of it is lost before she reaches it, the insurers are liable. This is the Engl. Laws article in this particular convoy to Sols. 1 Emerger. 1669. 2 St. 1265.

To sail with convoy means to sail with convoy for the voyage, the additional words for the voyage make no difference they are immaterial. It means for the whole voyage. Sometimes instead the convoy is not to go the whole length directly. As if the convoy is to go to the West Indies Islands, now when they get to a certain point they stop, if at the convoy take their chance, until they can conveniently dispatch a part of their force to the different
After this, it would take all the time come home at a distant and individual port in the North to the port of destination. This time is sailing with Convoy. The Insurers liable for loss.

The case of Billy on turn on Doug was six. The ship was warranted to sail with Convoy. The time part of the voyage with Convoy was from Bilater to the latitude of Cape Finisterre when the Convoy stopped. (It did not go to the dividing point as in the last case), the Insurer was, were the ship Insured at

the point? It was not considered the whole voyage. The engagement was to sail the whole voyage with Convoy. It is true the warranty does not always mean that the Convoy shall go to the Port of destination, as in the case above, of sailing to the 110th degree thence it is by custom to divide at a certain place. In such case the Insurers are liable. If there is a Convoy for a particular trade, if it does not go the whole voyage, it is sufficient if the ship is convoyed as far as the Convoy goes. If the Insurers are liable, if the Convoy is one appointed by Govt. The case is

2 Th. 351. Contains all of Law on this subject.

There are some cases which fall within the principle I have done, which are or themselves as little different from any of the cases I have stated. Case. The year at nouveau for all of us. The ship is 97. Kilos. I am not aware of any law of pool. The ship was lying at Victoria Insured for Eng. 2000. This has not sailed for 97 Kilos to join Convoy. 1. If lost, the Insurers are liable. 2.
Sea Marocatoria.

But there was a dispute as to whether the Convoys are binding up the subjects from Toledo, or she sails under the Convoys of the Frigate. The lost the Convoys at not getting back to Toledo, nor did she get to the Brest in time to sail with the Convoys, the winds being opposite, and the lone away for Eng. The insurers held on bills for it was considered she actually sailed with Convoy. This is not a case to show an excuse for not sailing with convoy, for she did sail with a convoy appointed by Government. For if she had actually sailed without convoy, no matter for what reason the insurers are liable to lose. Marshall 267.

Another case. Lisbon was the place of rendezvous. The subject was to sail from Oporto to Lisbon. She did sail under convoy of a St. Hope of war, but lost it. Not being able to get to Lisbon she was away for Eng. It was lost. The insurers were held liable.

But this is the last cases of sailing without convoy. But if this subject had sailed from Oporto in voyage to Lisbon which she might do, but finding the wind make Lisbon had come off for Eng. It was lost, the insurers are not liable. Poss. 267.

There are particular usages which it is no残疾 to attach to. These are usages to sail from one port to another to join convoy. As there is a particular usage by that is complied with the insurers are liable. E.g. it is the course of the Trade, the vessel sails from the South of Spain, as e.g. on Caravass, or sails from there to Eng. It privileged to sail.
Lex Mercatoria.

Convoys from these (see Fig. 3) to Amsterdam. Now ship from a gulf is insured to Amsterdam. The sails to the Downs (Fig. 1) with convoy. If for some reason she sails from the Downs without convoy, and is lost, nowhere the Insurer liable? Yes for this is the usage of the trade & they all understand it.

The Ship insured by engaging to sail with convoy, implicitly engages that she will have sailing instructions from the Commandant of the convoy, which means instructions that she may know his sign & in case he is disposed that they may know when to meet. & if she has not these sailing instructions, though she sails with convoy, the Insurer as a general rule, are not liable. For the Insurer depends upon the insurer's getting these instructions.

I will state some cases. The Ship arriving at the place of rendezvous before the time appointed to sail, the convoy was gone, but a man of war was still behind under whose auspices she sailed. She sailed, to overtake the convoy & sailed with her, but got no instructions from the Commandant. The Ship was lost the insurers held not liable. Park 375.

The ground of the decision was this. She sailed from the Port without convoy to meet the convoy. She came across a man of war who was to have been a part of the convoy, & she applied to him for sailing instructions, but he did not give them, not having yet joined the convoy. The convoy being gone (at that signifying time) she sailed. The last she could to sail with this 74 gun Ship, 74 years.
Lex Ipercatoria.

crook them. She might then have gotten sailing instructions, but neglecting to do so the insurers were known to be discharged. This was no fault in herself getting sailing orders from the 1st of the Convoy, but the fault was in not getting them from the Convoy when she came up for this she might have done.

It has been a great De. whether sailing instruc-
tions are absolutely necessary in all cases. She must sail with Convoy if the warrant, but is the vessel all cases to have sailing orders? It appears to me it is not absolutely necessary. It is a condition precedent that she will sail with instructions, and if she

lacks to get them, when in her power the insurers, etc. But if this was no such neglect, or she could not get them, the insurers, Appellant, are not dis- tressed the case above is not approved to this opinion. Sup.

she is in the Harbor owing to violent storms present-
ent on the following instructions, it is lost after she sails or if the Commandant on application says I will give them to you as a day or two, you may sail along; if he does not give them to you, she is lost if the insurer is not distressed. It is clear that the engages-
ting with Convoy does not imply that the must be sailing instructions provide at all events, but get them, of course... 1804 78 256 166. Park 394 9 Ser. 12 56.

Again the must not only depart with the Convoy, but she must Continue with it, if the can. It is not necessarily implicit that she shall, at all events, continue with the Convoy. for by ships of weather, she
may be scare away from them. But if the Master is ho,
his own negligence precluded from the convoy the evi-
us in discharge. This was a case when the vessel arri-
ved at y rendezvous I bring a very sharp sailor, t he
Capitan having a little business to do, waited 2 hours
after the convoy got sail. This is to say that he e asily
overtook them. The vessel was lost, whether before or
after she overtook them I do not remember, nor is it
material. The insurers sue vessel for 400, remaining
had 2 hours the convoy to sail with convoy" was
not complied with. Part 349.

If short of weather is the cause of the separation,
it is a sufficient excuse, t the insurers are not disch-
are case of loss. Part 344, 341. Part 340.

So sometimes when the vessel has sailed, she
h as parted, t e have joined, but did not, the insured
s discharged. But when she is prevented from joining as
by a privative, this is an excuse. If it is the neglect
that the master does not join after he has been told
of it, the insurer are discharged. This is a case where
vessel was prevented to sail with convoy from Potowmack.
They lay three two months before they had an opportu-
nity of sailing. The convoy then came along, when
signals for all the vessels are come out to join them. It
was a clear fine day, but the night was very dark
a Turk. Privative who had been, watching took
advantage of this, sailed all night in company with
them, so in the morning took this ship. t he ins.
never received her sailing instructions, t the Ro. was
Sir: Alexandria.

whether the insurers were disinclined, on the grounds of her not having her sisters? We decided the insurers liable because there was no fault on the part of the insurer. This is per Curiam.

Sec'y 3d March 31st 1813.

The next warranty that the insurer makes is that the property is neutral. What is neutral property? It is the property of the subjects of any country that is in amity with the Belligerents. This warranty contains more than a warranty that the property is neutral. It also contains a warranty that the captain shall so conduct that he will not forfeit his neutrality. The ship must be navigated according to the laws of nations.

In such case the insurer will not be liable if the property is not neutral, nor will he be, if the neutrality is forfeited by the conduct of the captain, unless he insured as the barracks of the master. But I leave this consideration out of the case since I am laying down the law. If other the property was neutral at the time of insurance, it becomes enemy property afterwards, the insurer is liable. E.g. Say the U.S. are neutral, a citizen of U.S. warrant the property neutral, if it is so an insurance is made. 3 weeks afterwards the U.S. become a Belligerent, the property is lost, the insurer is liable. For this is a thing in forcen. If the insurers give false information the insurer is discharged. But if the property is warrant to neutral, if this is the fact, the insurers are liable.
Sez. Mercatoria.

The sale of property at the time of the insurrection is not the only cause to be considered. The above case in point was this. The insurance was made on the 28th of Nov. at 1 from London to Rotterdam, warranting a neutral. Ship + cargo, property. The policy for the 11th Dec., and on the 20th Dec., hostility having commenced between the Eng. & the Dutch, the Dutch ceased to be a Neutral. Pursuant to the policy, the cargo ceased to be Neutral. Property, & she was captured by the Eng. on the 28th Dec., & condemned as lawful prize. The Insurers were not liable.

A judgment of a Foreign Ct. that the property is not Neutral, but belongs to an Enemy, is conclusive evidence that it is not Neutral. As however unjust the judgment may be, no enquiry can be gone into to show the judge erroneous in the property neutral. This is the law of Nations, & all the governments in Europe have acquiesced in the principle, except France. 1 Comyn's 4th Ed. p. 458. It must be the judge of a Ct. of admiralty, a Ct. competent to try titles, the Dec. It must not be by any new English jurisdiction, but by a Ct. of Admiralty. This Ct. is common to all countries.

Under this head there has been a great quest arising from the attempt made by France to establish Consuls at Foreign Ports, who took upon themselves the liberty of deciding us as to prizes whether good or not; for it is generally this was a Ct. of consistent jurisdiction.
Sec. Mercatorius.

There were many cases of this kind when the property was
confiscated in Spain before the war, when the French had
established a Consul. This has always been considered
as a case of no jurisdiction over the subject matter.
In all cases the insurers have been held to be liable.

There may be a case of condemnation in a port of
Norway, by a French Consul. In the case of
before the C.t. of H. R. 37. The determination that the insurers
were liable, the property was not condemned, is conclusive evidence
that the property was not neutral. R. R. 268.

If the C.t. is a regular C.t., it appears from the face of the
inscription that the property was not neutral, there can be no
further controversy. Bowers, 2 Ind. 334.

This rule has been established by the Commercial Nations, except France, for a long time.

So a condemnation as good prize has been
determined to be good evidence that the property was
not neutral. Black 361.

Now if the specific grounds of condemnation
set forth, (e.g., the ship is not neutral, nor the
property is not neutral) is a distinct ground from it not being neutral, e.g.,
the grounds set forth as cause of condemnation, does not
necessarily imply that the property is not neutral,
then it does not satisfy the warrant, if the insurer
is not discharged. E.g., an American ship, was taken
as neutral from London to Virginia. She was cap-
tured by a French Privateer & carried into Guadeloupe.
The sentence of the C.t. was that she was distinct to the
Sec. Mercatoria.

Eng. lands a hld. 80 Barrels of Powder on board. Not because the 80 Barrels of Powder were contraband goods, but that makes no difference. She was not condemned as not neutral. Now if she were condemned on this ground that judge would be conclusive evidence. I must have been a neutrall. Now what did Judge of condemnation speak of in this case? Why that she was admitted to Eng. Ports. Well, you cannot infer from this that she was not neutral. The judge proved such thing. She might have been bound to Eng Ports & still have been neutral property on board. In this case, the Insurers were made liable. You see the ground of the decision, y.4.16.523. And you may see a great number of such cases, where the insurers were made liable, & when they are made so, the adjudication you will find, of the Foreign lot, did not express that she was not neutrally property. They have now got more reasoning, & if they have any interest in it, they will appeal to Judges directly.

If the sentence is ambiguous, so that you cannot infer with certainty that the property is not neutral, the Insurers are liable. Doug. Bernadi v. Moolay...

In short, if she is warranted to be neutral, she is so, until proved to the contrary. Under she is captured, the sentence of condemnation is. Only way you can prove her not neutral is & case the Judge decides that the Ship is condemned, then goes on to state that the Goods were
Consignee to Dennis, it was strongly suspected that the Capt. claim his damages on board. Now this act in other proofs that the property is not neutral. They however condemned the Ship, & the Insured was not condemned. But a sentence of condemnation that it was enemies property is conclusive.

In the case of Roger vs. Aquilla, (1788) 3 the

basis of this decision it was thought impossible that the Courts should practice such inequality in the principle of what Nations were more jealous than that the judgment should be conclusive. But since that, there has been several cases where the judgments have not been his conclusion, so there has been several attempts to subject the evidence on the grounds of justice. Here he read the above case. It is also in Marshall, the iniquity of the Case is this: "By the sentence of a French Court of Admiralty, it appeared that the Ship in question, warrants American, had been condemned as enemies property for want of having on board a complete equipment of the arms, such as is required by a marine ordinance of France, & a judgment by the Court to be requisition, within the meaning of the Treaty of Commerce between France & America: held to be conclusive evidence of the warranty of Neutrality, as in fact the Ship was American." (53) This Case differs from the one above because here it is decided that she was enemies property, but in that case they did not decide that she was Property of an Enemy, but they condemned her without stating the reasons.
Sex Aberrantiae.

Now it is a rule of Equity that where property is not lost by the enemy, although it furnish him prima facie evidence that the property is not neutral, yet you may then by proof that it was neutral.

You will observe that it is even a defect to the Insurer when a Ship is condemned (not because she has gone contrary to the laws of Nations, but because she has gone contrary to the decrees of a Full-grown, made to govern their ownSubjects) if these decrees they will enforce: but if a barbarism under these decrees the Insurer is not discharged. The decision went on the ground that by the decree it was Enemy's property. In the above case there was a decree that she was good prize, but this was a decision according to the Law of Nations.

Now there was a Treaty providing that any vessel to be considered Neutral should not have on board an officer of an Enemy's Country, but that she must have a note of equipage, a list of the Crew, and a bond of the provisions or provisions was considered as cause of condemnation. You at the same had a foreign officer in no list she was accordingly condemned. To E. Benger's observations in the Case above say, the decision is clearcutting.

Now you will mark the distinction, that whereas they decide, state the evidence, but do not say that its Enemy's Property, if that evidence will not bear this out, the insuring are not discharged.

You will observe that no fact relit in the sentence is conclusive, though it be part of the
principle in which the sentence is founded. It is nothing but the sentence of condemnation which is conclusive. 5 Dec. 1377.

As to Forfeiture of Neutrality

The thing which makes the greatest difficulty in this subject is the question as to the right of search. The law is, whether a neutral before resisting a right of search, it takes a controversy (not because it is not neutral but) because she resists, the insurgents have left the right to resist, resisting will not discharge them, as furnishing conclusive evidence of non-neutrality. It seems that there is no law upon this point. The right of search must be acknowledged in every case. No nation can yet contend that contraband goods sent to carry on neutral bottoms by, if so, this must be a right of search, so it never be prevented, neither that any nation ever yet contented that a blockaded port be entered, without incurring a liability of confiscation. Of course the right of search is unquestionable.

But there is a case of a different kind. Suppose a vessel really neutral, insists a search is unlawful, and that ground, the Insurers in dispute. But the law I speak of is this, whether free ships shall make free goods, or in other words, whether the carrying of property in neutral ships shall make the property neutral, or whether when a Belligerent seizes a vessel, she finds goods on board, can the ship be carried into Port? The first claim that a Belligerent D.
Sive Mercurialis.

The enemy's property is not safe in neutral bottoms, as held in 1782. This is the first citation of the text. The oldest collection of the marine law is the London Law of the sea. The words are these: "If enemy's goods are found on board a neutral ship, they may be taken." Paulus lays down the same rule as the same words, no doubt copying it. In all his work, we find he does not entertain a different opinion. The eminent Dutch writer Knyphustocus lays down the same doctrine. There is no exception to the contrary except that there is now, allowing a later writer recognizes it as the law of nations. But in battle, a modern French writer, by most amount of any, lays down the same doctrine both as to the right of requisition, the right of capturing enemy's property carried in neutral bottoms, battle Sir all these authorities. In battle vol. 3. Article 7th propositions 112. 8114 of 71st article.

The French in 1553. (Bouyez. 458) that in France they made a decree that the ship as well as the goods should be forfeited. This decree remained in existence at least a century. In 1683, it was altered, and said the goods only were liable. (Bouyez.) This continued till 1681, when the old law was re-established. The ship was thus saved. They made some alterations in 1704. I do not know what. In 1744, they restored it. Mr. 1 claimed that the goods only should be liable, not the ship. But further, in every treaty of commerce, unless they refer to, it is as existing. It is recognized in the treaty of 1782 between America and Holland.
at Law qualifying it that, that there shall be several.

of the Ships taken by a Company with an armed

force. They alter the Law of Nations so far as respects

themselves, by this qualification. In Spain, in a late

decision, the same rule was adopted to that. But

years to be a decree of the States of Sweden in 1664

where they recognize this to be the Law.

Have they been no decisions to the contrary?

The Court did not Scintilla juris to be found to the contrary in

eight or Single decision some years ago. 357 R. 3d. 136, 137.

The decisions, since have always been

conformable to the Law of Nations.且 the rules say

that such cases are not intended to be opposed to gen-

eral Law, but that it can never satisfy the mind

they are correct; it is really a case in opposition.

The case was this: It was a Tuscan Ship, she had

made a coast which was in England. 357 R. G 3d. 136.

Of course it was enemy's property. A Spanish

Ship demanded her right to search, the subject

was an joint at the Spaniards. She was captured comes

into a Spanish Port, or sometimes, to the Insulation

went or to some State, that is the cause, that she contested

the right of search contrary to the Spanish in-

ance. If this ordinance was different from the Old

Law, the Eng. decision was contrary to “that, that, in

War, was made that, the wine of the Etruria, at the

right of resistance, it is an exception of her neutrality.” But that ordinance is

in Conformity with the Law of Nations, of course.
Sir Mordacoria.

Spain now has a right to search. But the case might have been otherwise. For the Spanish appeared in a foreign color. It was in the Mediterranean. Such being the case, there was no infringement of neutrality. For, the Spanish were not bound to submit to a search by an Algerian private, if the Spanish appeared to be. Thus, there is no evidence that the ship meant to resist. Except the Decree. But as it was deficient, it is on the Spanish side. For, we are not at liberty to assume it. Therefore the right decision that the Decree was not to proceed to a just right. But this decision has been since overruled, by a course of decisions, the law is now well established. The last case is in 3 T. R. 23. In all, also on McCardell 323, it covers all the other cases, it contains all the law on the subject. I know of no later case.

Many individuals, Nations looked upon this case, as respecting the right of search, as injurious. Commercial Nations, powerful at Sea are anxious to extend the law. Holland was once a great Commercial State. Some time France had great power in the Ocean. A few now claims to be mistress of the great highway of Nations, perhaps the actions between of Constitution and the British, the United States, of Macedonians, the Constitution of the Jones, the wares of the French, the House of the Peacock. If. But England, Sweden, Denmark were less powerful. They determined in 1730 that they in change the case by force, it formed the system of the arms of neutrality. It does not apply.
produce a conception by France or England. But since that time, the power of France sailing on the Ocean, they have countenanced the armed neutrality. It had an effect, however. The King relented the practice, but made no concessions; I never gave up the principles, but returned to the practice again. The armed neutrality was introduced a second time; and we all know how it was crushed by Lord Nelson. I have collected all I could find on the subject, but it is clear that all Nations recognize a right of search in Neutral Waters.

[Signature]
Fellow. April 1st, 1813.

It seems from what I have said, that it was not necessary that a Ship be neutral, or that the property on board is neutral, but that it is not neutral. It is clear that the Insurers are discharged. It matters not whether the Ship happens in consequence of its being a neutral or not, being neutral. For if it was not neutral, or insurers, it is not a warranty that the property is neutral, on which the liability will attach.

The warranty that the property is neutral, implies that all the Ship or property may be neutral, yet if she is under such circumstances as not to be protected from Capture, the Insurers are discharged. As e.g. if she was carrying contraband goods, or going to a blockading port having notice of the blockade, although the property on board is neutral, yet it was not such as entitled her to protection. The marine law is, that in such case the Ship may be captured and the Insurers are discharged.
Sec Mercatoria.

It also seems that the ship, if neutral, but covers enemy's property on board, there is no question about its being neutral. The ship is liable according to the law laid down in the last statute. The right of search exists if she may be captured. Then such a ship is taken into port by a belligerent, on demand, albeit it can be proved that if property is neutral, yet if the sentence of the Cts. is, that it was enemy's property, however unjustly practiced, it may be, the judge is conclusive that it is not neutral, & the insurers are discharged.

But if the judge is rendered not for a breach of the Law of Nations, but for a breach of some particular ordinance on the insurers are liable. The ordinance is no part of the Law of Nations. The Law of Nations may be altered by treaty, as respects the nations, parties to the treaty. If it be, the insured ought to be prepared to navigate according to provisions of that treaty. It is a breach of the treaty, if they are not prepared. For it is a condition precedent that she shall be navigated according to the treaty that the insurers were to be prepared with all the documents, papers, required by that treaty. This is only calling up a view what has passed. But in this case the insurers supposing that the insured will thus prepare take his Premium accordingly. The doctrine is supported in three propositions.

First. that the Belligerents have a right to search neutral merchant vessels. Not
Sec. Mercantilia.

Men of war, that is to say, vessels of war or ships of a neutral in a neutral port, is a matter of dispute. The protection of a neutral nation for a vessel in a neutral port is a matter of dispute between the neutral and the belligerent. This was the case of an American ship of war being searched by a British man of war.

No neutral has a right to resist the impressment of conscripts, and the vessel is not a neutral vessel if the vessel is impressed on the part of the insurors and exchanged for the insurors, according to the custom of the nation by sailing without the proper papers. This is sometimes said the Books on this subject are contradictory, but I suppose that is not the case, because it is in the cases themselves, too. There may be some things which have fallen from the books that appear contradictory. This neutrality is perfect by sailing without the proper papers, and if it does not, then that when they sail without the proper papers the vessel is not a neutral vessel. Suppose it turns out, in the case that a vessel is neutral, but it has not the proper papers, what is the proper position of the vessel in the neutrality? Can they consent to it? No, they cannot. Some say they cannot, in principle, but this has been many such conscriptions. It does not follow that the vessels are liable for the conscription unless a risk by it. So of these many obligations on the part of the insurors by treating the
Sex Mercatoria.

I have remarked that certain particulars required
The 7th is a Passport, which is a license from the authority of the neutral State, for the captain to take.
The 8th is what is called a Bill of Lading. This is only a specification of the nature and quantity of the cargo. Say an American is on the high seas, he bills a quintum across her, he does his passport is a letter rogatus, but say they this is not an American made effort, it is English. In such case, they ought to have a bill of sale of her, or a certificate of her being captured, otherwise there is a ground for reasonable suspicion.
The 9th is a Register of the cargo, or what we call a master's record of the cargo. The 10th is a Bill of Lading, it is the captain's receipt. You must have the Bill of Sale containing the prices of showing the quantity on board, to whom it belongs to the log book, having an account of the voyage from whom it sailed to.

Now, if she has all these, it goes to show she is neutral. It is prima facie evidence of that fact, if the papers are not forged. She is neutral. If she has not these or both, it is grounds for suspicion and warrants a detention. By the Bill of Lading, the nature and

condomsation. If she is without them, it is prima facie
Sed Moratoria.

evidence only that she is not neutral; it is an absolute
obligation for she may have lost her papers if after
all this she is proved to be neutral, she cannot be con-
demned. And all he a great loss happens by his being
carried out of the course, it retains a long time, yet
there can be no recovery of costs of the capture, and she
may be condemned to delight to pay all the costs, for it
was her own fault that she has not the paper on
board. Now are the Insurers liable? No. It is not
until the insurer have no right to enforce any pa-
sers. Further, she must be neutral, according to,
or in conformity with the Treaty between the Belts
grants to the Neutral, not according to the decree.

Suppose there not to be a Treaty as there is between En-
cien and France that then shall be a rat of every page.
Now it was never supposed that this paper was ab-
solutely necessary by the E. No., but it is required
by Treaty. Now the Ship ought not to be condemned
for want of this paper, if otherwise she can prove her-
self neutral. But the insurer has a right to claim
that the insurer shall carry this paper; for it insures
in the implicit engagement that the insurer will con-
form with the Treaty. For if he does not the rates may
be increased. You may see a case in 2 P. 705, 711.

In the Treaty between America and France it was
stipulated that every Ship (in case one of the neutrals
at war, which war it shall be by the neutral) should
not sail without a passport, i.e., a license to sail from
the authority of the Neutral Nation. The case was this.
Lex Mercatoria.

The Ship of Cargo was American. The Insurance was on the Ship goods from London to Guernsey, from thence to the Coast of Africa, during her stay there, before from thence to her port of discharge or allaying of the British West Indian Islands and America. The Ship goods were warranted to be American property. Now she sailed from London to Guernsey, without a passport, and arrived there. Safe, but Guernsey procured a passport. It was continually till the time of her capture. A French Privateer came across her on the Coast of Africa, captured her. The Captain showed the passport to the Commandant of the Privateer at the time of the capture. She was taken however (notwithstanding there was no grounds for capture) carried into a French port, and condemned. For what they condemned him for, I only know for having shown the passport there was no principle on which the condemnation could have been made, as the privateer herself was very respect the neutrals. The question was were the insurers liable? The legato did not happen because she had no passport, for she had one. But it was a condition precedent, required by the treaty, that the Sh. sail would passport to. But she had sailed from London to Guernsey without passport. She then taken believing these two ports evidence of her neutrality would have been wanting. Therefore when she sailed, the warranty was not complete without. Now this is the ground it is important to notice it, as there is nothing contradictory in it. The insurers had a right to have it at presenting protests by a passport.
Sea Berenberice.

when she sailed. No liability is attached as the vessel (a condition precedent) was never completed.

See a case in Pack 362, which was this. There was a French ordinance (20 part of the Law of Nations of a Treaty) that every neutral ship is liable to answer when the Supercargo on board was not a native of Neutral Country — or if be was a subject of that little gnat — a Portuguese ship was taken in the Supercargo on board was a Scotchman. There was condemnation under this ordinance. Why are the insurers liable? Yes, for it was merely an ordinance of France. There was no treaty requiring that Portuguese ships shall not deal with a neutral supercargo. Now had this thing been regulated by treaty, if they had not conformed to the provisions of that treaty in this respect, the insurers would have been discharged. In the above case, the insurers says you have increased my liability.

But the answer to this is — this was a regulation existing (not by the Law of Nations, or by treaty, but by a municipal ordinance), if we (insurers) are not bound to know or take any notice of these ordinances. The Law of Nations, does. Treaties are our guide, but this or that we bound to conform. Of course, the insurers must be liable. So, if it was by Law of Nations or by treaty, the insurers will be discharged.

Another Case. By the Treaty of Utrecht an agreement was entered into between Holland and Prussia that a certain document should be carried. The policy was a warrant, Dutch that is neutral.
but this document was not on board. She was taken con-

commit, i.e. she was not on the ensuing day. As to the

whether they were discharged? The fact that they were for

the Treaty was not complied with. Bank 35, in the

course of the argument there, are some things said in

written from the month of S. Albrauf. This was not

order once, the same as the treaty, but it appears that S. Al-
nrauf said the case would have been the same if the
document was required only by that ordinance. But,

this is clearly a mistake on the Reporter's part, that

is thus made to contradict himself. The doctrine then

is this. A breach of the Law of Nations is a forfeiture

of neutrality—i.e. of there is any alienation in law of

Nations made by treaty, a noncompliance, with the

provisions of that treaty, by the parties to it, falsifies

the warranty of neutrality. But, a breach of a marine

ordinance of any particular nation, does not falsify

of that ordinance, is not warranted by the Law of Nations,

on this ground it is that in all the cases of commis-

sion of American subjects under the French decrees and

British orders in Council, the insurers have been held

in liable. The same doctrine in 3 Dan. 2343, Stebbins 357.

In all cases of these ordinances made by a different

time are all founded on injustice as to respect of neutrality. It is

giving law to a Neutral, to an arbitrary Stated of Power.

But the insurers are liable, i.e. that of great object.

Then the judge, in the case above, in Marshall 23, 2343,

remarked that, the arguments in it, were essentially,

most luminous to that even sum.
Sir Meratonia.

Of Representations.

If a representation is not true, it avoids the Policy, but it is a different thing from a warranty. If representations are falsely made, specifically for policy, or for fraud, but they may be made innocently; in other case if they are not true, it avoids the Policy. If the Insurer takes his premium according to representations that are false, he confers on them, if they are not true, he ought not to be liable.

These representations are, by Parol or by Writing, the more commonly by Writing. I said earlier that if your representation is in writing, whether artfully or innocently made, it avoids the Policy. This it is to qualify it avoids the Policy, if the circumstance or fact is material, if it is immaterial, it will not avoid Policy. It is not like a warranty, which is a condition precedent.

A wilful misrepresentation is a fraud, so avoids the Policy. E.g. the insured knowing that she had sailed, makes a representation that she had sailed at such a time, carrying the idea that she had not sailed before. Now if he had said "she had sailed," without nothing else, the Insurer is naturally have enquired "when did she sail?". This was a false representation. Parker... and keep this in mind, when there has been false representation of a material fact, no matter how the life is occasioned, the insurance is discharged. Suppos e.g. there was a representation that the property was neutral. (not a warranty) if this was false. The representation was made for no purpose of getting
Sex Merculandiacum.

The assurance at a lower premium, the subject was lost on a point not noticed. This is the Policy of 1753. If the Policy was not covered by that, there was no warranty of the Policy and the assurance was not voided, the insured and discharged, for his liability was not attached.

There are one or two cases of which I am not aware by elementary reasoner, you may see one, case, in Com. P. 1753. There was no warranty of Policy, the assurance was not void the fact to be so, but he said, he believed it was so. It is unnecessary, otherwise. Now the difficulty is, how can you ascertain a man's belief? To insure upon the belief of a man is a little too loose, and on the other hand, all the assurance did not have yet the grapple if it might have covered the insured assurance. The C. held that the Policy was binding for assurance not discharged. But I believe the C. ought to discharge the assurance in such cases, for an honest man comes to tell the story it says he believes it, upon assurance is imposed upon if it is not so. In common law as the law is, it will settle an opinion many years, of any avail; but I repeat, that I think the law, the case in the minor, says the insurer ought to be discharged for the opinion of an honest man of common sense, no doubt operates on the mind of the insurer.

In another case the insurer said, he's put the lift the coast at such a line. He knew nothing of it, now who expects it? no one in particular. He might operate on the insurer's mind, but the C. said he was not discharged. This is your one stick, further investigation...
The Mercatorian

crending, then are the case. There can perhaps be avoided the inconvenience in most particular, the

Subje of October.

If a representation is substantially true there is no need that it should be literally completed with as a warranty must be. Comp. 385.

Everything is a representation, which is not put on the face of the Policy, as if it is or a separate

made by the assurance, is a representation. Thus it is a reresentation. There is a R. if this kind. It may go to the insurer. In

F. J. an underwriter. He is a distinct quid. He makes a false representation to him, the insurer.

tells him that if he goes to other underwriters makes no representation to them, but the insurer.

So knowing him to be wise enough, he does sign without knowing any, he is impostor. How is he impostor, or; are they all, or only, F. J. It is said, they are all impostors upon a false imposition. It is impostor is to every assurance. For the misrepresentation is made or purpose to take in others. The false

estimates to all - Comp. 386, Doug. Case 1 & Perre.

There is a case of Doug. 10 W. Dovell, Fras. where the insurer was misled for an innocent misrepresentatation. The truth is, the insurers are misled of the insurer, is a misrepresentation, whether made fraudulently or by mistake, or through negligence.

Thus are some cases which do not fall within, and above, but the principle is the same, viz., a non

written letter to another to insure his effects, but the
Lex Mercatoria.

letter in the Post Office. It contained a true statement, at the time but before the letter went off, he heard that the ship was lost. The letter went on and the insurance was made accordingly. The insurer was bound to be discharged, for it was the duty of insurers to have retained the letter from the Post Office after the receipt of the information of the loss. 1814.

A great deal of the representation differs from the Policy. The Policy gives the voyage as a greater extent (of course making it more dangerous) than the representation. Now in this case, are the Insurers discharged? i.e., provided the report pursues a voyage according to the Policy. The case was this: A French ship was insured in Eng. to go on voyage to the French Antilles, from thence to the Indies, to China and Persia, to then return again. This was the Policy - but the representation was to leave out of voyage "to China and Persia." The owner the voyage for far where home was captured. By law, was there any insurers liable? The contract into this case. The insurers must have known they were bound by the Policy. The owner had a right to continue a voyage as extensive as the policy. This was no imposition. The representation could not contain a written instrument. Doug. Page v. Tucker.

Another case where the insurers were held liable, was in 1814. It appeared that they ought to have discharged, e.g. a ship was insured from London to Nantucket, Rhode Island. Nothing done, but after the insurance, it was cleared out from London to Boston.
and on the Policy, she had lately to touch at Ostend. Then she sailed from London directly for Ostend, and as for Ostend, I was lost. The insurers said we were insurable, but they were held liable on the ground that this was the clause of the trade to clear out for Ostend when they meant to sail for Ostend. If this were one knew it was done to save the delays which were doubt on goods when they came from Ostend, if they were clear when they came from Ostend. The French consignments all knew this. It was done to cause this doubt on goods. Goods the court held there was no fault on the insurers.

Para 182.

Of concealment.

Not only a misrepresentation but a concealment.

Of any fact, which ought to be known to the insurers, will avoid the Policy. The concealment must be of some thing material, the insurer is bound to disclose it, whether in the insurers inquiry of it or not. When one goes on board a Ship, he is asked for grants, that the Ship has not yet sailed. If she has sailed, it is the duty of the insurers to make it known. The he says nothing about it, but the insurer does not lie, yet the Policy is voided if the ship has sailed. He ought not to conceal the nature of the employment. Or whether the insurers asks the insurer.

Is it not known, the insurers asks the insurers, or how long since the Ship sailed? To long says he. But he has some heard from her, when she was in danger, by this he was not informed. If insurers, the policy is void if the insurers discharge this thing if the insurer & has been informed. We have told the truth. Deut. 11:18.
Lex Mercatoria.

It is a maxim of bailiwick bailiff, now down endless in points, thus does not apply to other. No. 1st.

It is a principle of fact, that the causes of such thing will not amount the insurors. You may see a case in Park 182, where the insurors told truly what he believed. Which was that the vessel would be ready to sail on the 24th of the month, the insurance was made. She got ready at the said on the 23rd. The insurors were discharged. This appears to me carrying the principle too far. I think the true construction is, that the act of the 24th of the vessel down (if there be such a warranty that would be no doubt above it). This case shows how exact they are.

A case of cunning. An insurance on a vessel that had gone to Africa. The insurer tells the insurors he had not heard from him for a long time, but his last information was, that on a certain day (by 20th May) she was on the coast of Africa, she was there. But he heard at the same time, that she left the coast on that day, and to the Co. of the insurer had known of this, he would have raised the premium. For the 20th, 21st, 22nd, 23rd, and the 24th of the vessel down. This is not the case, he would have suspected that the vessel was lost. The insurer was discharged.

Another case. A merchant had a ship at Goa, a gentleman a friend of his had heard a report of several vessels being captured or lost, which made it probable this vessel was also lost. He came to the
Sec Aequatoria.

Another case. The owner of a Ship in London received a letter from his Correspondent in Boston, that his Ship was ready to sail. Soon after a Ship arrived at London, she sailed from Boston in Co. with his Ship, but they had parts of a Gale. This created an alarm that the Ship was lost. He waited a few days, then proceeded to insure. He heard the Letter from his Correspondent, and in writing stating his readiness to sail, but did not inform them that she had actually sailed to Co. with a Ship which had arrived a few days before. He then decided that the Policy was void, and therefore discharged. (2d. p. 372.)

Another case where the Insurer was exculpated, because the Co. thought it a certain fact material, as not being disclosed, which fact the broker concealed of no consequence. The Broker was a respectable man, but the fact was concealed by his means, because he was before the Co. Philip Wilson.

Book that Insurance men lie to be disclosed, read by as they were, i.e. as doubtful. E.g. a man had been
Lex Mercatoria

A story that his vessel was taken mentioned he put on the report. It was a mere story he got the insurance but did not mention the report. She was afterwards lost in a different way — say by storm. But because he had not disclosed the report as it was, the insurance was discharged. The same decision in Law & Equity. Pitts v. Tabb 150. 2 Tha. 1183.

Now a partial decree contrary to the Law of Nations ought to be disclosed by the insured. If he knew it, or the insurer did not. The insurer is not bound to know it. But if he does know it, it does not disclose it, unless in some is cognizant of it, he will be disclosed. 2 Tha. 1183.

So on the other hand, the insurer must not play tricks of he does he is not entitled to his premium. E.g., a man wrote to an insurer, to procure an insurer on a vessel he thought was lost. The insurer has just heard of his safe arrival, but the insurer had not heard of it. The insurer was made on a high premium. The insurer recovered it back on of ground of fraud.

Secre. 4th April 20th 1812.

There are certain things agreed on all hands that may not be disclosed. They all proceed on the ground that the fact is as well known to the one as the other, if it is not. They have all the means of knowing it. There is no fact within the knowledge, or within the means of knowledge of the one is not of the other. What will increase the risk, but ought to be disclosed. But what is more, matter of speculation and not to disclose in law there is an impropriety in doing it. Suppose the
Lex Mercatoria

insurer expects will be declared, when he goes to the insurance office, he finds they are taking peace premiums. He need not tell them that it is his opinion that there will be war, for the insurers judge for themselves on this subject. There is an impropriety in it, he might be caught at for his opinion.

But if he knew that there was danger, he must report it. He observes the insurers taking peace premiums, he is bound to disclose the information. If he procures an insurance without disclosing it, it is a fraud. A concealment of what a good conscience ought to be disclosed. Or if there is a rumor of war or a rumor of anything else material, the insurer has not heard of it, he is bound to disclose it, as it is. But his opinion he may keep to himself. So he need not tell the insurers of the probability of certain events (e.g., monsoons) on the voyage for which the ship is insured. Those are facts which the insurer is presumed to understand. For the same reason he need not tell the insurers there are rainy and dry seasons. This is only valid in Bhave 1909, 138 C. R. 599.

There are certain cases of insurance, when you must not disclose facts. That is when Policies are inserted you must not disclose to the insurers any intended enterprise, as when you are going on a voyage of importance, that it is to keep a secret, and the insurers have imposed upon it (this is premiums, according to). In other cases the insurer is bound to tell the voyage of a particular business, as to one vessel. In this case

...
must be disclosed. He must disclose every thing material, relating to the voyage. Park 320.

There is no obligation on the insured to make known what has taken place by a Foreign ordinance if he does not know of it, i.e., if he is not bound to know it, if the fact was always or is known to the insurer. It does not, he is bound to disclose it. Parkinson's Bur. 1905.

OF IMPLIED WARRANTIES.

There are certain implied warranties on the part of the owner of the Ship, which if not complied with, the insurer can discharge. As to the Governmental orders of them always have been necessary to the preservation of the Ship...

There is an implied warranty that the Ship is seaworthy. What is meant by this? Why that ship is seaworthy, capable of resisting the ordinary dangers of the Sea. She must not be the strongest ship in the world, but such an one as men of discretion would say there was no doubt of her being able to resist what Ships ordinarily will resist at Sea. All seafaring persons would say there was any hazard in the going out, she is not seaworthy. If they say the ship is seaworthy and there is a severe gale, perhaps the insurers will not be bound by their opinion, as they might perhaps be discharged. The insurers undertaking is as inseparable from extraordinary accidents, as that of the ship being seaworthy. It is not extraordinary that she should lose.

The insurers are discharged if that of the insurers, (whether a seaworthy ship, existing previous to her sailing, notwithstanding).
This, the insurers are discharged. There was a case come before our Court, where there was no defect of insurance, and the part was scarce (without any known cause) went all to prizes. They got the interest, but with great ignorance also. There were two before approved more sea-worthy. But when they took her apart, they found the iron at all her brace was tied into the bower loops. The insurers were discharged, for she was not sea-worthy. This is agreed to. And I suppose if she had been surveyed by persons appointed for that purpose, a pronounc'd sea-worthy, it might have made a difference in this point, but that was ordinarily the case.

Suppose a Ship is lost in the voyage by becoming leaky, &c., you cannot attribute it to the weather. This furnishes a presumption that she was not sea-worthy, but it does not follow of course that she was not sea-worthy.

If a Ship is lost on a Sloop, &c., the Insurer claims that she was not sea-worthy, the cause probably that she was not, this or that. There is no presumption that she was not sea-worthy. If it can be proved that she was not sea-worthy, the she is lost by Sloop, the insurers will be discharged. Ignorance or carelessness of the insurers avails nothing at all. They may believe her sea-worthy; if it turns out that she was not, then during the insurance, she is discharged. 20 Miss 366. 367.

The case in Mores half was this. It was
Sex Mercatoria.

agreed by the Parties that the Ship was sea-worthy—
but contrary to their expectations, she was not. but
the Insured knew nothing about it. & this led up to
the Question whether this was a risk to that the Insured was to
bear, or whether it was for the Insurer was discharged?
It was determined that she was not sea-worthy.
the Insurer was discharged. The liability depends entirely
upon the Dece. is the Sea-worthy?

There are many cases where parties are liable
as above. Both parties being ignorant of the situa-
tion of the Ship. But the Rule is that she must be
Sea-worthy. The same implicit warranty exists here
as in the cases above. Park 221, 5 Dees 2304.

By being Sea-worthy you are to understand
that the ship is Sea-worthy at the time she first sets
sail or departures. If she is Sea-worthy when she sails
becomes disabled afterwards (as by storm e.g.) the Insurer
is liable for all Loss. When we say a ship is not
Sea-worthy, we mean that she was not so at the time
of her sailing. There is a case reported somewhat (by
an excellent authority) in which I have seen, which was a
remarkable case. A party at the time the ship was
ordered to be the best order on the deck, but before she was
out 6 hours she filled with water, all this was fine
weather. It was now known that was on sudden
disorder [From E. might call it the Englishmen T & T]
the was determined she was not Sea-worthy.

The Ship must not only be launched, but there
is an implicit warranty that she will be properly
Sec. 1715.

MARRIED. If any loss happens in consequence of her not being well married, the insurers is discharged.

By being properly married, it seems that she must set out so not that they are obliged to continue so for the sickness e.g. this may be impossible. And the captain should always take a pilot on board when he goes into a Harbor. If the Captain goes into a harbor in any case without a pilot, if any loss happens, I do not believe the insurers to be liable. It is not acting prudently. *Th. 160*

There is also an implicit warranty that if a ship shall be well provided with PROVISIONS and WATER for such a voyage. Such provision as is generally made. Now they have gone from St. Thomas to the West Indies in 16 days. But it is not sufficient to provide provisions for 16 days, for they are frequently 30 days on the passage. But they are not bound to provide for 100 days because some months have been thus long making the voyage. It must be reasonable.

When the Ship isspecified there is an implicit warranty that she shall not be stricken except in case of her capacity (at least) of the becomes disabled, she has sufficient excuse to put in port, or take another Ship. Suppose she is bound to a port far distant from the one where the goods are to go, a port to a port where from which the goods are to go, a port to a port where going to that Port, and it is the best thing that she can do to change the goods & put them on board the other and the warranty is that the Captain done the best thing possible for all concerned. If he can put the
Sex. Abercatoria.

On board the same ship, the vessel is not going to up- 
same port. A case. The voyage was at press from 
to the T. Indies. The vessel was shipwrecked on the Indi 
coast. The goods were not saved. The captain 
did all the goods that were saved. A vessel in 
the Brandon and put them on board another ship to 
run back to France. It was holding the captain to the 
that he was convinced that the insurers were lea 
that if he were protected the goods of the to.

There is a power always vested in the capt to 
employ another ship to finish the voyage. Many 
times it is important that he should do so. The some 
times he has no the liberty. Suppose the insurance 
was from New York to Jamaica, he got into some port 
in Jamaica, it was going no farther. Then it is duty 
of the capt to send these goods from there to Barbados 
and another ship. There is this attending all such 
transactions, viz. that all the expenses the capt incurs 
for salvage or saving the goods, unloading them for the 
purpose of repairing the vessel, loading them again, or 
any increase of freight, fall upon the insurers. It 
therefore frequently happens that the insurers are liable 
for more than a total loss. These expenses 
incur for the benefit of the afterwards there may 
be a total loss, yet this is unforeseen, but is reason 
also to pay for this loss. The expenses incurred in ren 
advancing to save the property. A case of this kind is 
conn. (Perhaps on May 1st.) Enquiry for 436. 878. 881.

But the rule of insuring on the Mercantile Ship is
Sex Mortalors.

dispensed with in those cases where the parties knew nothing about her, as if she is aboard, that the insurance is on the Ship or Ships, and of this has grown. Dec. 21st. 1845.

There is another implied warranty that the Ship shall be navigated at the time and lines. She is not to be navigated contrary to the laws of her own Country; to the must be navigated according to the treaties between her own and Foreign Countries. But you are not bound to navigate according to the orders of a Foreign Country, when this is not necessary, although you know of the existence of such orders. as if a Foreign Power were to make a war, then require you to carry certain papers, there is no implied warranty on the part of the insurer that she will carry these. See a case in 6 T. R. 1790, also in Marshall 389. Where the judge reads the case as concluded by saying: and observe that the ship was not condemned because the 123 not a vessel for insurance, but they condemning her on the ground of her being enemy's property. It was understood, that she had not a vessel for insurance, if those reasons were open for investigation. So that the principle is clear. Any point, decision, cannot be considered into it must be taken as true, however false, it may be, but no facts leading to, or stated to be the reason of that decision, is conclusive, it may be, considered into. With or more than that in the above case, he having made it, as insurance was not the point decided, it was the result of the decision, that she was enemy's property.
of Deviation. Sect. 11th April 1813.

There is also an implied warranty by the insurer that the ship shall not deviate, i.e. go out of her course. The insurer is discharged if she deviates, but if she is deviated she is not subject to the penalty. If the ship is deviated from her course, it is implied in her contract that she shall not deviate. If she is not deviated, then it is a warranty. If she is not deviated, then it is a warranty. To be sure it is not like a warranty, a condition precedent, but this voids the Policy altogether.

Suppose the ship does not go the nearest proper course, is that a deviation? If she goes the usual course, whether that is the nearest or most direct course, is not, there is no deviation. There is a deviation from the direct course, but it is no deviation within the meaning of the term as used in Law. In such cases it is a great Rea. Whether the Cape has a right to take the nearest course or not (to use the word), is the question whether the customary one? If it is more matter of experiment, she is lost by attempting a new course, although it is nearer than the old, it is a deviation. There is a case where a ship struck a new course not for matter of experiment, as the sea was well known, but was forced to be so deviate. This was a voyage from America to the East Indies. It was the first voyage, and at attempt to go the route, which is now the usual one, which is, instead of going the old road round the Cape of Good Hope, to go then the South seas. In the voyage a partial loss
Les Acerbatoria.

It was held not to be an deviation. (Burn 333.)

That was a correct decision—this is no case on the
subject. This case was from Delaware, or Maryland.
I do not know that it has ever been reported. If the
true course taken be really a dangerous one, it is
a deviation. The safest way is to follow the usual
course, and when this is done, there is no deviation. And
it is no deviation to go out of the course to land at
certain places, when those pursuing that voyage usually
stop.

Suppose a certain place lies out of the course
of the vessel you have; there is evidence of a prior instan-
ces where vessels have gone there, when pursuing some
voyage, or nothing said about it (as being wrong), will this
warrant the deviation? No, it must be the common usual
practice, this time may have been instances where ves-
sels have not touched there. See Case 3, 301.

The effect of the deviation is not to discharge the
insurer entirely, so not to vitiate its Policy but to dis-
charge him from all loss subsequent to the deviation.
He is liable for all prior losses. It is not in the nature
of a condition precedent, like a warranty. (Exx. 4, 344; 5, 364.)

It has been contended that when a vessel is de-
viated, if the vessel herself again to the same course
without any accident happening, being in good plight or
pursued in voyage, the insurors are not discharged.
This was formally contested in Exx. But 4, 344 it is how-
settled on this subject. Such deviation is fatal, never
to her on all it is of force in judgment. That is why

follows.
Lex Mercatoria

Thus decided in Eng. it is now decided in France. The Insurers are held to
for no subsequent loss. Brown's Bell. 316. for cases. One of
these cases is a strong one. It was an Insurance on Ves-
sile from A to B, and they touched at C, but immediately
were out again to pursue her voyage. It was not usual to
touch at C and this was therefore a fatal deviation - the
insurers were discharges.

The Policy may, a ofter does provide for touching
at a Certain port, but if it does not this provision, is
the port of one which is not usually left at, the case
bars are discharged. This was strongly contro-
versial. It was decided at Surprize, to put in 1793 to it, it was in the
dominies resort amongs in the House of Lords, agree-
ably to the decision of the Judges. Bro.Perd. 33. 44.

Suppose there are several Ports of Discharge
you have got to go to all of them. How in what way
must you got to them? you must go to then in their or-
der else it is a deviation. If the order is points out
on the Policy that must be strictly pursued, the it is
not a deviation to the insurers on discharge. 6 T.150.
The claim in this case was that there had been a deviation.
The part which was mentioned last in the policy was
the first in geographical order. The touched at it justly
it was held to be a deviation to the insurers discharge.
But yet the case? It is a reason for touching at that point
first - for this point the last in reference to policy was
a good and safe one, the one mentioned last in order
in the Policy was a very different one, by the Capt. wishd.
In this case, the rule is, that they must pursue the policy. Suppose this is not provided for in the policy, a reef was in sailed to go into the Mediterranean and the Ports of discharge are Albasinies, StJames, &c. The natural order is as I have mentioned them. In stead of pursuing that order the sailer past Albasinies, went on to James first, from thence to StJames, &c. first out for Albasinies it is going there, she was lost. The Qn. was, what the Insurers discharged? The Insurers, according to the rule, that they must pursue the Ports of discharge in their natural order, if the order is not pointed out in the policy, if it is, they must pursue the order thus pointed out. Of course in the above case the Insurers were discharged. 624, 533. But I find much fault with this decision on other grounds. It appears by reading the Treat, that they were unable to get into Albasinies owing to contrary winds, it being favorable to carry her to StJames she continued on voyage there at supper. I think the deviation in this case ought to be excused on the ground of necessity, which will always excuse as you may see in 15900 P. 382. The necessity in that case was not greater than in this. The principle however was a correct one.

Another point necessary to be noticed. The insurance is made with liberty to touch a stay at any place in that Country where the Insurer or is made. Suppose this is insurance from St. L, to be Charleston, with liberty to land at any place in St. L. Now has she a right to go to
Less Mercatoris.

Boston (6.) The 6. have decided that this is not a con-
struction. The meaning is you may touch at any port
on the voyage. By touching is meant stepping at any
place, date you have set out on your course but
when this liberty to touch you have no right to
by the contrary way. The rule as above is proper for
otherwise it would be contrary to the intention of the pa-

Letters of Marry are often inserted. What in the
privileges of a Letter of Marry &. unless it is expressly pro-
vided for, they have no right to engage. Their pursau-
mently for offence (as this they are entirely different from
Privates). When captured they have no right to divide
a gunner of prizes. They have a right to redress them-
self if they come across an enemy on their course, they have
a right to chase him, to pursue him out of the course in
order to capture him. They shall return to their course
as soon as possible. But if they shall now return the
vessels to the Indies. But they have no right to go
out of their course to find an enemy, but having found
him in their course they may chase him ever so far. 18th. 2th. 3th.

In y. above Case in Curves, or in some other in the
same Book. the Letter of Marry found an enemy in her
course, she chased him out of it. She that right lost sight of
him, of the next morning went bringing in that it was
holtor to be a deviation of the insures discharge.

The may provide at the Port or in a right on
this she frequently does for a limited time. When
this is the case she has a right to continue for that time.
Sea Aberrations.

but it must be for that time successfully, as in the
case. I cited before what liberty was given to a Dutch
government 6 weeks — it was determined to make
6 successive weeks...

There are such things as trading voyages to
continue for a certain time in season. All the trading
voyages to Africa were of this kind. Hon. when a vessel
was insured to go there, it did not deviate or take
voyage, but stays on the coast a number of months;
for time, it was finally lost, the insurers were des-
charged. Part 313

You must always keep in mind that if de-
viation is not life fatal, because there is in our view,
no greater risk. We cannot tell whether a life has
happened or not if the insuff has not occurred. But it is
a contract, but it must be complied with.

As to the deviation when they come to the direc-
ting point, I have had occasion to speak before, but
I will not再去 notice it here. This appears to be a
contradiction between the first 2 cases in this sub-
ject, but there is none in principle. You see in that,
that an intention to deviate, is no deviation, if a
life happens before the Ship arrives at the directing point.
This intention will not be charged the insurers. But if
a life happens after she has arrived at the directing point
she has deviated the insurers are discharged. E.g. Supp-
ose a ship set out from this country for Egypt. The assur-
er is from N.Y. to Liverpool, she has an intention to deviate
to Cairo. Now the course to Cairo is the same from both

distance, as to London, or a loss happening before the arrival at the dividing point, the insurers are liable but for a loss happening after she arrives from the course taken they are discharged. But in case no such voyage was intended as that for which she was insured, the insurers are liable for no loss whether it happens before or after her arrival at the dividing point. I. g. Suppose she was intended for London, but the cargo was not adapted for her, but for a Chinese market, then the insurers are liable from a loss which happens before she arrives at the dividing point, so it is evident she was intended to go to London. In the other case the ship did intend to go to London, but she wished to divert to go to Cork. If you apply this distinction in mind you will understand all the cases. I will all go with it but 2 Stan 13 49, where there was a voyage before, see page.

There have already noticed that no deviation of point, necessary to avoid danger, or a deviation to avoid danger, this being in such case is, the Capt has done his best to procure the voyage, i had no intention to divert, but has been driven out of the course. The strong weather is sufficient reasons for a deviation. I having been driven out of the course, she may pursue her own course from that point that she is, by insurers are not discharged. 15 30 29.

For want of necessary power discovered at sea, the Capt has a right to divert to the first nearest port, that is out of the course, the insurers are not discharged. This was a case. This case is used and bound from Stan 13 49.
Sex. Mercatoria.

in the F. from this. If he got to town, it was found she would return with the craft took her to the port, this was great injustice. But the ship was not the case. This was the only point the ship was, the insurers were discharged. 16th Nov.

I have already observed that a ship may go out of her course to avoid a regular course. The magistrates of the course to avoid an enemy. The case is a case of necessity. 22nd Nov. London.

Cases of Meeting have occasions some difficulty. Suppose the ship meeting another ship, to go out of her course, is it a voluntary? There is a case of this kind where the point is settled in court. I think from looking into the different accounts, that it is not the case. It is not the converse of cases of necessity. The case was this: The ship was a letter of credit from Bristol to a ship in the Thames. She took a prize of the ship wanting the money mentioned. This had previously been in the ship. The ship wished to contain the passage but the ship was bound to last her, he being bound to last her, the ship being had. The case is whether the insurers were discharged. It be decided these cases on the necessity. 22nd Nov. 1812.

of the cases included against.

 Saved merely upon the fact that of such a contagious in considering this part of our subject, they in more the particular way in our accounts as of the matter there was made to that of another. 24th Nov. I am treating of parts of the sea, in short, consider...
Lex Mercatoria.

That the assurance is limited to a loss by the peril of
the Sea only. I have already noted some things as to a
total or a partial loss. I now come to explain what is
meant by a total loss or partial loss: the latter has
sufficiently considered.

A total loss means something indifferent or common
particular, from what it does in fact. There may be a total
loss at this rate, the all is not lost. If the loss is so great
as to frustrate the voyage, it is a total loss. Suppose,
by the Ship is cast away, what is saved does not am-
to as much as the value of the freight. The insured
recover for a total loss. But in doing this he must
abandon to the insurer all that can be saved, and in this
way the property saved being sometimes of more value
than was expected, the Insurers make a good bargain.

There is a time, in which the insured has the
right to abandon all the property insured to the insurer.
This claim of being for a total loss. E.g. Suppose
insured he has the Sufficient is captured, he has a right
to abandon to the Insurers for a total loss. If I still have
more than afterwards, that the Ship has been recapt-
ured, it may a capture. Voyage, it is nothing to him.
The whole property belongs to the Insurers.

I know a case in the time of the American
Revolutions: A Privateer which went out from N. Y.
was ensured, they knew that she had been captured to
the was abandoned. But before the capture she had taken
captive prize which arrived safe. This was decided to
belong to the Insurers.
Of Berths of the Sea. Ship assurance is made on parts of the Sea only, the insurance not covering any loss happening in any other way. What are parts of the Sea? All danger from storms, tempests, rocks, sandbanks &c. These are parts of the Sea. An injury arising in some cases to the ship, even if of the Sea's doing, the loss is attributed to a different cause than that of parts of the Sea. If there is another cause in conjunction, e.g., that the vessel was not seaworthy, then the loss it is not by Berths of the Sea. So in a case I mentioned above where the insurance was for the parts of the Sea only, & by stress of weather the ship was driven on the coast of France & there captured. This was not a loss occasioned by the Berths of the Sea. The immediate cause of the loss was the capture, the remote cause was stress of weather & the both combined to produce the loss & the calling is entirely out of the Sea is not regarded.

There has been some difficulty arising from cases where two causes have combined to produce a loss & if property is thrown overboard to save the ship, the loss is always thus considered a loss by the Berths of the Sea. But suppose that, by contrary winds or a great length of bad weather, the ship is delayed in her voyage & many of their cattle (e.g.) which they had in town become diseased, as by being kept in half allowance. Is this a loss by Berths of the Sea? No. The loss has resulted from that of their salvation depending upon the throwing property overboard, the saving the life by the Berths of the Sea. This was one case of a thief...
For Mercatoria.

It was entirely ruined & lost by worms. The Captain, this not a loss by points of the law, 1St Ep. 1649.

Threw it into the sea; the rigging was e.g. his anchors were lost which were insured against. Upon it is clear, that the insurer is not to pay for the Common warrant of the rigging. But suppose, she is sighted & cast her cable so a towns & there (e.g. the anchors) are claimed. Now will it be an ordinary or extraordinary case, it is nice.

Thus requires a more accurate judgment on his own than those names & ye law. If it is extraordinary, it is considered in points of the law.

Of Insurance out of its Valor. (Running foul of another Ship).

All that is to be said on this subject is, that of an ordinary human purpose, contrary to running foul, the insurers are liable. But if it happens by the misconduct of the masters or mariners, the insurers are not liable for this is not insured to. The claim is then on the owner and collection of the ship. Except by running foul of another ship, where usually happen in this right.

Of Insurance of loss by Fire.

The same rule obtains here. As a case of loss by running foul, if the loss happens by the misconduct of the master or seamen, the insurers are not liable. This are two cases which I will mention. A Dutch ship coming up the Sevart wished to touch at a Spanish Island. The people were much alarmed by the Plague as on board of the ship they appeared together & burned by. The insurers were below. 1672.
Lex Venatoria.

The other case arose from the same cause. The people on the boat were at sea for two years and during this time were sickly. They arose on one day to leave for home. But the next day they heard that the boat in which they were traveling had been attacked and that the vessel had been burned and that the people had been killed. This caused them to leave for home. But in fact they had no other choice. The people on board were sickly and could not travel. They were not in good health. They were in danger.

Lost by Capture. There is a distinction to be drawn between Capture and Detention. The Policy provides for detention, which is a detention by Kings. Princes, &c. Detention may be detained and not Capture. If the object is to take a prize it is then a Capture. But if the prize is taken as for carrying personal effects, or for having enemies goods on board, it can be for adjudication. That comes under the less Capture insurance as lost by detention. No matter whether the detention is lawful or not, the insurers are liable. It is within the words of the Policy.

In case of Capture if the prize is not warranted, it makes no difference whether the boat is used, or if captured the insurers are liable. But if it is warranted, and if it is not in Capture the insurers are liable.
Lex Abenakoniae.

Capture of ships, or else of capture may always amount to a total loss. The insurers are liable for the whole, but the state is within the property of all ships. Sometimes the subject is captured before they abandon it, then it may be either to take a partial loss. If the ship captured under such circumstances that the carrier has original voyage, it is only a partial loss, if the insurer cannot abandon a full. If she is taken out of the course so that her voyage is frustrated, it is a total loss. If the ship captured there is a right to abandon. So likewise if she is taken in reparation for a certain sum, which the Captain pays to the voyage is imposed, it is a partial loss to the amount of the reason of the sum, which the insurer is liable to that one. But it is not a total loss. So in all cases where there is a partial loss by capture, whether made by a neutral, or by a neutral, the insurer is liable for the voyage, it is only a partial loss, you will observe (I. if a capture).

Capture of ships, is a total loss, if nothing can intervene. By you may abandon to decline as for a total loss. It does not depend on the consideration of ships. But if the insurer is liable of the capture at the same time that the ship of the capture, any time before the ship, whether he can abandon a total loss or not, depends upon another, which it has the voyage been frustrated? Suppose the ship has been captured by some enemy, if after pursuing her voyage, she incurs 1000 hours of this before abandonment, it is only a partial loss.
Lex Mercatoria.

the several abatements: he will recover the monies paid
of the insurers. To of the holds of the Captains, first, does
not abandon till he hears of the reception; if there
ese a later. You will not only the cannot abandon. You
will remembre that no property rests in the reception
the she is carrid in a Condemnne. Dene 640, 10. 653. By
this is done, the property is in the first Captains.

The right of abandonment is a liberty given to
the Insurers. He can never be compelled to abandon. He
has been sometimes contracted by the insurers, that they do
not compel the insured to abandon upon them, that the least
abatement is. Not take us much care as they ought; nor
then the insurers may take upon themselves to save as
much as possible from ye Insurers, 11 Bl. 16, 173. The ensur-
ers are liable for such sums as are bona fines paid fo
Censors or Compromise. Suppose there is a total loss
after the vessel has been ransomed: the insured is lia-
tle for both. In this way you see it is that he is obliged
to pay for more than a total loss; you will find ma-
ny such cases: this is one of them.

There never has been any rule to ransom
Bills till lately. They were formerly considered good
Contra's: no recovery allowed upon them. But now
in Eng. no recovery can be had upon them, while the
sum costs. This is a provision made by Statute. As
without the Statute I conceive no recovery could be had
upon them in any other. On the contrary, while the
sum costs, according to the principles of 62. Mab. 477.

Another loss which may be insured against is
Sir. Abercrombie.

Is. by Detention. The expression is taken by Kings, Princes, & People of every Nation, whatever. It is the law, and by the law of nations, that deten- tion of the Ship by the authority of another Nation is lawful, or illegal. Deten- tion or seizure by Embargo- rights are retained to procure the circulation of certain intelligence or the government sometimes detains them for public service, as I take the Ship as a transport, these arbitrary acts of government are all detentions, against which the insurance is made under the head of detention, of course the Insurers are liable. So if the Ship (being neutral) is taken with the enemy's prize, or taken by the Ship cannot be considered, but she may be detained, while the goods are taken from her, she may be sent into port to unload the goods; this is a detention of goods the Insurers are liable. When two nations declare war, they declare war against each other, at this time, there are ships of one in the ports of the other; they are prohibited from going out; this is capture, not detention, the object's prize. But whereas the object is not prize, it is detention. A case in Jamaica (or not in the West Indies?) the island of St. Vincent belonged to the British republic, it was in a state of insurrection. The British took upon a large prisoner, four men, and sent them into the port (without right) to relieve the inhabitants. They received paid for the seizing; the Insurers refused capture or detention. Do not recollect what else was said whether this was a capture or detention.
The assurance is generally with the ship owner, determined with it was their own ship that it was detained for the object was not prize. Thus we get at the first point. If the object is prize it is capture; if not, it is detention.

If a ship is navigated contrary to the instructions, or as arrest for non-payment of duties is detained, on this the assured is not liable. He does not insure to such misconduct. And thus is an implicit term that the ship will be navigated according to law, and that the assured will pay duties to the owner may make himself liable in such case. If he gives it to the security of the Capt., which is often done, always as it may appear. But this is a distinct consideration, I express the heads of detention we have nothing to do with it. 2 Jeram. 12.

The insurance is as detention by 'Kings, Princes, People,' any detention by these whether made legally or illegally, rightfully or wrongfully, will subject the assured. There has been a case, as to what is meant by the word People. I will mention a case which took up the case. It was a case with corn, left in Eng. It was seized by ships of war, and sent into Ireland, and the people appointed a Committee to pay the Capt. a generous price for the corn, the House took it before. This was not done by the authority of the people or prince. The Capt was whether this was a detention by People within the meaning of the insurance? The question is that the words 'Kings, Princes, People' mean the
Section II. Instructions.

Vesting Power of any Government, whether monarchial or republican. The Insurers once not tottering, it was a notion to be held that any People within the meaning of the expression. If the notion is by order of Government, the Insurers is always liable whether lawful or not, except in case the Insurer is to blame.

22. "Rag. 543. 1 Salk. 444.

Sec. may the Insured abandon in case of detention? It depends upon this. If the detention is so long that it defeats or frustrates the voyage, they may abdorn for a total loss. If this is to be determined by the Court. But if it is a detention only for a few days, the voyage is not frustrated, the Insurers cannot abandon, but will recover for a partial loss. 2 Dan. 883.

There is always a Cause in all Treaties of Peace, that all captures made after the date of the Treaty shall be restored to the owners. Now in such case of captures are made, if the prizes are restored to the owners, it is considered a detention, not a capture, and the Insurers are liable for a detention. 2 Dan. 883.

If Insurance for Barratry: With regard to this, the law appears to have been continually changing from the first case to the last. On this account the law does not appear to be so well settled as this, among other cases of Insurance. I will state what subject to you.

By Barratry is meant, an insurance by the insurers to the insurers of the misconduct of those persons employed by the insurers, their Captains of adventurers.
Lt. [illegible]

He is an insurance to that any thing on which you
are the Ship or the insured will be liable to those per-
sons who are injured. The reason of this was that the
owners put the Goods on board, when they went to ensure
the Ship, they asked the insurer if he would also ensure
as the Cargo of the Ship, for he was a foreigner or

Now that the particulars of that was to be made in the en-

surance but you recollect the insurance is no no

wry way. "A. L. Capt. of any other person, who may have
no." The great difficulty is to ascertain what blame

by which definition to be gathered from the old Ed. was
not convey the idea equally. I will state it to you. Ac-

cording & then it indeed some in his misconduct or

practised committed to the owner. Some cases are plain, as

running away with the Ship, abandoning her, selling

the running chine $5, 608, 838, 689, 66, 626.

The owner of the Goods thus has no object to issue

to the Barratry of the Capt. for he may have his or-

der vs the insurer. But the owner of the Ship may in

some vs the Barratry of his own agent. (of Capt.) Day;

Capt. may issue to the Barratry of the ship owners.

The first case go on the ground that a right

given or centred always is barratry with the owners

of the Ship $6, 6. 6. to the owners of the Goods a

Capt. happening to consequence of case but it is not

Barratry because this implies something corrupt or

wrong, you may sue case as $6, 6, 686.

When the insurance is to the Barratry of the

Capt. $6, 6. to the owners of the insurers which I will give
Sex. Mercatoria.

Casp. 6. tenth of May or 3d.Baratley. as in the example before given of the Letter of Binary. The 6th. 1282 it was a
matter of necessity. It was an wron: tention of the
Casp. this time must be to constitute Baratley. It is
here this Baratley in the billiance, of that had been
sued against. 23 Mer. 1266. perhaps 22 Bea. 1266.

Another Case. A Letter of Binary was one of the
Casp. to recover, what you will recollect she has no
right to do, and yet lost, was it Baratley? It was not
constitute. No doubt. It was urged that there was no wron:
tention, no corrupt design, nor any fraud. The C 6th.
determined that it was Baratley on this ground that
there was a breach of trust, and when there was no
breach of trust, the no wron: intention it was Baratley. 26. 37.
According to the circumstances of this
Case, we are not at liberty to conceive that she was
out of her course for the purposes of injuring the
owners. Much the same thing in some other cases. In the
former ones they held that there
must be some willful misconduct or fraud committed
by the owners to constitute Baratley. In this they say
a breach of trust, without any willful misconduct
is Baratley.

There was likewise in that same case an
Casp. sup this circumstances in which I have before men-
tioned another purpose. This 6th. before not with
an American. This is plain and true. The owners of the
Letter was made liable to an American in the vessels.
This was another ground in which it was decided at
2. Baratag. He had no intention respecting the
owners, but he had subjected them by a wrong act.
It was a breach of trust. If the owners of the Ship, had
been to commit the wrong act, it would have been the
same as if they had done it themselves. But the
owners of the Ship can not commit Baratag, for he
has a right to act as he pleases with his own. 2 Thes
173, 1570, 323.

If the Ship is chartered from another person and the
person from whom the Ship is chartered directs a wrong
act to be done, it is Baratag to the insurers to be liable.
The Freighters in that case is the owner for the time being.

Comp 193, 4 TA 33.

This case has arisen, the Ship was lost by the
smuggling of the Cargo. Surely this was Baratag, it
was a breach of trust of the owners did not direct it.
The Capt had no intention however of injuring his owners.
But the Policy was expressly limited to Carful trade only.
Now says the Insurer, I am not liable according to
the terms of the policy although in Carful trade only.
But the Capt lies him liable for this Baratag. They
insist upon it. Thus they consider it as two distinct
things or an ordinance. It Baratag & an ordinary on a
Carful trade. Suppose the owners had in
formed the Capt to baratag only, they would be liable unques-
tionably. This case is not clearly reported for the Reporter
does not make him liable. Because the ordinance on Carful
trade means that in the owners of employment about his ship
in this is not correct. The ground of their decision is almost...
Sex. Mercatoria.

Another Case of Barratry. The assurance was for a limited time, say 12 mo. or 24, to assure all the accounts in Port. The ship arrived it is safely anchored it moved 24 hours without time expired. If after this she is taken for smuggling which is Baratry. Now on the insurer's side it is that the loss must happen within the time mentioned. If the loss does not happen till after the expiration of the time the insurers are discharged, so the cause of the loss may have happened before. In this case she was got into port before the time, and after that she was found out. The rule as above is universal.

175. T. 222

With respect to Baratry it appears to me by the cases that any conduct which is mischievous to the owners or which arises from any act which injures the insurers in it, a breach of trust, the no injury it must be to us the insurers, is Baratry. Sezme if it does not simply a breach of trust. If you can presume that the owners would have avoided the thing to be done, has it been present, the it afterwards turns out to be to the loss to the owners, yet it is not in my opinion, Baratry. Case to Come. A protest went out warrantment Neutral & on the same it was agreed she was neutral. She was taken by an Eng. Frigate on the ground the property in board belongs to the enemy. The Captain wrote the for Gibraltar for adjudication. The Capt. hands over and retook her from the Captain which you will observe is the same as resisting the right of search. If
This she was again captured to be sent into England, not because she was enmity property to the Spaniards, not because she was enemy property to the C.P. S., but because of her resisting. As an action was brought for the insurance for Barratry in the C.P. S., as doing the act which caused the condemnation. Were the Insurers liable for Barratry? The answer to the old idea it is not Barratry, for no one can suppose the C.P. S. meant to commit an act to the prejudice of the owners, for this would apply to the vessel. But I disagree. (I was up only a few minutes.) I conceive there was no wrongful conduct, no breach of trust; an act with which the owners have done as they think proper. But acts are always approved on this ground, I conceived thence was as Barratry. This is not the case of the vessels to be paid. I believe, you may see this case as a Day, or a judge in Action. There is a case of this kind. Vessels went to the Coast of Africa, to continue on the coast trading. She had a board sent aboard across the C.P. S. that a French force was on the coast, but the trade was going on the coast, so contrary to the orders. The C.P. S. was for a long time, the had no intention of impairing the C.P. S., that was finally captured. And the C.P. S. told that it was Barratry, but the ground of the decision was that the owners would not have advised him to continue there, when they were under danger of being captured. But in the Court case. Sup. Ass. 2nd, arg. if the owners had been on board, but th
Lea Mercatoriae.

If it had asked them, "Shall I touch this prize master upon the hatchices?" would they not have directed him to do it? It was a monstrous act, done which is always applauded by the owners. It is fair to presume they would have directed it. It was to be sure a breach of the Law of nations I think, for if any contrary consent was there, only this difficulty in it, it is said that you cannot presume the owners to have directed an act to be done which is unlawful. But this is contrary to the usual practice for we know the owners always directed an act of this kind.

General Average.

This is a loss insured against, when a ship is saved by the insured for the purpose of saving the ship's cargo, remaining, as if a part is not remaining, thrown overboard, all will be lost. Now this is a loss by General Average; the principle is this, was the loss sustained for the purpose of saving the ship's cargo? If so, it is a general average, so the insurers are liable to those who pay. So if you have 1000 worth on board, of another a like sum, of the property of one is thrown over to save the rest, the person whose property was saved must pay the other his proportion of the loss, as among themselves they adjust the loss. So the insurers are liable to those who lose. So if, most rigging &c. are cut away, it is the same. So if it is a composition with pirates, and they say, if you will give us certain pay, (which belongs to it,) we will leave you the ship, if it is accordingly done, now the rest must pay it not according to their pay or board. So if the ship is run away, such as pay his proportion, part
For Mercuriania.

Thus he may receive it of the Assurers. So if they deliver themselves as an Enemy, any expense or charge, as if some are wounded, it is under the Case of a Doctor, the Assure is liable for all these expenses under the head of General Average—because it is incurred in endeavors to liberate themselves from an unjust capture. The loss is proportioned among all the owners of the Ship goods, & the Assurers is then liable to each according to the proportion paid. This is the to say it has never been contradicted. 12 Co. 63, 13 St. Co. 148.

There are certain things more usual against in paying Pilot money, cutting out of the Tide. It is said that the throwing overboard must be by consultation of the Officers. But that is not true for this in all cases. It must be done by order of the Master. Now you will remember the principle is that the loss must contribute to the safety of the Ship & Cargo—just it is not for this purpose it is not an Average Loss. Suppose a Pirate comes across the vessel, he does not wish to take the whole, but takes the provisions e.g. this is not a general average loss, which all those in loans must apportion among themselves according to their interest. Be suppose the vessel brings a deck, & a person on board has LOPS of sugar, damages, but nothing is thrown overboard, there no average is to be made. More 297.

Suppose to avoid an Enemy, a part of the Cargo is landed, which is said, but the vessel all remain. The pack of that Cargo is confiscated. Now shall the
Goods cannot contribute to pay the loss. Ask the Dw. did the saving of the goods contribute to the loss? This is the question; on this point, the decision is to be made. The taking the rest of the property on board did not contribute to save those on shore; there is to be no contribution there. So if goods are thrown overboard to save the ship, but she is finally lost on the shore, or is driven on shore by the storm, 1 part of the goods saved, the goods which went down in the first case, or those which were saved on the last shall not contribute to pay the loss of those thrown overboard or lost. Here you may draw your own conclusion again by asking the Dw., was there throwing these, contributed to the means of saving the rest? certainly not. For all are after losses lost. But, if the ship is saved by the gale, then it is a loss by general average, not the insurance viable. And if the ship is saved on that shore by the gale, afterwards lost in another storm, still there must be an average. So the principle is the same, it contributes to save the ship.

Suppose the ship is on a Bar, the weather, but some goods are taken out of her and loaded into lighters, and after lightening the ship, she gets off the bar, arrives safe, but all the goods on board of the lighters are lost. Now there must be a general average. But suppose the goods on the lighters arrive safe. If the ship is lost on the Bar, now the goods in the lighters shall not contribute to the loss. These being saved did not contribute to the loss of the ship.
Among other things each particular cargo for which the Insurers are liable, although the loss is on articles which it is not otherwise liable, are those when a neutral vessel is taken a carried into port of a belligerent, but turns out that she was unjustly taken, she recovers no cost or the conjunct detention, but the cost, expense & all charges during her detention to be this thing called general average. For it the Insurers are liable. You may remember that by the mere attachment to the Prize, the Insurers are not liable for a particular cargo. For staple articles, in certain other articles, he is not liable for a particular cargo unless it exceed 5 per cent. For all others he is not liable for a particular cargo unless it exceed 5 per cent. But still in these cases the Insurers are liable for cargo by general average. As to ever so small. And so if a ship is forced into a Port to repair the Crew is at expense carrying thence, it is a loss by general average, the Insurers are liable. Sec. 150.

More Sea Damage as such, which is not occasioned by saving the vessel or cargo, is always to the loss of the particular owner. Any thing done for a Leaking, to nothing is thrown overboard, but if it has 12. 74 lbs. of Sugar on board, a Quintal of Sugar, it is injured. If Saloon must bear this loss, no average to be paid by the other. Of course of the Insurer is called upon, he is not liable, except in certain articles.
Sir Mercatorick,

When the loss exceeds 3 per cent. in others, he is not liable, and it exceeds 5 per cent. in others, he is not liable. The claim is a total loss. And remember that although goods are thrown overboard to save the ship, cargo, yet if it does not accomplish it, there is the 2 per cent. average. As in the example before, goods being put on board of lighters for the purpose of saving the ship, yet the ship was lost, there was no general average but, unless if it has the words 'after 1st. August 1828'.

There must be some rule about the damage. They are to be borne by the estate. The ship bears its part, the freight its part, and the cargo its part. The rule of damages is this. The proportion to be paid by the ship is according to its value in the Port. of Delivery. So also of the Freight or Cargo, there are to pay according to their values at the Port of Delivery. The aggregate seems to be counted upon is what it is all worth at the Port of Delivery. To explain it: each person's loss bears the same proportion to his property, as the whole loss bears to the aggregate sum (i.e., the value of ship, freight, cargo). Suppose e.g. the ship, freight, cargo, were worth $200,000, the property thrown over was worth $50,000. The property thrown was worth 10 per cent of its worth thrown over. Now how much must he lose of his property is said to have got 230% to save it. If his property is lost 2, has 750 to receive. How is he to know? It is most generally settled by the parties themselves, but if any difficulty arises to be adjusted accordingly.
Let Meculoria.

The word "salvage" has it's own double meaning. It means the taking back into the agent's service. There seems to be great barriers in this, with regard to terms. It is just a confusion. The thing is wide of the expense. There is some issue about this. The question having is, the expense of saving a ship is set at a certain amount. The captain is entitled to a certain portion of the capture, but it must be paid by the Insurer. I mean a recapture, before condemnation. So, if the recapture is after condemnation, the recaptors are entitled to the whole.

The difficulty is what are the recaptors entitled to? I have taken much pains to find out what the rule of law is on this subject. The reason why there have been opinions to find out is, that we have statutes on law on this subject. In Eng. law, every other nation, statutes, case decisions are made regulating the amount that recaptors are to have. The first Stat. is Eng. law in the reign of Anne. But this is not the Stat. it is a regulation by Stat. or course not binding on us here, this of the Tudors. I do not agree they should be. If Admiralty, or the Tables, the Recaptors have a title on the property, have not the right to give it up, but they were paid, there proportion, which was to be a reasonable sal. way. In the case they discussed they 5 have it settled by the Stat. of Admiralty. This is why it is done here, but it
In Mercatoria.

It is desirable to have a uniform rule. To that end, the parties may agree on what the rates are to be paid on the property, and the amount paid to be paid in advance. This is reasonable, and is thus done in the same way as in the present case. I will give you an example of what has been done.

Suppose the property is worth one half the amount. How much is this unreasonable? The answer is not to be found in the laws. The amount paid is to be considered as the sum that was deposited with you. This shows how much more we have for a certain definitive rule, 2 John 6:5. Thucyd. Ch. 3209.

We now shall be able to ascertain what the amount of the costs. No one can give us the amount of the costs, as there are no costs, and as the parties are not sure of the amount. In this particular, a uniform rule on the subject is an essential element. By Stat. 1798, the costs are to be fixed by the parties. In this case, the amount is by one of the forms above, they receive, 1/3 part of the true value, or by a Privation or out of

The Right of Abandonment.

That the insurer has this right is certain when the life is considered total. There is before observed that the word "total" does not signify the same as the above common part. Wherever there is a right to abandon, it is in the insurer. Considered a total life has been sustained.
Sex Meercliens.

This case is these? When the voyage is interrupted, as by the ship or its captain, or any one of her crew, into port for reparation, although she is acquitted, not owing to her long detention the voyage is lost. The reason has passed. So if she is stranded, in either of these cases the insured may abandon. You must keep in mind that the voyage must be lost.

If she is detained by a foreigner, it is such.

The voyage is not lost, but so much property was lost (as by stranding) that it is possible, it may be a total loss. The voyage is not entirely frustrated, yet the damage is so great that the amount saved is less than the freight. If you will recollect of the property saved is of less value than the freight, it is a total loss.

Suppose there is no freight, by priences usually go out in ballast or no lot of any freight. Now how are you to ascertain whether the loss is total or not. The criterion of comparing with freight is here wanting. For there is no freight. The only rule is this - if the salvage is "very high," the insurer has a right to abandon. Now very high is indefinite term. The parties must agree upon what is very high. If they cannot, the court must determine. That is no certain rule about it.

Another ground of abandonment is when the vessel has been obliged to put into port in order to repair, the expenses in repair are to very great. The insurer has notice of it, which notice must be given by
Six Memorandia.

the insured to the insurers. The latter know that the question will not be a sum this less. If the insurers will not agree to pay it, you will remark that their agreeing to pay is the same as paying, for they are bound by the contract may abandon, but if the insurers again to pay the vessel cannot abandon. If they agree to pay, if the vessel is afterwards lost, the insurers will then be subject to pay for the loss, it also for the expense incurred.

The case of Capture. I have noticed it is considered as a total loss, this by nothing else in the case of the insured may abandon. But if they do not abandon, the same is restored, as it reasonably be captured, they cannot abandon until the voyage is frustrate. But the vessel having heard of the Capture, it does not lie in the mouth of the insurer to say, wait till we see whether the ship is not re-captured. 2 M. 643.

In one of the Cases in Burke you may see an excellent Opinion of 2. Thos. W. You may say, so per 1. I. 359. Then you write find the rule, establish that if there is only a temporary hindrance of the voyage, the loss is only nominal. So a case in 3. Thos. 175.

"In the same principle of there is a division by Kings, Princes or People" which frustrates the voyage, the insured may abandon. Seems if it does not frustrate the voyage, P. 2 3 M. 1193. This case contains much law on the subject. It is a case where there seems of not abandon.

The marine law on this subject is that.
Sir: Morretoria.

The Cape is the agent of the insurer he manages for them. But after abandonment he is as much the agent of the insurer as he was of the insured before abandonment. The law makes him agent, his acts are as binding on the insurer as they were on the insured. E.g., his insurer becomes injured the carrier proceeds not to send the goods to the port of destination. He is vested with power to sell the goods he has the power of office. It is the best thing he can do for the insurer. To the same end, after abandonment, he may do the same thing with good for the insurer if they are bound by his acts as much as if they had originally employed him.

There is the case above 12 Ben 1193, which is also in 1138. 12276 from Marshall 291. The two cases in Ben, Day & Page 683 1193. Contain all the Case on the subject that would ever find any other. It is important to understand this right of abandonment, as it frequently arises in insurance cases.

If the Cape, as the recapture is of the ship, is not worth bringing in, he has no power to sell her. If she sets the goods to the port, or sells the goods, the insurer is a partial loss. If the insurer is bound by it, so of the Cape is total. Douglass 1850 Fitch 124 1850 237. The case on Cape was this. The ship was captured at the Cape, shipped in, it proceeded to voyage, he had power to do this for 7. Benefit of ownership, of course, of cargo on the ship that the property was charged to insurer, if it were abandoned. But the Cape was on it, and it is out of that Cape you can recover of the insurer, the money $20000 in the Cape. It was paid for their benefit.
Sir, Mercatoria.

There is also a right of abandonment in case of Shipwreck, the Ship is lost, or the Cargo is all saved. Is this a total loss? No. For the voyage is put at an end. It is not only a total loss of the Ship but of the Cargo too. Is the L. I. it now belongs to the Insurer. In such cases the Cargo has a right to get the Property carried on another or Ship. at his discretion, if he can, and he is to be paid his Freight, but he can get no more for Freight than what he himself agreed to carry for.

In all these cases there is a partial loss if the Salvage falls short of the Freight, when it is a partial loss the Insurer cannot abandon. If the Salvage exceeds the Freight it is a total loss.

The abandoning of the Ship does not of itself make a total loss. It must be such as frustrate the voyage. Then the loss is total. See 1712, 187, that an abandonment cannot be made when the loss is partial. See Park 169, when the Voyage was lost, it was held due to be a total loss of the Ship. Freight and Cargo, though there was very little loss, except the interruption of delay. See also Park 136, 2, 169, 1068.

This a abandonment must be made seasonably. By this I suppose it is meant that the insured cannot lie by to wait the happening if any event. But on receiving the information which will produce a cause for abandonment, they must do it immediately or never. 1712, 608. Park 172, 5, 12, 268.

If the Insurers in any way prevent the abandonment, when it would have been made, it may be
Sir, [Name]

there was a total loss. 

The case is, the ship was stranded, so stranded so much that they were unwilling to be at the expense of repairs. The insurers requested them to abandon, and it was present the bills I will pay them from this promise is binding, but on presentment of the bills he refused. The bill said it was a total loss for the insurers, had prevented them from abandoning the vessel to ZIRO.

Suppose a vessel has been a long time at sea, it is generally lost. In such case, the vessel may abandon. If she arrives, the property is all in the insurers. The insurers have no claim upon her. Again, suppose after her arrival, in the above case, the insurers claim a return of the money they have paid on the abandonment. This they cannot do. The case is settled by the doctrine that they cannot. But then what will you do with those cases where the insurers have received back the money they have paid for the vessel, as paid in a contract without consideration? There are cases where the insured have abandoned the money less paid them, afterwards, the insurers allowed to recover it back again. I am not sure how we are to reconcile these cases. It is possible they are contradictory. But I suppose the insurers have no right to recover the money paid them in those cases only when the vessel has arrived, if the insurers have thrown the vessel to their own, in such case, the insurers might be allowed to recover back the money.
Dear Mr. Morland,

In regard to your queries, I shall answer them as follows:

1. The insured may settle the money the insurer may refuse. If the insured cannot compel the insurer to keep its word, the insurer treats the person who is bound to the insurer as the owner of the money. If this is correct, the cases are not contradictory. (Reynolds' Case).

2. There is a case cited by Lord Mansfield in 2 Sir Moses v. St. Faith, where a recovery was made in the Condensation. But it is my opinion that in this case the insured claims the goods as their own.

3. The abandonment must be entire. If the insurance is general, you cannot abandon on the ship, not on the cargo. But you may abandon on one of them is a distinct insurance, the contract is the same. Policy. So if the insurance is on the cargo, you must abandon on your whole, if the insurance is general, because it is distinct. Suppose there are two distinct policies on the ship and goods, you may then abandon on the ship and keep the goods. Suppose the insurance is upon three articles, Sugar, Cotton, and Indigo. A loss happens upon the Sugar, now you cannot abandon on for this three, the other articles. But if it were on the three articles distinctly, then you may abandon on one, take the rest. The abandonment must exist the majority in the insured. If there are more than two articles, they are thus made Tenants in Common. The whole cannot be abandoned. Suppose the cargo was worth
Sec. 8.

88,000, and the value policy is only $6,000, if you advise
then you must recover for $6,000. If for the remaining
2,000 of the insured is innocent or saved with the Insure-
21st May 253, 1813.

There is a case of this kind of consequence as
Before the war broke out in Spain, the Spanish con-
sists captured many Eng. vessels & carried them into
condemnation. The Eng. in return directed Captures
to be made, & grants Letters of Request, by the Span-
the crews come to be paid to the owners by Spanish
Captures. Now to whom was the awards to be paid?
The insured had abandoned their we received the full amount from
the Insurers, & therefore they had no right to it. Clearly
however, the money in Case of default, to be paid
over to the Insurers, & they (to, viz.) minors those whose
property had been taken as trustees for the Insurers who
were the equitable owners. (Berry 98.

Of the Adjustment of Losses. Sec. 19. April 7th 1813.

If the loss is total, the policy’s value is being
taken into account. The method of adjustment in this case
has already been noticed. The recovery will be the value
of the loss. If the policy is an open one, or valued by a par-
tial loss happens, there is to be an inquiry gone into
the party will receive what he has lost. If the thing
lost is capable of a distinct valuation, then the
value of the thing lost is to be paid, e.g. suppose
there are 50 bales of sugar at $10 each are totally in-
that case, we can’t not, 60, that the loss must be paid for according to their worth, of
Lex Mercatoria.

There is a Partial damage to all the one that may be damaged more than another. The damages received for the partial damage will be according to the diminution of the whole. It is not culpable of a distinct valuation. But 1070.

Now when goods are partially damaged, you have found what it is, deduct what they are worth, from the Prime cost, and the residue is the damage added to the Premiun. But is it all expenses to? It has nothing to do with the value at the Port of delivering it up. Prime Cost. I speak of a total loss of that particular article, but only a partial loss of the cargo, if it is an open policy, or a valued one there is a partial loss. The rule is, you find out the Prime Cost. Then put on board the damage, as in the example above you find out the prime Cost of the Sugar, and then add the damage occasioned by the loss of 10 1/6% out of 50. 10 this damage added to the Premiun, will give expenses in repairing is what is to be paid. An inquiry is to be made as to the value of the partial loss. The Ship is valued according to her worth at the time she sailed, including her furniture.

The rule of £2. 2s. 6d. ascertaining the loss, an insurance as has sustained, is not a very obvious one. In a valued policy the difference between the value of the Goods on the policy, and the value inocluded, is not the rule; e.g., a 101/6% of Sugar when put on board is worth 20 £ to give it away at 5 £ 16s. 8d. per cwt. Now what is the rule of damages? It seems he has
For Actualorice.

Cost 10L at least, I perhaps more. For the all market may have been higher. But this is not the rule. It is not 10L. The truth was when they got to market, it was ship's good sugar was worth only 25L and the damage 5L for only 20L then it seems the loss would be 5L.

But this is not the rule. Within 10L nor 5L. By damage. The market has nothing to do with it. The rule is this. The same proportion of the loss (e.g. 5L) bears to the value of the whole or Market (e.g. 25L) is the rule of damage. Well then this the damage in sugar was 20L in Market it on the good sugar 25L. Now what proportion does 5L of difference between good sugar bear to 25L? Why it is one-fifth. Well then the 15L of 30L are 5L and 5L is the damage, the one-fifth of what was the value above but on board is the value in that case. It is simple then you understand it. It makes no difference whether you go to a rising or a falling market.

Again suppose when he got to Market the good sugar would sell for 50L and the damage for 40L. Now it seems he has lost 10L. What is this? Enquire what proportion 10L bears to 50L. It is the one-fifth. Now the Insurers say you have lost nothing as you gave, but 30L but your rule is as above. Now what was the value when but on board? 30L then the one-fifth of 30 is 5L the same as above.

Suppose an example of going to a falling market. The good sugar would only Command 12L. The damage 10L. Now what is the rule? What proportion does 10 bear to 20? Why it is the one-half
Sex Mercuria

will be 10% of the damage. If the damage is just, or half of the
same which is £15. If this will be recouped on every dam-
age, the 2. Nov. 1167.

The losses are commonly adjusted by the Insur-
ees. Insurers without much difficulty. They regu-
late by their, in the Chambers of Commerce which are
established in all large cities. This is not always
usual. In some frequently is called in aid. If the
Issuer becomes important to ascertain what the Insur-
ees, as a adjustment. After the adjustment, it is
usual for the Issuer to endorse the sum agreed up
on. This is Prima facie evide that so much is
due, that he is liable for it. Can this endorsement
be impeached? No more than any other obligation.
A note of hand may be impeached so may a note
the same way. If there is any misconception of
facts or if the Conservator fails, it may not be
impeached. The usual mode is to bring the suit on
the adjustment (not on the policy) the same as on
any other obligation at C.S. which is subscribed.
The note is inquiry is of Return of Premium.

There are cases where the Premium is to live
under 3. Other cases where it is not. In these other
cases still where the Premium is to be proportioned, e.
a part of it is to be returned. The principle on which
the Issuer is entitled to a Premium is that he was
at risk. Thus, it is a general rule that if the man is not
at risk, he is not entitled to return Premium. As this is
like any C.S. contract.
Seco Mercatoria.

When the consideration fails in the contract, and it is.

There are some exceptions to the general rule that when no risk
has been run, the premium is to be returned. I will point
by mention them. In all cases of a Policy void ab initio,
cluding the idea of fraud or temptation, the premium
not to be retained. We know that a warranty is a condition
precedent to the liability, and when the warranty is not
complied with, the contract is void ab initio, the premi-
um ought to be returned. And in other cases where there
was no warranty, but it turns out that there was no con-
bideration, the premium ought to be returned. Suppose
a man in N. York has 610,000 worth of goods in Calcutta,
he gets insured to that amount, to be lost, one in a
 Certain Pkt. If it turns out the goods were never put
 on Board, done. How can he risk was ever run? The pre-
miun ought to be returned. But if one half of a certain
part of the goods were put on Board, then the premi-
um ought to be apportioned. A part of it paid back.

In case of Reversion Policies which are still
practiced, the no recovery can be had upon this, be-
d's of this kind, have arisen: Can the premium be re-
covered back? Why should it be? why, because the
insurer probably the is, therefore the Policy is void ab
initio. He insures, know he is not recover on the Pol-
icy, but he has the insurers know that he is paying
on the insurer recover back the Premiums? Why at all,
why, because the insurer would have
written his part of the contract, therefore he had
a right to the Premium. On this point it is clear


Sex Mercatoria.

that the insured could not recover back the premium, because the decision. The reason is, they were not delicto. They sit down to voluntarily break the law of society, and the law will not stoop to adjust either the case of recovering back as serious money is very difficult. For in that case the law will stoop to a just

opportunity ensues. But suppose two men sit down to gamble. It resources a sum of money out of that play. Can you recover it back? No. Will suppose he has not paid the money but gave his obligation for it. Can you recover on the obligation? No.

The law disclaims to hold out his helping hand to those who voluntarily sit down at hazard of their own debt any regulations. The going in line, proved upon the same ground, Doug, Doug, Round, Round.

In the case of Doug, Round, Justice Dullin, paid (it was agreed to by the Ct.) that there was no material distinction to be observed between executory or executory contracts. But if the contract was not executory, then to be a recovery. But suppose that here this distinction is absurd. All authorities support it as e.g. you pay for the Premium before the Ship returns, according to the idea you to recover. It is incorrect. Suppose for example you pay a man for smuggling goods, he has received the money; you have paid it to him to break the Revenue Laws. Now if you recover the money back while of contract unmade, recovering.
Lex Mercatoria.

c. 1. Upon the smuggling was done, it would appear greatest complication for how to hasten or breaking the laws of his Country, for fear the money might be recovered back. This doctrine has been overruled in 3 T. R. 166, by one or two later decisions in Camilla.

The whole the contract is executory, yet you cannot recover. If the contract is to do an illegal thing you have paid the money, you cannot recover back, if you have not paid it, the other party cannot recover it of you.

In a valued policy, in Case of a total loss the Premium can be no recovery of Premiums. There have been instances to protect a trade, as e.g. with an Enemy. Now the premium cannot be recovered back, for the contract was illegal. Avoid a void ab initio, East 96.

The exception to the general rule that the Premium can be recovered back where no risk is there, is in this principle, viz. that the contract is illegal, then it is illegal the law will afford no assistance to either party. In all other cases the premium is to be returned back in whole or in part. If the consideration fails. As suppose the policy is void for non compliance with a warranty, then was no paid, the premium must be returned. So suppose there is found in the commerce (the premium must be returned) as in the example already given, where the end was supposed his profit was lost, and the lesson is, he has not insured in a premium high. The premium of the lesson, when he paid the Premium and


The under 2d avowed safe in Port, the the owner was
ignorant of it - the premium was to be returned.

It is a Question decided whether, part of the insured, so as to destroy the policy, & discharge
insurers from all liability, whether or not on of the insured ought to be allowed to recover back the pre-
mium? The argument that the insurer ought to
recover it, is, that there has been no risk, therefore
to make the insured pay it, is a penalty on him.
that this penalty is to go to a private person to
the fund it is to know nothing of paying a penal
by a private individual. But reasoning from
analogy we find it is not in essence a thing that
private persons are allowed to recover penalties.
the in certain Laws in Society declaring which
penalty, committing a breach shall pay a certain fine.
whilst is a penalty, doing person being negligent it is usual to divide the penalty equally between
the informer & the Government. How is it with us?
there is a penalty on the Lender of y money, the
whole bond in the security is void the recovery can be had upon it. Here there is a penalty which goes
directly into the pockets of non-payers. Suppose,
that a man of smuggled goods sells them. Now by
a Stat. in Eng. he never can recover the debt for
them. This is a penalty inflicted upon him the mer-
ning of which is just to much money
in the hands of the Lender. The idea of it brings a penal
by us is as an argument why the premium sh. payable.
Sec. 7. In certiorari.

The Common is without foundation. If there is any ground for it, it is because there is no risk. The rule formerly was both in law & Equity cases, that it might be reserved back. 2 Cm. 206. 3 Ems. 76. 3 Bar 1664. But the rule is now certainly otherwise by the English cases. I think they are correct. But the reason given in the Cases are not the same. They say it is because there is no risk is now. Now it appears to me that this is not strictly true. There are many cases where it is true there is no risk is now. E.g. when the insurance is on a warranty that the vessel shall sail with convoy. & she does not. Now here is no risk is now. But a point is a secret thing. The chance is on the Insurer or who imposes upon many less of the risk to pay the money as on a good & fair policy. This is my opinion a risk. As e.g. suppose the insured tells the Insurer all the circumstances exactly relating to the voyage, except that at a certain time she was in distress, all hands at the pumps & several feet of water in her hold. Now if no one survives to tell the story the Insurer will pay the money. It perhaps never know that the insured was possessed of this intelligence at the time of the insurance made. Case 213. is the first case where this was known. In later cases, the Insurer recognizes the same to be true. And they say the reason of their decision is no ground of policy. Both reasons are good.

There is one single case where there is no reason given by the Insurer. In the case of the capture of Bridges. The Captains
Sir, Moratorius.

an entitles to only a part, but by usage they got, what Prize. Now this may be inserted, but it is uncertain whether the vessel will be condemned or not, but it depends upon this fact. Suppose the Prize is not condemned, but a quietus can the Captains recover back the 'Prize?' The interest was contingent, but such it was inserted, 8 T. R. 139. If someone that in some cases there might be an appointment of the Commissioner. This is true. There are such cases. I will state to you the grounds of it, which is that all the risk had not been run. It is not in such cases when the risk has not been run, that they were not to be returned; for the general rule is, that if the risk has begun to be run, there is to be no return of the Premium. And here I think I can say that it is a matter whether it is by the pleasure of the insurance that the risk has not been run. Suppose the Ship is insured from New York to London. It never sails. Now says the insurer: 'Pay me back my money.' You no risk has been run. Now it is not on the mouth of the insurance to ask why it did not sail. It is none of his business. Suppose, e.g., the warranty was to sail with Conway, or in other words, the insurance was provided the ship with Conway. After it is not, there is no risk. So if the warranty is that the whole back by such away at the does not there is no risk run, 8 T. R. 139.

These are all cases of no risk. But I will mention some where the risk has begun to be run. By the Ship sails in the voyage at the time the agreement matures the next hour. Then there is to be no return of
Lex Mercatoria.

any part of the Premium. So if the vessel wants to sail with Convoy, it after going a little a short time she purposely deviates; this deviation discharges the insurer, but there is to be no return of Premium, for the risk has begun to be run at the Contract time.

Davy, Ruman & Woodridge.

But, there are cases where the risk has begun to be run, so the Premium is to be returned. One clap is of this kind. Suppose a vessel is insured from New York to Barbados, & the Policy is $500 for on the outward bound voyage $500 for on the inward bound voyage, which makes $225, but it is all paid, and for the goods to Barbados $900 is lost. If one has the risk has begun to be run, but the risk has not begun to be run on the outward voyage, then for there must be an apportionment made, & the $500 must be paid back. But if the insurance has been at 225 for on the whole voyage out & in, & nothing is lost on the outward & homeward bound voyages, there would be no apportionment. It is usual in almost all countries as well as the U. S. to make two voyages so much on the outward bound & so much on the inward bound voyage.

Another set of cases which are the practical ones, you will remember that if a vessel goes to sail with Convoy, as for instance from London to Jamaica, she may get to the place of rendezvous without Convoy, if she is lost or going down the Insurers are liable. Now suppose the place of Rendezvous is at the Downs.
Letter from Mercatoria.

When the vessel from London to the Downs the risk commences. When the arrival at the Downs the convoy is gone - the process without Convoy. Now the Insurers are discharged. The insurers say, pay back the Premium. I want says the insurers, for I have run a risk, the risk has been commenced, for if you had been lost on your voyage from Port to Port, Bains, &c., how have obligations to pay. What is to be done? The decisions on this subject have not been uniform. But it is now settled that they must consider it two voyages, one to the place of consignation, & the other from there to the Port. If during the voyage the insurer has run part of the risk, therefore there is to be an apportionment. The insurer is to retain a certain part of the premium, the quantity of which the jury are to determine under direction from the Court. S.D. 1837, 1838, & 1839.

This brought up another set of cases. Suppose the vessel is insured "at from", the Premium is paid. Now the Insurers is liable for all loss as well as the Contractor as for the voyage. The fact is the vessel leaves the Harbor and calls at such a place. The voyage is given up, or the sails are not fully ready, &c. The Insurers are discharged. Can the Insured recover back the Premium? The Insurers says I was liable; you have run the risk of all loss which might happen while the vessel lay in the Harbor. In the first cases it was said the Premium was not paid, either, to the Insurer to return it. The principle is said to be overturned in subsequent cases. But then was
Sec. Abercaloria.

In case where it has been decided, except what has been an usage to do so. And in all the cases where the jury premium was in part restored, the jury found no usage. March 566, 7, 8, 9.

I see no reason why the principles at the same or this case, as in the former where the suit is in place of insurance, I can see no difference between the two cases.

In case of insurance for a limited time, the interest is not so long as they expect, yet there is no return of premium. Suppose the insurance is for 12 months, she returns in 6 months, then is an appropriation of return of premium. They agree on a line that they are bound by it.

Rect. 15th April 8th, 1812.

It is often stipulated in the policy itself that there shall be a return of the premium, on the happening of a certain event. This is no warranty about it, on the part of the insured, but there is a stipulation that if the policy with Company, or at such a time, or unless with many persons being in line of war (the premium is to be returned). It is an agreement between the parties as governed by the contract. There is a case where the contract was that if she sailed with Company, and part of the premium was to be returned, but she did not sail with Company, no premium was to be returned. The boat did not arrive, a part that left her in any way. The reason was that he was not obliged to return the premium as there had been
Sex Mercatoria.

Partial loss. But the cr. tells that this was a contract to
forward the parties, they must be bound by it. the parties
may be insured. Doug. Scam. 87 Doug.

In another case of the same kind of assurance,
the loss was not insured, the parties lost the cr. must to pay, but the Premium was in part to be
returned. 1 Do & Rob. 21.

In another case the ship was insured from one
port to London, if the parties with Convoxx the part
of the Premium was to be returned. The parties from
Santos to Lisbon (the place of rendezvous, with Convoy,
then costs to sail under protection of another. But the
lost the first Convoy, the other was gone. She sailed
the second quarter of the voyage without Convoy further
data. The cr. was, whether part of the Premium was
to be returned? The cr. returned it to be. Not because
she actually did sail with Convoy, but on another
ground, that it was the best she could do. In decision
was not voluntary. They considered thee as sailing
with Convoy. 1 Do & Rob. 11.

In all cases when the Premium is to be returned,
the Insurer has a right to one half per cent. Losses
for this trouble, he has had. but it was for the fault of
misfortune of the insurer, that the risk is no risk. As
if the is insured to sail with Convoy, then not the
insurer is discharged, the risk is not run. the Premi-
un is to be returned, but the Insurer will return
the policy for it is the insurer per cent. that he did not
sail with Convoy. if insurer has been put trouble.
2 Doug. 132 167.
Six. Percutia.

I shall now notice that species of borrowing which is a sort of Insurance, known by the name of

**Bottomry & Respondentia Bonds.**

In Bottomry Bonds the money is loaned and the Ship is pledged for the security of this money. If it is agreed that if the Ship is lost, the loanee loses his money, and the revenue. If the Ship returns the loanee receives the money, and the marine interest agreed upon, but it is said it may no matter how exorbitant it is not usury: it is because of hazzard. These Bonds are most frequenly given by persons completing Bindings, they borrow money, and if the Ship arrives, they may make a handsome profit, or be able to pay the lender, if the men arrive they have nothing to pay. This is called lending money on Bottomry Bonds. I said let the interest be ever so exorbitant it was not usury: for it is a principle that it is never usury when the principal & interest are proportioned: it is thus a fair bargain of hazzard. This is the same in all cases, when there is thus hazzard it is not usury, as e.g. the Case of an Annuity. 1 Bl.C.C. 482.

4 T.R. 353, Cor. 2 265. 503. Thad. 418. 10 Video 604. 1904 236.

The Ship's hazzard are not only insurable if bought here, but also the person of the borrower, for the money lent at the interest. 2 Bl.C.C. 468.

**Respondentia Bonds differ from Bottom Bonds in this:** the Ship is not pledged, but the goods & other hazzard are. This goods are always on the Town of the borrowor & his pos. of it, & the trade must only be shipped according to the course of the voyage, & the borrower possess it.
Lex Mercatoria.

is bound to answer the contract. It is that you may invest much more than a personal security, but this bond is frequently entered into with the same marine interest as policy. Bonds are just as important in this way. To be sure, if you will observe that in this case, the money is always at the risk of the lender. There is no difference from all other loans. For in all other cases, the borrower runs the risk. In many respects it resembles an insurance, the lender in this case loses his money in case the vessel is lost. The insurer has to pay it in case of such a loss. The insurer receives his premium, the lender his marine interest. If no risk is run, the lender receives no interest, more than on another contract as e.g. if the voyage is given up. The money is to be repaid to the lender with simple interest, but there cannot be a recovery of marine interest, any more than a premium can be recovered when no risk is run. In many respects then it is a kind of insurance in others however, it differs materially. The insurer furnishes nothing, but here the lender furnishes all. The insurer becomes a debtor as soon as a policy is signed but the lender never becomes a debtor. If the ship is lost he loses his money, if the cargo is discharged from his contract. The insurer has no claim on the goods, insurer but the lender has. Again the insurer is always liable for an average loss, for a partial loss generally, but the lender is never liable for a partial loss. If there should be a damage yet, the lender loses nothing by it, if the ship arrives there is
Sex Mercatorum.

... is an opinion of general average for which the loss is liable. If a loss happens for the purpose of saving the ship, the owner must contribute as well as the rest. He is liable for the average called general average, and so must be to be indemnified out of his marine loss as his share or proportion amounts to. The principle is, it is for his interest, for if the ship is lost, he loses all, therefore the jettison is as useful to him as to any one. That loss which is occasioned by jettison is called general average. The origin of this custom of the custom of pledging the ship doubtless was that the seaman being in a foreign country, was allowed to keep potashate the ship's bottom in order to raise money to repair. The seamen are thus to agree to furnish him money to relieve his wants, if he would pledge the ship. This gave rise to the custom, but it has now become a very common practice. The money must be stated in a contract, to be for the use of the ship, this must be the real fact, that it is for the use of the ship, not for a wagering contract. The Sar is as strict to a wager of this kind as any other, if there is not such a contract, it is treated as a wager. D.B.C. 468, 166, 452. Bacon book II. Cap. II.

The marine interest, you will observe several branches like the rest of commerce. If a ship endeth with commerce, if the marine deals the trade as good only for the merchant or simple interest, then can a contract be entered into. This man dealt not lend his money unless the person wishing to borrow...
Sea Mercuria.

would enter into a Covenant to perform the voyage. The did enter into such Covenant but never perform the voyage. Since the London would have no recovery of Marine interest (as he might sustain an action on the Covenant but that is a different thing). The London would be allowed his half $F595. 28th June 1863.

The money is due when the voyage is accomplished. Suppose it is not paid the London pays, what will he recover? He will recover the money lent, the marine interest before it is paid, and the time it was due (to the time the arrived) + simple interest from that time like it is paid. No marine interest is allowed after it becomes due. 6th March 28th.

The Parties are the same generally speaking as in case of insurance. If the vessel is lost either by storm, capture or in any other way, the money is lost. But the loss must be a total one to discharge the Covenant. The London is not liable for a partial loss; at e.g. if the Ship is Captured the captureisthe arising, no deduction is to be made by the London, for the partial loss in being Carried out of the way. Marshall 659.

The Ship may be lost from under such circumstances, that the Insurer does not lose his money, but there are cases where the insurance is to be discharged. Such as e.g. the Ship was not Sea worthy or if she is lost by the Master's conduct of the Mariners. Now in such cases the London may not lose his money, for an insurance is not to aid the for the loss caused by the Master. 2 Edw. 4th. 30th.
Dear Mr. Reinstein,

I trust by smuggling to the American coast, and if the haversack weighs to the smuggling, as of the officers, his money on a smuggling voyage, he will lose.

If the ship deviates, a question arises, does he lose his money? Nor does he lose his marine interest? I think not, for the risk has begun to be run. Thus is the case where this is decided, but I reason from analogy — the instance of such case as not lose his premium. Why not the loss of his marine interest? The marine interest is the London Premium, and in this respect it resembles an assurance. Thence, it is

Changing the ship without any necessity will discharge the losses from loss, as such as are of discharge the interest.

As to the case, it seems to me that the risk ceases the moment the ship anchors at the port of destination.

With respect to the sum of general average there is no law about it at all. But there is a custom in England that in such cases the haversack or a Botany bread or the nothing at all. But from this case it is apparent that the answer in England is not the custom in the nations. The C.S. is that the owner contributes, while there is a general average. And there is the best reason for it. And is that by the settlement, the principal interest is saved. In this,

In case of insurance of C.S. on all contrivance is, although the highest practice there is difficulty, that when a man wants to recover he must go to C.S. for generally. But the practice on England it is certain.
Sex. Mercatoria.

in the Common Laws, Courts have a right to try any breach of contract in a Policy of insurance, as in a case of this kind. Equity Courts have nothing to do with cases, when they have with Cases at law. To be sure they can compel a policy to be given up, but it is done under certain circumstances. They once in such cases decree the same way as in other cases. Suppose a man takes a Policy in his own name, to another person, now they can say that he is trustee for this other person. But they have no more power in this, than in other cases. 1 Steph. 237. 2 Steph. 239.

This is a very common provision clause, inserted in the Policy that if any difficulty arises it shall be submitted to arbitration by the Chamber of Commerce, but this provision is nugatory. For suppose the man who owns the Policy says: Can you please this provision as a defence? No, for it is a principle that the Citizens of a country, over the lot of their jurisdiction by any agreement they enter into, they may be liable on the agreement. 2 Edw. 1842, 1851.

What is the action on a Policy? It must be a simple suit of tort vs uninsured. In case of a failure clauses say: 2 Ins. Comp. 125, it is covenant thereby cannot act without his consent. But vs uninsured it is special to Bump it.

The Declaration begins by reciting the Policy. That is an agreement that it was made necessary by the Custom of Merchants, this is what the court say as usual. After stating the Policy the Declaration...
Sex Mercatoria.

goes on to state all the steps warranted attached to the Policy, as that she was to sail with convoy 1. It then states the premiums for considering of the Policy and that it has been paid. It then states that you certain sum be agreed to insure to subscriber or agree 2. (or, of course Policy was made to subscribe.) The insured essentially that states, of the Policy a certain policy, that was a sum agreed upon, if it is an open Policy that it is the sum subscribed. It then states that the ship sailed on the voyage insured, if convenient, to sail with convoy or at a particular time, that the said sail be short a compliance with all the warrant his must be state. It then states the ship while was insured of that the manner of the ship was insured as if it happens by capture he states that the ship was insured to. It then states a notice of the ship to the purpose and demand of Payment, diligently that the ship refused to pay. i.e. it states a liability or account of loss payable. I state the form of this, because it is a technical thing. The forms are always to be found in the Elementary Writers, but we shall consider the law. Many a per or can draw a declaration by looking at a form, or know nothing about the law. If a person knows the law he will always be able to draw a good declaration, but perhaps it may not be a handsome one. I would advise you to draw a declaration in your first place without a form, if then you may take a form and Compare them.

It may be that the ship has been adjusted.
case you make a declaration just like the above, if the payment is proved, there is evidence of every thing except the non-payment. You have nothing to prove but the adjustment and the non-payment. The contrary now must be shown, as that there was no consideration or command to pay the Policy was affirmed by the Agent, it must be stated that the contract was so made by the Agent of the grant of the action. There are some questions of this kind. If a Policy is made to insure goods of A.B. and B. By the consent of B, it is taken in at a Partner. How can not action be sustained on that Policy being lost by A., without joining B upon the ground that shown has an interest ought a join? The be determined that the action in the name of A.B. &. to be sustained, it is sufficient of both in the names of the Persons mentioned in the Policy. 2 Bos. & &c. 155.

On the same ground of one of two Partners agreeing and both, if the action is lost in his name only who consents, it is good. A.B. Sc. Canc. no reason why this is not correct. The contract is made by one of the said materials to the insurer whether he is bound by A. alone, or by A.B. If A. Insures then, the Beneficiaries must sue both. 2 Bos. & &c. 156.

One thing further, when you sue for a loss you must show the loss to have arisen from a cause or cause or cause. It has, you state your loss you must state it correctly. If you are insured by two parties, state your loss to have happened by one, and it happened by the other, you cannot recover in that action. The most
Lex Monatoria.

Case in suicide was of this kind. The suicide was insured as detention by "King's Prisoner People" as also, "as bystander". The insurer took their action as the insurers, according that the loss happened by detention within. They set the prize, a mob assembled, took the ship, the being rigging in the was shoved. How the court in this case to recover in this action because this mob was, not the People. They could recover if they had swore that the loss happened by standing, but outside of the loss to a cause, which was not the one, they did not recover in that action, they might bring an other action, recovering the prize by standing. 17720.

[Undated, April 15th, 1813]

I was observing to you the necessity of stating the loss correctly; that it might appear to the Examiners [the report is not clear above]. I should observe one thing to you, you will remember that losses may happen by the Insurers not be liable in them. Except your insurance was by Capture, the warranty that she was not, with convey, did not she was lost, not by Capture, but by force. The convey was to protect from Capture. The Insurer was not liable. Attends to the principle a moment if you will see the reason. The warranty was a condition precedent, if that is not complied with, there is no Policy. So that in all these cases it is immaterial how that was lost, of the warranty was not complied with. If you make an assertion that she did not comply with the convey, if you said not it where she was lost, with the convey alone, for, because of the
Sec. Memoratoris.

Warranty was not complied with, the Insurer was now in liable for any loss. In other cases you must know how she was lost, i.e., if you mistake the captain's name in any of the above, i.e., suppose you state the loss to be by Port of the Sea, but it turns out that it was not by Port of the Sea, but by Capture, you cannot recover. As in the case of the "Thyssen" whose insured was lost to the Port of the Sea, by Storm, she was driven upon the Coast of France and there captured. The Port of the Ship was not the Place of the loss, i.e., had not been a storm she would not have been captured. But the immediate cause of the loss was the capture. Art. 12 of the Declaration makes it to be by Port of the Sea, it is not the Port of the Sea, it is by Capture. Add 62. 4. 10. 728.

The case in Point 62 was a case where the loss was by the port of the Sea. The subject was one employed in the African trade. Daring to a long spell of dull, cloudy weather, the Capt. thus negligence, or ignorance, or a mistake in his reckoning got out of the way. The voyage was very much prolonged by this bad weather, the negroes became sickly and many of them died, and the Sea was whether the Insurers who insured the port of the Sea were liable? No doubt had the weather been good but the Capt. did have continued in the right course. But in this case it was not a loss by Port of the Sea. The immediate cause was the mistake of the Capt.

The best way is to state the loss truly in the words of the policy. As e.g., suppose the Insurer was written B. M. The loss was occasioned by Storm at sea, you state the loss in the terms of the policy, i.e., by Storm.
Sec. 2149.

But this is not necessary if you declare in language that constitutes sufficiently the loss insured as it is the same as stating the facts in the words of the Policy, and the example. Case first. Suppose you state that the loss happened by fraud of the master; it is insufficient to

say it is barratry. In one case it is said, "this fraud negligens of the Master's negligens however is not necessary: if the negligens was great, it amounts to fraud." 1. Play. 1349. 1 She. 55.

When the Insuree dull to recove what they have paid, as for salvage repairs as it is not necessary to state this particular thing, they must state the loss, and that it is a loss insured as in the Policy. If e.g., if the vessel was insured as a ship of the sea, if they were stranded in a River, they may state the loss to have been by the vessels of the sea mode may be given in evidence. Leader, 681. 6 Coa also was its hire.

This is one case where you must not state a Policy at all; this is when you sue for a return of the premium. You sue in an action for money had and received the Policy is evidence, when from no risk has been run, as of the was to suit with Levy. This not, this was necessary to sue, but the 1st. But that of known

So far of the Declaration. But further. Suppose the Declaration is good, the Deft. Comes 1st, 2nd. It pleas the general issue, how a strong point. Now the Deft. must prove all his allegations, his whole case. So to by to state, how he must prove it. The Deft. under the general have to say that the Deft. can prove all in has alleged may
Sec. Mercatoria.

himself show many things that will discharge him as he may, that any thing that prevents the contract void or invalid, or any subsequent fact which will discharge him. He may show the illegality that it does not appear on the face of the contract, if it does appear advantage may be taken of it even a Domino.

The may show that the plaintiff had no interest, therefore it was a mere wager. He may show that the plaintiff made a fraudulent representation which will discharge him that the plaintiff did not disclose certain facts which he was acquainted the concealment of which will discharge him. He may show that the plaintiff was not henceforth. He may show that the voyage was not the one for which the insurance was made, or that there has been a deviation, all these will discharge him. He may show that there has been no effort to discharge him, so that it was one not insured. He may show in compliance with some of the warranties that will discharge him on no perfect way to lose for a remedy for him. He may show that it was a double insurance, that the plaintiff has been remunerated, received full satisfaction of another underwriter or Insurer of the plaintiff has no claim or right for he is entitled to have some satisfaction. To the effect of the contract to the underwriter, who has paid the full amount, but this is a distinct thing. Suppose the insured has claimed for a larger loss, the Insurer considering the loss as a part that has been so much as he thinks is the

Now if he had for a total loss, he should please learn.
Lax. Mercatoria.

as to that amount then assumed as to the residue.

As he can prove to the jury that the amount by non-
tender was sufficient, no cash will be recovered to
him, I judge; I am sure for the amount tendered.

Now here mark a difference betwixt the

C.O.D. At C.O.D. you can plead a tender only when the
sum to be paid, or the duty to be performed is certain
andascertainable. As e.g., you can tender the money due on
a note. But for this is ascertainable. So if you are to
deliver a Horse, a tender may be made. Because
the amount of damages is uncertain, i.e., will require
the intervention of a jury to ascertain, a plan, for
the due is not good. As e.g. in the action of Trench, you
cannot tender the damage done, for it is uncertain.

other is no standard by which it can be ascertained
it must be determined by a jury. So if, in a Contract
to build a House for another, it does not, there is no
standard to which you can refer to ascertain the
(damages). Of course a plan of tender is such as is not good.
But if you have a standard to go to, a tender may be
made. As if it agrees to return to one hand. But, whether
and does not, you can ascertain the amount of those
at the time it or have been received, this you may
under the damage, but is considered as certain, for the
majority is "to be certain, good polish with action." But
it is otherwise, i.e., for how all, the damage is
wholly uncertain, as if the C.O.D. is parol. Still if you
happen to judge right, tender as much as the Fears
think is due, your tender will avail you, as good
Lex Mercatoria.

defence. Suppose be wants to tender before the suit is
filed. Can he after this make a tender? The practice
would be to some extent of the States is to allow the D.P.
to bring the money into court at any time before the
cause goes to the jury. The C. & R. rule 15, that there
may be the tender after the suit is filed. But a word
say to our practice, the costs must be also tendered
which may be ascertained by referring to the estab-
lished rule of costs. In England these are those of the C.P.
where they have no practice like this the money
be brought into court it will not clear your costs. And
the suit on the suit? By C. & R. it is the same as prior to
that you may tender at any time. It is an advantage of it.

Here we come to the other side where a suit is to be by
your enemy in the court as if he
might get it. Now what is the law about these enemies?
I am sure this it is certainly determinate, if he was once
an alien friend, but has now become an alien enemy a
contract made prior to the war, the enforced time being
either before or after the war, but during the war or
after. Cannot be maintained on it, as must abide
all the law is over it is a temporary bar a mere
matter of abatement. The next is that of the
least made during the war, then what shall happen?
It affects upon the legality or illegality of it. What is
the law? If the contract is illegal he may plead the
C. & R. rule 15 on the illegality which renders the contract
void. So any of the contract is illegal then all contracts
with an enemy are not illegal. As a man did not make
a contract with an Enemy to furnish him with provisions, so is it illegal. But suppose a Ship was taken at sea, or the Capt. falling into a Handsome Lord to pay a certain sum, now is this a good contract? I conceived it is. It alleviates the Calamities of War, is of advantage to Commerce, but yet no action for principle can be maintained on this land during the war. This after the war, a recovery may be had upon it, so this corresponds exactly with the Cases I mentioned to you of the Commencement of the title. Whether Contracts with an Enemy are legal or illegal depends upon the circumstances. I have no doubt that if in a Common Laws Action I should give my note to an Alien Enemy for a Sum I owed him but it is to go on. The illegality consists in strengthening the Enemy willingly. The fact is that Contributions made to save a Town from being destroyed have never been supposed to attach guilt to those who contribute, neither is it considered as aiding to stiffen the enemy willingly. To a person in a peaceful state on board an Enemy's Ship, he comes into action of that, compel him to fight, he is considered guilty of crimes in doing it. Compulsion consists of what otherwise is guilt. In the same ground it is, that if an enemy may get possession of a part of the property, of our troops which they do not habitually, we cannot then impute provisions to say they are not guilty of any crime.

In proceeding with the subject you may perceive a difficulty arises on these that are a number of Subscribers to a Policy. Such...
Sex Mercatoria.

Subscribed by 20 persons, all for different sums. Now there
are also distant Contracts. Each one is liable for the
be subscribed. There are as many rights of actions as
are underwriting as insurers. The practice in Eng. former-
ly was to bring an action on each. The Lat. found these
very mischievous grievances thing. The first thing was
to obtain relief was to apply to Chancery and they de-
cided that if the applicants would submit to the verdict
(but in 50 one), i.e. if they would agree to abide the first
50 one, I divide the same according to each ones inter-
est, this shall settle it. There is generally a rule of Court
for all States where there have no City. But when they
the practice is as above, which is that when these suits are
lost, if the insurers will never apply to a City of City on
being a writ of Error, but agree to abide by the judgment
there, the City will then consolidate them, I thus relieve
them of the inconvenience of having an action about
one separately. Suppose the suit is bid 50 D. Why
come into 2 City wish their cases to be consolidated. They
make a rule that if on the writ 50 one, the City
take agree to abide the judge. on that one, I agree no
in being a writ of Error, it will furnish all the ne-
cessary evidence, as papers the Court shall see. the
suit shall be consolidated the one being shall decide the
whole. But suppose the judge will not agree to it. The
Court cannot compel him, but if he will not agree,
they will continue his case till the cost of line, but
the this cannot be said to be compelling him to agree,
yet it has the same effect. If the City will not agree.
Sex Mercatoria.

Dr. C. objecting the plea to proceed at each of them. I make them as much cost as he can. This rule of C. is not saying more than was formerly done by Chy. Nor suppose in error except in, as if a material error is not in the Declaration, notwithstanding the agreement the party brings in View of Error. Now the C. cannot say there is no Error when there is one, merely because the party has agreed not to bring a View of Error. In such case they will treat it as a contempt of Court, that is to say they will imprison him.

Much has been said as to the difference in testimonies between mercantile suits and those at C.S. I must say that I do not find any material difference. I know of one Case, standing alone, where the testimony may be extraneous to contract, a written contract. This is not Law (shall mention this case when the facts of Proof) you may be as certain of having the advantage of a written contract as at C.S. Is there any difference there? There is a case of this kind. When it is said there is a difference, there were a number of undertakers. Say A. B. C. D. E. It is said, D. B. is lost in to prove facts (you will observe this is no consideration rule); he is excluded on the ground of interest. Will what interest had he? Why he would, if it might occur, for if it occurred, he suppose he might. But it's unjust in the Suit. A. B. C. D. E. could not be introduced as evidence in an action on D. The truth is he is excluded only on the Question. I formerly such an interest excluded from testifying, but now it does not.
Lex Mercatoria.

he might be admitted a witness, as you may see in
5 T. 253. in a note - The certainly would not be excluded
now, see the case of Kent v. Basham 3 T. 253.

There was a case of Sowen, a broken, the inven-
tions was signed by it. 15. 6. C. - it was not filled up, so the
broken, put his own name to it. when it was sent, the
broken was called as a witness, thus was no consti-
tution rule, but there was a bill filed in Equity.

This by the decision, that a child was
as much as any thing else. But the debtor, got together,
to gave him a discharge from any liability, as to say
demand a withdraw of the Bill in Eq. - the Debtor,
affirm the withdraw on purpose that he might keep
him from testifying. But the be, admits him - when
the Bill was withdrawn his interest was done away.

The be give several reasons for admitting him. 67, 96.

Kentoni's was "that he was not interested:" Ascher says
"the broken had no business to sign, his signing it, was
void, as by signing he could not prevent himself from
testifying." Burtles says "he ought to be admitted into the
the exception to the general rule of evidence which is
"the necessity rule." He founds by this is, that the bro-
ken is admitted on some ground or another, I believe
in all cases when an object is called upon to testify
he should be admitted. I do not believe this case differs
from 6. 9. rules. But if it does differ, it is a single
case, it forms an exception to the general rule
of Evidence upon this subject.
Of Proof

My great object here is to make plain to bring up to view the law you have already heard on this subject. Now the case is in court the parties being forward their testimony. What is to prove? The first thing for the plaintiff is to prove the contract. For this purpose you introduce the policy—but this does not of itself prove it, you must prove the subscription of the same. Then the contract is proves. But it is certain no parol testimony can be introduced to control this written policy, except indeed when it is illegal; all the time is one case which I mentioned to you above where it is by parol testimony may be admitted to control the written Policy. It is not law. Shenue 454.

Are there any exceptions? We do know that testimony may be introduced to show the usages and customs of a particular trade, to explain them, as e.g. Bottomry Bonds are not customary under the term "goods" but there is an usage in the S. India that the insurance on goods will include Bottomry. Now parol testimony may be introduced to prove this usage. But you cannot enquire the opinions of the witness. He is consulted as you we consult an author, e.g., to ascertain the existence of a fact. So in another case where part of the premium is to be returned the ship is warranted to suit with convoy. You all agree that she may sail to the place of rendezvous without convoy. If lost at any way there, the insurer is
Sea Surplices.

table. The suits there go no further. The risk has been lost in part, and, if there must be an appor-
tionment of the premiums, how much must be paid back? If there is no usage about it, it may be proved by
parol. An usage in the Bills is the same as a Custom
at C. L. But you cannot inquire of the custom, as the
Law is. Then the judge gave us a long dissertation
on a custom in town, relating to Books found in a lobby
etc., not very important. J. F. J.

Lecture 17th April 20th 1813

These Policies of insurance are frequently pro-
cured by Agents, and Warrantors are Subscribed by
Agents, i.e. Agents of the insured. If their subscription
is denied, their hand writing is proved as in the case.
But they may also be consulted to show their authority.
The Power of Agent is always in their own hands, but
there is scarcely a case in the Books where this pow-
er has been doubted in other transactions circular.
Plains in this way, much difficulty would take place
but among Merchants there is seldom any Idea as
to the Agency power unless it is downright forgery.
These agents make it a business to act for the insured.
You may be a case in High Court when it was prove
the man has been in the habit of subscribing for
the insured, tho he had no power of Alley to yet it.
but his this sufficient? - it was a sufficient pow.
er the contradictory.

When the insured fails to recover, the inter-
est never can all add that be has not received
Sex Mercatoria.

the Premium. He has subscribed the Policy, background, and he has received it, the production of the Policy is sufficient evidence in this action, that the premium has been paid. But when the Insurer seeks to recover the premium, this acknowledgment on the policy is no evidence to him. it is no proof that it has been paid. There must be an interest in the insurer, else the policy is not good, so this interest must be proved. It may be shown by the Bills of Sale, invoices of the Goods, charges of the outfit. These all go to prove an interest. There is no great difficulty in proving an interest. If the ship is cleared out in the name of the insure, and not the Bill of Sale can be produced. The Custom House do not clearances go to show it. 1 Sed p. 82, 206, 266, 1127.

A general averment of interest is sufficient. the Insurer under this averment may prove any insurable interest, any thing on which the law allows an insurance to be made. As to the recovery, the case regulates just according to the proofs of his interest and the loss. The quantum must be proved. But if it is a valued Policy, if the loss is total, he need not prove anything. the quantum is agreed upon in the policy, it is proved by the Policy, but this is but prima facie evidence, for if it is a mere evasion of the law, he can recover on a wager. It may be shown. But if that is not the case, the recovery will be to the quantum agreed upon in the Policy if the loss is total. If the loss is partial the Description of the loss is the quantum. Viz., the Bounts are to be endorsed in their own character.
Sex Mercatoria.

except when usage regulates it differently, as in the East India Trade. 1 Bun 1399, 1400. 118 Ch. 1232.

If a responsible Bond is endorsed, the bond itself is prima facie evidence of the interest. 118 Ch. 1236.

The insurer thus having gone thus far, having proved the policy, it shows that the subscription or the bond itself is a sufficient evidence of the interest. Having proved the premium, he is entitled to any sum, as if it was an open policy proving the loss, or if a valid one proving a total loss, or if a responsible bond, by exhibiting it. Having shown the warranties of the sure, any act that they have been complicit with in the ship that he has a right of recovery, as if she was warantee, to sail with convoy, or to sail by such a time, or to sail with so many guns, or so many men. He must show that these have been complicit with or if warranties neutral he must show that she was neutral, as by the clearance from the customs house or the adjudication of a Foreign 60, deciding it to be neutral, it then lays on drift to prove that he was neutral, or if she has forfeited her neutrality, that she was condemned on that account or sufficient evidence. He must be condemned however according to the law of nations or of a treaty, else it is no evidence. The true loss must be set out in the declaration, the proof must convince it prove the loss alleged, for the choice of a loss 6 one insures 6, yet if that is
Sirs, Mertoric.

not the case, you cannot recover on that declaration. In showing this loss, it must be shown that it happened during the risk, as if it is a loss on goods, it must be shown that they were put on board, for the risk does not commence until this is done, unless in a case where she goes to another port to load. The bills of lading are evidence that they were put on board, unless there has been some collision. 7 C. 76. 103.

If the Barretty of the Master is insurable, a plea that the Barretty was committed by the owner, who is master, is a good plea, but it lies on the Insurer to show he was owner. If he can show this it is not Barretty, the insurer will be discharged for the Barretty of the owner cannot be insured on.

What are the Damages? It is said, the ground of recovering of Damages in mercantile instruments is different from what it is at C.E. But I do not concur that this is so. There are certain damages called "remot" not to be recovered in any case, the immediate. Damages are those recoverable on a mercantile contract. So it is at C.E. It is true, there are certain Damages peculiar to C.E. like those mention to L.M. Suppose a man contracts to build a ship, that he have him ready for sea by the 1st of November, it does not matter what damages are to be recoverable of him. The owner may say, I wanted her to go out in Nov to 1st, and 1st she have, tonight Beef 50c. per barrel at the market, to which I contemplated going.
Lex Mercatoria.

was this very high. I'd have sold it for $15 per stand. 

Now in this way he can make up a very large 

four bills, he can say he would have made a great 

voyage $100,000 was the money, I perhaps it is all true. 

But the Ct. cannot go into this. So on the other hand the 

vessel might have been lost before she got to the 

port of discharge, it depends on a contingency. 

There are remote damages into which the Cd. makes 

enquiry. The enquiry in such case is what are the 

immediate damages? The man may have been 

expense in procuring his load to this is immediate 

damage which can be proved, for this he will recover. 

Can see no ground for saying that more remote dam- 

ages are recoverable in mercantile transactions than 

in those at Ct. Suppose a man contracts to deliver 

100 bushels of wheat by Dec. 30th. He does not. What is 

he to pay? Why just the value of the wheat on that day 

at which it may have arisen in a week after a double 

day's value, still, the price at 3 days is the rule 

this only, he will recover, together with 3% interest. 

10. A 1% note. This was a case of a ship engaged in 

the Slave trade. There was an insurance on the pol- 

icy of the lives of all the negroes who should be killed 

in consequence of running. They maintained, I told 

them the sailors were obliged to shoot among them 

due some were killed, others wounded. The Africans died, 

the rest grew weakly. Some flung themselves, others 

killed themselves by drinking salt water, 3 others jumped 

every one of us were murdered. The ship was, for how many
For the cataria.

The insurers were liable? The court decided that those who were shot, if those who died of their wounds were included in the policy, those only. Any immediate damage you may prove, by anything you have paid for salvage. To under the policy without stating it was for salvage.

Now come to a subject, where it is said a distinction exists. Is there is one I am unable to discover it. It leaves the cases are contradictory. It is to say, that as an instance of wages, provision is not within the policy to the ship, I mean. There are cases to this point, they say these must be insured as such particularly. I mean the wages of marines while laying by, as for requiring. If the law is whether, they insure the Ship they are obliged to pay these wages to the marines, or in other words, in a bill or a policy on a ship, are these wages provisions to given in evidence for recovery. For them? The cases that urge this idea are in Black 53, 54, 157, 127.

Since there, there has been a decision in the Bell of B.B. which was this. There were Banksmen on the Island, there being no houses near. The provisions were taken out of the ship & put in one of these Banksmen while the ship was repairing. The Banksmen was burned. The provisions lost. The insurer was sued for these provisions. The court decided that he was liable. They consider the provisions the same as if on board. If they had they been on board the insurer it no doubt have been liable. 407, 920, 33, from it appears to me that there are some cases on the provisions in principle, there may be an instance to a different point of consideration. In it, I do not think that that case corresponds of above.
Sec. Liberatoria.

Under the words "Goods were perceived" in an insurance, provisions are not included. The reason is they are considered as appendages of the Ship. To the Capt's clothes, & goods cast adrift the Deck are not included under the general word "Goods" unless specially named. Park 20.

It has long been a Deo, whether the party can recover for a partial loss, when he sues for a total loss. But it is now settled that he can. 1780, 52, 178.

I have now finished the subject of insurance so far as respects mercantile transactions.
Of Insurance on Lives.

An Insurance on Life is to insure the life of a person for a certain time, for a great sum of money, a premium. Or it may be by way of an annuity, paying so much yearly, or it may be to pay such a sum if the insured dies in such a time, if he does not die at that time nothing is to be paid.

The Act as to whether you may insure the life of a person without having an interest, is the same as the Act about wagering policies. My own opinion is that such an insurance is void by Statute, without any Statute. In Eng. they have a Statute of all insurances on Lives, or it is also forbidden in most other Countries. There is a common warranty extant in or the part of the insured that he is of such an age. This is like any other warranty, if it is not true, it vitiated the policy. Another warranty is that they have no disease tending to shorten life, i.e. it is a warranty of good health. Then the warranty there have been some cases, a man had an infirmity, there was a warranty of good health but it was proved by Physicians, that it was not one which tended to shorten life, the man might live as long with it, as without it. So where a man had a Cyst, the physicians swore that they conceived it did not tend to shorten life in those cases the warranty of good health was not a gift to him, 1736, to 1812, about 667. In this case case it was proved that the insures was troubled with spasmodic fits, tremors, the physicians swore
that these did not tend to shorten life. As there is no warranty the insurer takes all risk upon himself. If there is a warranty, it must be complied with. If the case of a hypochondriac man, the physician states that such a man was as likely to live as long as any other man. These are not diseases which shorten life.

I have said they must have an interest. Who has this interest? Why of the holder an estate, for the life of A. If he has an interest that is not life, the may insure it. It has been a tax, whether a creditor has an interest in the life of his debtor. Return that he has. But it seems to me this will always depend upon the probability of the debtor living a life, as far as is insolvent. Is 80 years old being public, there is very little probability of his ever being able to pay, but secure if he was young. A thrifty man.

The loss in an insurance on lives is never partial, but always total. In the policy there are inserted certain exceptions. If the insurance is void, if: 

- To commit suicide, if short of a due. or it be to satisfy justice. The loss must happen within the time limited. If e.g. the insurance is for one year, the due after the expiration of the year, the insurer is discharged, thus the cause of the it will happen before the expiration of the time. There is no claim on the insurer if he died the next moment after the time specified had passed.
Insurance against Fire.

An Insurance to Fire without interest was void at common law without the aid of Statute, but has now been Contradicted, 2 K. 3 S. 4. It is a common thing to insure at several Offices, the recovery of the value of the thing insured is all that can be had.

If a person insures at several Offices the same course of proceedings to be observed which I will mention to you. Suppose a man goes to the office of A and insures, but then to that of B. Then to that of C, he insures. Now, after he has got insured at A, he must give notice to the second office (B) of the prior insurance (A of). When he goes to (C), the third Office, he must give notice of both the former insurances, then the subsequent insurance are liable only for that which is not covered by the prior insurance. There is a provision in these insurances which has made some figure, viz. that no loss happening by the act of an Enemy, as by invasion, or by an inscribed power, shall render the Insurers liable.

There is no law as to the act of an Enemy, but what is meant by "inscribed power"? It has been determined that it means a power so authorized as amount to a Turbation, not a common mob, as a Rev. 16. Of course, the famous mob in London in 1780, was not an inscribed power, they burn'd down many houses. 2 Wh G 363.

The words "Civil Commotion" are afterwards inserted to a Rev. Law as arose as to the meaning of "Civil Commotion." The Col. decide that these were inserted for
the purpose of discharging the insurers from all losses happening by want of care, so that this was the meaning. Marshall 688.

The insured must have an interest at all times of the insurance, both at the time of the first. This insurance is a personal contract it cannot be assigned, unless otherwise is provided for in the policy. In cases of

In New York there is generally a provision inserted authorizing the assignment. I presume this is the case in most of the States if not in all. Where there is this provision the insured may sell the property. There is generally another provision that the insured shall give the insurer immediate notice of the loss by Fire. 3 Bro. Part 6a. 497. 2349 334.
 charter Parties. Sect. 18. April 18th. 1792.

There are two kinds of these charter Parties. One is when a merchant agrees with the owner of a ship or the master of her to carry goods for him from one place to another, or from E. to W. and as the case may be, to bring goods back. This person is said to charter the vessel. It is different from chartering a vessel, for this is generally done by a number of individuals who join in chartering her. But if a person wishes to hire the vessel of the owner, the master continues the command of her.

The other kind is when they hire the service of the owner, without paying any regard to his master, they employ a person of their own master. The former is the most common in England, the latter in the U.S. and have understood. The charter party is a contract entered into in writing it is called a charter where the action is always "covenant." It is a contract, an agreement entered into by the ship's owner or by the C.O., or captain for the benefit of the vessel. It is a form of contract for the voyage, sometimes for the month, or the most usual mode is to pay so much per ton. Sometimes they say to pay so much for the outward bound, some for the inward bound voyage. Sometimes for the voyage which includes both the outward and inward bound voyage. This is the contract entered into.

Suppose a vessel charts the vessel the same as he works a carriage or back stage, then he takes care to his own C.O. to join his own C.O. and transact his own business. This is one kind. The other is
Sex Moratoria. Of Charter Parties.

A ship or charterer is to give, and furnish, everything necessary, points the plain. What is peculiar in this species of contract is, that if the vessel is lost before she reaches her port of delivery, the charterer is liable for the outward bound voyage is mentioned. If she is charterer, so much for the outward bound voyage, not much for the inward bound voyage. If she reaches her port of delivery, it is lost on the outward bound voyage, the owner will receive the hire for the outward bound voyage, but not for the inward bound voyage. If she is charterer for both outward bound voyage, but not for the inward bound voyage. If she is charterer for both outward bound voyage, but not for the inward bound voyage, she lost the freighting, pays nothing at all.

The whole this is this: you charter a vessel for voyage, say to the West Indies, back. No matter when she is lost for if she is only lost, the freighters have nothing to pay. But if she is charterer, so much for the outward bound voyage, she is lost in the inward bound voyage, the owners receive pay only for the outward bound voyage. 20th 21st.

Suppose a ship is charterer for the voyage or which is the same. In this case, suppose she is charterer so much for the outward bound voyage, so much for the inward bound voyage. The ship sails the voyage delivers her cargo, brings nothing back. You charter, you pay much sooner. How is the owner to lose all the money, he would have received, if you had lost a load back? This appears upon this, what is the fault or misfortune of the charterer or his agent, a factor in the voyage.

But that he has not a boat ready in time? For
A master is not bound to wait an unreasonable time for a cargo. If the time for waiting is not agreed to, he must wait a reasonable time according to the circumstances, but the time is generally fixed. If the time was his or his agent's fault that he was not put on board, he was compelled to pay as much as he had lost back a cargo, the the owner ran no risk, had nothing to lose as long as he was nothing on board coming back. But if it was this some fault in the master, that no load was lost back, the freighter pays nothing for this inward bound voyage, if the master by his misconduct makes himself liable to the owner. Be an the owners liable to ye freighters? [?

Suppose the master was so misconduct with the ship that it is not safe to put a cargo on board the case is the same, he is liable to the owners, but if a freighter pays nothing. The fault of the master is the same as it respects the freighter as it commences by the owner, for the owner appoints the master. Suppose the master acts imprudently, as if he were a master’s mate in a storm, or goes up into a town on other dangerous place without a pilot, if a loss happens, the owner of the ship or master are both liable, the master's owners agent. Feb. 246.

I have written been speaking of cases of a total loss. But what is to be done in a case of the ship's voyage is to the West Indies. She is compelled to put into a port to repair, it is so long detained that the voyage is entirely frustrated. In such case the owner
Lex Mercatoria

[Paragraph begins]

The Ship has always a right to procure the proper conveyance to the port of delivery. This is in case the goods are not materially injured but can be transported, if the conveyance is so much injured that it cannot proceed. But suppose the goods are also very much ran aground, what is to be done? The freighters have a right to abandon the goods to the owner of the vessel to pay no freight. But suppose the vessel wish to abandon, albeit the goods are damaged, then procure another vessel to carry on the goods in this case the owner of the Ship is discharged, the freighters will be obliged to pay according to the distance they have gone. As if the distance was 600 miles and the sum agreed upon was 8000, they had proceeded 300 miles before the loss happened, they have no right to pay, if they do not abandon but take the rest of the voyage on themselves. But if the freighters abandon they have nothing to pay. If the owners agree to transport them the rest of the way, the act of the master binds them. If the master has to pay more freight for the second Shift, while the freighters have to pay no more than they first contracted for. It is just the same as if I hire a man to carry goods from me to New Haven, he breaks down his wagon on ye road, I was to pay him 300 to deliver the goods at New Haven. While he is looking at his broken wagon, not taking off the casks and fallings on terrains from his cart, the ruin of his ancient and honorable piece of furniture, which has been the family vehicle for more than three score years.
Dee Mercatoriae

Alois Parlées.

John filed his excellent proof of neighbors coming along against carrying the goods to him for $20. Now he cannot compel me to pay this under same for his misfortune. And if the freighter is willing to lose, in such case he is not obliged to pay a penalty. If the ship is perfect they must pay something because something is saved, but if it is total and perfect below the value of the freight, they have no thing at all to pay. [533, 534].

Before we sometimes freighted or hired in this manner there is no written contract entered into the basis to make it into writing. But the law does not require it, so it is good by word, the like other general contracts it may become uncertain, as by the death of parties etc. There is this peculiarity in the law, when a contract is entered into between the parties in this way, there is always a certain sum of money paid which is called "earnest." After this it is optional with the hiree to go on with the contract or not. If he does not go on with it, the earnest is forfeited and the much of the earnest may also receive at any time before the hiree has commenced getting loading etc. But what is he to pay in case he needs? They tell you he has got to pay double earnest. This is inaccurate. By forfeit, it means that he has got to pay back the earnest money but much more to the hiree. So this every either party may receive. How is an Err, as suppose the hiree pays 100$ earnest before he loss it all different means to lose the 100$ is 200$ more. By 108.9% of 108.9 $100 this is a singularity, i.e., that a man should be at liberty to make the entering into a lawful contract by whatever other words or not.
Sec. Mercatorica.

Of Charter Parties.

An action? lie within for a breach of contract at all, but it is different here: it is regulated by Art. 4. But in
some cases, where an injury happens to frighten the
miscarry or fault of the master, he is always liable, but
when the injury happens by inevitable accident, or without
fault of the master, neither the master nor the owners are liable,
for this reason because they do not stand at all on the same footing
with Common Carriers. Packet boats along the coast are
liable in the same as Common Carriers by law, if this act is not
a prudent for ever lasting. Except it is occasioned by the act of God, an omission
by the act of the Builder himself.

No special contract extends into between the masters
owners, as to this shall have the freight can affect freight
the owner have of same ready as the owners as to have, but
not that contract been entered into. Sometimes the contract
is made with the owner, first with the master, but this does
not subject to owners any more than if the contract is made
with the master a contract extend into with the master, contract
extend into with the owner. The contract may be made
into with the master in a distant part of the world, yet the owners
are as liable upon it as if it had been made with them, but if
the contract is made with the owners they alone are responsible
to the freighters, the master may receive the pay by his own contract.
but the freighters looks only to the owners with whom he
made the contract. But still the master is liable to the owners.
If the contract is made with the master, the freighter may look both
of both are liable. This is different from Art. 4, for if a man at Art.
enters into a contract with oneatty, the latter is not liable, and to
be completely master himself do that occurs by Art. 4 Art. 4 Art.
The freighter have gets double security, but none of the contract

is made with the owners. In case, however, it is laid that the owners have nothing to do with the appointment of the master, then the warranty
same, except that the owners are not liable for any act of the master
for the master is now the agent of the owners in all other respects
the time is the same. There have been some cases of this kind, when
a ship is not at sea, so we have to happen by accident we knew
and it is said, if a life happens when they
are in fact, they are governed by the same law as common carriers
subject to this, that it is not the law of
not the law governing
common carriers, for they are not common carriers. Suppose
it were from their being within the body of the County, but they
did not carry as common carriers do. The carrying was at sea. It is
however not yet settled. Rent. 140, 238. 1 M. & D. 8, 8 Geo. 6, 37 Geo. 3, 918.

The mercantile law gives to all masters of vessels a power to
aboard the vessel to contract for necessaries, so far as the owners. This
is a power given by law, of course no power of any sort is necessary. The
master may contract for provisions or for repairs? It would be
no defence for the owners to say, we are bound to this, for by express,
contract we deprived him of such authority. We furnished him with
money to. This is no defence at all between the owners, with whom he contracted. It will not discharge the owners from
the contracts made by the master, that the master may be liable
to the owners. The master may also hypothecate the ship, to the
person of the master, as well as to. The ship is liable to hypothecate to whom the ship was hypothecated, it besides that the persons of
the owners are also liable. But this liability, in the great extent, for it is impossible for the owner to get anything. Suppose
the case of a ship for 10 years to P. P. has the whole power
Let's Mercatoria.

Of Charles Parke.

Contact over his for that time. Mon of within that time it becomes necessary to furnish the ship with tackle 
& every repair to it. A merchant is a foreign country 39; furnishes these necessaries the owner 39; is liable on the contract with the merchant to make by which the master att he the owner 39; has contracted on the voyage or freight. This is not at all agreeable to civil principles. But this is not all — for suppose the master is not the principal, the owner, and liable. The owner is liable so long as the freight is not appointed to go, and this is for the purpose of facilitating commerce. For by these means the ship can obtain supplies 39; in a foreign country by pledging the ship to those who furnish them. But the owner, being given money 39; cannot know, nor does the ship, the pledge 39; for the object of the master 39; in pledging his ship 39; to put him in a situation to go where his business calls him. But as such, the pledge is always retained as security. If it pledges his horse for the payment of 1000 39; 10, now 39; can not to a horse take the money is paid. But it is different when the ship is pledged 39; for the very idea of the contract is 39; that the ship 39; s property on the voyage. But after the voyage is performed, you may 39; the ship of any part of the cargo 39; 39; hold him till the money is paid. Thade 39; 2, comm 443, 643, comp 636, 39; 76, 136, 108, 39; 86, 336, 39; 85, 195, 376, comm 39; 04, 43, 230, 39; 40, 40, 40, 40.
I am not here into upon the whole subject, because is
in a great measure governed by the C.F., which I shall not
speak of here. I am merely giving my wishes to point out the rule
as it differs from the C.F.

Suppose a number of persons own a ship, and
there is to be a voyage. Then they either ask what voyage
shall be taken, or what is to be done? The rule is that the majority
or interest alone shall take the voyage, they desire it; or the
majority, but the minority may be present, and by means
absent themselves, or by not being notified, so that they
may be present if they please. When the vote is taken
of the majority, say they wish to go such a voyage as
to the Indies, the is to go there—but what are the minority
to do? They may think it a dangerous voyage, they cannot
be convinced to join. Suppose the majority go out in
a voyage, and nothing more is done of the voyage, and the profit is
not taken to be a profit, but now the minority may come and
demand a share of the profit, according to their interest:
but in such case they make themselves liable for the
share of the expenses of the voyage or. But some
thing more may be done; the majority may promise
that they have all the profit is to themselves by going into
an admiral's court, by giving sufficient bonds that if
any step takes place they will pay the minority their
share of their interest. After doing this of the nature...
Sex Abenatoria.

profitable voyage, the majority are entitled to the whole of the profits; if the ship is lost the majority must pay the minority their share according to their interest in the Ship.

Suppose the majority have rented the voyage, have done nothing more, but leave the minority to take their share if they please. Now if the minority do not approve of this, they may go into a Court of Admiralty, compel the majority to give sufficient bond one deposit for the result of the voyage as in the above case. The receives no share of the profits; if the ship is lost they are to be paid as above Box 76 Ship 228 12 33 Harold 672 305 109.

There is but one case more. Suppose the majority send out the ship without the consent of the minority. The ship is entirely lost as above, &c. The ship is lost, do the minority lose their share? Certainly not if the had made a profitable voyage they would have taken their share, & it is their own fault that they are not secure themselves by going to a Court of Admiralty. They must then bear the loss. Moly 22 10 and 297.

Suppose, the joint owners agree to send there is no difference between us to the voyage. They have different interests. Now when the account comes to be settled a majority of owning governs not a majority of interest as in the former case. Page 65.
Six Mereocoria.

Of the Law of Partnership in Trade of any kind.

Men are always partners in trade in title or such, when they are to share jointly in the profits of the trade. The men carry on the business to the ostensible trader, they sever, or common partners, yet still, if they share in the profits, they are partners, liable to be sued as such, or may sue as partners. A man for the purpose of giving credit to his name is held to be a partner, in the course of the trade or business, even though he does not to share in the profits of the trade. For, if he not to the creditors would be exposed by this imposition, it is not to the partners. The law of this is that of C.D., 1 Vent. 437, 440, 1 Vent. 437, 438, 439.

Now by the principles of C.D., whenever persons are joint owners of property, acquiring it by the same right or title, they are joint tenants, and the jus accursus de praevio, there is an implied meaning of possession. But this is not the case in C.D. By C.D., they are owners in common. If A, B, C. are partners in trading in C.D., the title, his share of the property rests in his title. But at C.D., if A, B, C., own a house jointly, it does not rest in the entire owners. So if A, B, C., own a farm jointly, the right of survivorship takes place. In C.D., we know nothing of the jus accursus, because we never adopted the rule of C.D. in many of the States it is preserved by Statute. In N.Y., this has a statute, giving this power, that there shall be the jus accursus, unless it is manifest from the conveyance, and that it was intended to survive to a survivor. But on
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If a & B. do not exist. Suppose A. & B. have proceeded to Trade, there are no debts & no dies. Now E. A's debt is to receive 36000 & B the other 1000. But if there is any thing in action, as debts to be collected, they must be collected by the surviving partner. You cannot join him and the Executor in a suit together. For the Executor must not be a party in the same way as the survivor. The right to sue and the liability of being sued altogether is in the survivor. But this has nothing to do with the right of property. It is only to save the forms of proceeding. The surviving partner must account with the Executor for what he collects. He must pay them this moiety of the testator's property. So the surviving partner is to be sued. & judge goes to him (i.e., for partnership debt). But he has a right to obtain out of the partnership effects a moiety of the sum so collected out of him. The survivor will not sue. Only can compel him. 1Bd. 449. 3T.R. 233. 1Panc. 183, 188.

It may be that the Executor has got most of the property into his hands. If so, he must account with the surviving partner. In no other case, except this, if so much of the property, is being sued, has the Executor's personal contact over the property than the surviving partner. He cannot sue nor be sued. These are all the rights of which he has a right, as principal. If a debt comes of his & to the debt, he may give a receipt or discharge, & it is good. He must then account with the surviving partner. So if the property is taken away, & there is no right of recapture, it exists as well as if he held all of the surviving partner. In short, every right rests
The true rule seems to be this, that an individual is entitled to as much of the joint property as lies in the land, must be collected by the surviving partner. Suppose a creditor of the firm sues the survivor, a judgment is then rendered in no property on which the operation of the judgment is a bankrupt in his private capacity—perhaps the firm C. has property in or corporeal his hands. If the deceased partner was abundantly able to pay, must it not be paid? Certainly if the suit of B. becomes inequitable, i.e., cannot be other than the executor may sued. The mode in England is an application to the executor, in London, as an executor, not specifically in bringing the suit at Law, where they have no other courts, they must sue at Law. In the suit of B., the executor appears on the declaration, that there has been a mistake, and he brought suit to the surviving partner that gave a reprisal action at him, to execute it. I will make a few observations as to the rights the creditors have as the Partnership and the members in their private capacity in case of bankruptcy of the firm. That firm of A. B. are partners, now as long as there is no bankruptcy or insolvency the property is
Lex Mercatoria.

all liable for debts. If in his private capacity 3. B. a certain sum, to the firm of A. B. 1. in a certain sum, to his private capacity unless a certain sum. Now as long as there is no bankruptcy or insolvency, any of these creditors may sue but that debt out of the private property of the firm; but the individuals of the company property is liable for the payment of debts. All the property of partners have whether it is private or Company is liable for debts, so long as there is no bankruptcy. But in case of bankruptcy or insolvency it is different, as you will presently see. 5. 5. 6. 6.

The Partners in Trade become bankrupt or insolvent under a Law of the State, then property is taken from them as Trustee of assignees to settle accounts, pay the debts. How? The rule is, the joint or Co. Property goes to pay the Co. debts, you have now got to make the creditors all whole. The private property of the Partners goes to pay their respective private debts. This is the first thing to be done. Now suppose the Co. debts amount to $1,000. The debts of the Co. are but $250, you apply this 25% to pay the Co. debts, it pays but 5% of the debt. The next thing is to look into the distribution of the private property. You find he owes $1,000, his private property is $1,250 you then pay off the private debts he then is 25% remaining. This you take to pay the Co. debt, for the rule is that after having paid the private debts will the private property take
Suppose there is a surplus of Co's property to a deficiency of private property, e.g., A & B as partners really own but $10,000 of the Co's property amounts $15,000. Now the Co debts are to be paid off in the first place. Then you have 50% left. What is to be done with it? Why you divide it between A & B, which gives each 25%. A owes private debts to an amount of $2,000 & his only 100%, so that he is a bankrupt in his private capacity, but he receives 25% from the Co property, & this must be also applied to pay his private debts, which will enable him to pay 125% out of the 200%. This is 125% on the pounds. Now B, only owes 50%, it is worth $10,000. He pays all his own debts, but his property is not liable for his private debts. The Co was not bankrupt. This law applies only when the Co is insolvent. Rev. 365. 2:18:2:3. 1 Thon 133. L. R. 764.
Now, how are we to get along when we say the joint property is liable for the private debts? it certainly is liable. But how are you to get along when you lose the execution on it? There is done frequently attending every mode I have ever yet seen. In England, there are three methods: one is this- If A, B, and joint owners (E.g. of a shop), A is sued at the Exon., B lives in this H.W. with him for the debt. Can you sell this property for debts? it is not fair, but still I must pay his debts. if he has no private property, the property of the firm is answerable. You can you draw off 1/3 of this sum? very often it? this is frequently done. But who gave you authority to do this? I hereby dissolve the partnership. Another mode is- Carry upon the trade till the firm is answerable. Then B, C, the residue are joint owners of it. But there is a difficulty in this; for many persons will object to purchase if they are to become a partner with B in this firm. Who is a stranger to them. He will not sell for its true value. Another method is this: Sup. pose the debt of A is small, one barrel of flour will pay it. The officer goes into the flour and lives on this barrel of flour, sells one to A, and the other to B. Another method is to sell both, and give B one half of the amount. But B, is not a Bankrupt, he does not wish his property sold at the least for any frequently it will not bring one half its value. Then are the objections to this last method, but still it is in many cases, the least exceptions, and the lesser of the means. Some say the last mode is the best.
it is evident that a justice will often be done to B, and moreover you have no authority to separate the partnership. This the owner of the half, i.e., what right have you to sell his property. Add to the first misnomer that there are objection to that. I mean a case where a whole cause was set at, but not carried over as much, as it would provide the debt. Let not make the owner B, owner together. However think this better mode is to levy on the property. Set up one moiety. You have a right to into a moiety, by it will not sell for as much as it is worth, it is the owners misfortune. None of these methods practiced can be any good, substantiate point of law except this method of selling a moiety. But in this case this is no violation of principle, is the only objection to it is, that if property will not sell for its value. But in all the other cases, you are taking the property of B who are doing nothing injuring it at the most, you have on principle no right to do this. They may have divided or some better method or some of the states, but I do not know of them.

There has been an attempt made in the principle of liability of the partners. To explain what I would. Suppose A and B, carry on business of great honors without any apparent connection. In one house, the business is carried on in the name of A, and the other is the name of B. No one supposes they are partners, but they agree to share the profits. The law has now settled the law, that each one is liable for
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of Partnership in Trade.

the saids, at respect, these persons, and this, even tho' this
is an expressly stipulation that they will not share the loss,
but only the profit. It was contended that this was
not a partnership, but it is settled that it is so far as re-

cess, Creditors Song, Motto 37, 1834: 682, 2 T.R. 367.

There is no case of death of one partner, his
exec. & the surviving partner must account with each
other. But they are not to account on the principles of
individuals; & this, as to. Suppose, the survivor has more
than his share, can you sue him on an action for me-

Suppose one of several partners should contract in his
own name, & as for himself, & if you can show the
property went out, the firm you may sue the firm,
they are liable because it is a partnership contract,
this is the principle. 1 Dec. 785, 7; 77; 1 Ch. 121: 45.

There is some difficulty attending this subject,
To ascertain when the partnership or firm
are liable. The partner contract & gave the name
of the firm as security. Now the firm is, are they liable?

One thing is clear that, when the security of the firm
is given for that which is clearly without the scope
of the partnership or firm, the firm is not liable. Now
merchants or co. (assumed) have nothing to do unless
Suppose A. goes & purchases blank acre for $500 it

gets note
Sec. Mercatoria.  A Partnership in Trade.

for it in the name of the firm, are the firm liable? No, for it is evidently without the scope of their partnership, therefore the firm are not liable unless it was bought for the firm or comes to the use of the firm. In this latter case the firm is liable, for it now becomes a partnership contract. But this must be presumed to be for the use of the firm. But for contracts within the scope of their partnership as merchants, they are liable, and the contract does not come to the use of the firm. As suppose it goes out to buy sugar, cheeps it, and gives it to the partners. This is private, but not to the use of the firm, the firm is not liable. If it goes out to purchase an article not within the scope of their trade, e.g. a bough, it gives a partnership security for it. It may be that it goes to the use of the firm, if so they are liable, if not, they are not liable.

Sec. 1. 20th April 1854. W.D.

The contract made with one of the partners with respect to the scope of the business of the firm, the firm is not liable. The partners have the same, to receive a contract as to make it. The may give a discharge or a partnership account but it binding on the firm. As soon as the partnership is dissolved, one partner contracts in the name of the firm, it binds the firm unless notice has been given of the dissolution. All the difficulty is in ascertaining what is binding. The discharge must be known, and it is presumed that it is known. Where a general notice has been given according to the law, where it is a matter of
noticely that the partnership is dissolved all are subject to know it. The mode of notice is not regarded. The usual way of giving notice is by having handbills or to publish it in the newspapers. In this notice is frequently set up at the coffee houses as well as published in newspapers. But yet after this has been done, there may be persons who are really ignorant of the dissolution or may enter into contracts under the idea that the firm is joined. You must then, however, this may be, not on the presumption of fraud, which cannot be rebutted, that all persons do it, when the notice has been published and notice in the ordinary way as the law requires. I know a case where notice was published in a newspaper, & the persons claiming to have not received notice were in the paper weekly in which the advertisement was inserted. Nor it is possible he never read the notice of dissolution, but the presumption is he did know it.

Suppose A & B are Partners. Now it is a very common thing on a dissolution of partnership, for A to take all the property into his hands, & agree to pay all the debts, & that B shall be discharged from his liability. Now the contract with B has no effect on third persons, both remain liable for the debt. 1Bulk 292. 18c 76. 993. Coun. 539.

Properly, which is not the subject of mercantile convention or to convey the firm by that name, use of a conveyance to C & D will not the title to this alone. The individuals composing the firm must be added. It is not the subject of mercantile transactions. If a conveyance was given to A, B or C, it is conveyed to the individuals composing it, & makes it take the course of A & B's a mere voucher to their heirs.
Law: Mercatoria

Of Factors

By the term Factor there means a man employed by a merchant in one country to transact business in another. This factor acts under a commission. As whatever the commission is, he must strictly adhere to its terms, & if he does not but transgress to the injury of his principal, he is liable. As e.g. suppose his authority is to sell goods at such a price only, & he sells at a different one; now he is liable to the principal; but the principal cannot pay the sale. And good, because the factor has gone contrary to his commission: he acted without authority; for him: a different principle step in: governs. The principal has employed factor, the purchaser has a right to presume: he has authority to sell, that he will not exceed his authority, and the purchaser cannot inquire into the nature of his commission; the contracts therefore that the factor makes with third persons are good.

These commissions are General or Special. The words of a general commission are very technical, they are these: "to buy, sell, conduct with as his own." Sometimes the words "conduct with" are not inserted. Such a commission thus vests the factor with discretionary power to buy, sell as he pleases. But is he never liable? yes, he is liable to the principal, if he has so acted that you can draw the inference, that no man of ordinary prudence would have so conducted with his own, as if he sells for the price; no man of ordinary prudence would do this. The factor may be called to an account for his mismanagement.
miscarantine to proceed. But under the general commission, the principal cannot complain, tho the factor sells a little lower than the real value. July 202.

"A special commission is to sell at disposal," now words are inserted "to manage with it as his own." Under this commission, the factor is at liberty to sell on credit, but it has always been understood in the mercantile law. If it is a general commission "to sell it as his own," he may sell on credit. But if it is a special commission, if he neglect giving credit, he runs the risk himself. The principal may call on him for the money, though the goods are sold. The principal is, he must receive a good pro quo at the time he sells. Molyer 493. 2 Mads. 100, 2 T. & L. 633. 10 Mod. 149.

When the principal wishes to bring the factor to a settlement, the ancient remedy in Eng. was to sue him in an action of account. But it has now gone out of use. They now in mercantile transactions apply to Chancery, for Chancery have more power to call for papers &c., and I believe it is generally the custom throughout the U.K. where they have Chancery to supply a bond. In Cor. the we have a b. of Chancery that our custom is to sue in an action of account. It is said you cannot, go to Chancery in Corn. because our action of account is so framed, as to give an adequate remedy at law. Our action of account suffers from the Eng. But I do not believe but that an application may be made to Chancery in Corn. To be sure, it is a rule, that you cannot go to Chancery, where an adequate remedy may be had at law.
Sec. Mercuriala.

Of Factors.

but I believe a bill in Chancery may be filed in Conn. for the Auditors have not as much power to call for paying it as a bill of exchange. I once filed a like myself, because I wished to have some evidence which I could not have introduced before the Auditors, the objection was made to it. In some of the States the action of account is too bold or expensive, but it must be so, since they have no Chancery.

It is a common thing for one gentleman in a foreign country to act as a factor for several houses, or firms who are strangers to each other. Even at the time they are strangers, they have sometimes to run a joint risk, as suppose he is factor for A. B. C. D. E. and all of them have sent him so much broadcloth, so the factor must make a joint note of it to each man. This commission allowed him to give an order on credit, the vendor paid the bills down; if it was to pay the residue in 6 months, but before the end of the 6 months the vendor fails, now this is a joint debt, and the merchants must each bear an equal share of it. If the factor had no authority to write an order to pay so much to himself for the whole amount, then if the factor becomes bankrupt, those must be an equal division among the merchants, and one cannot secure to himself his whole debt by superior diligence, as may be C. E. This is a mercantile idea altogether, for one knows nothing of dividing the risk of loss in this way, for at C. E. one creditor may secure his whole debt by taking all the property, and then leave a cent for other creditors. The is allowed to prefer himself to his neighbors. This is a principle of Mercantile Law, which was theoot
Lex Mercatoria. Of Factors.

The mercantile transactions that lie as shall be 2 as speedily as possible.

This rise has arisen - this factor is employed by these five different merchants. He draws a bill of exchange upon them; presentment is made to one of them. He accepts it, but it turns out that there is a defect, or the draft is for the acceptance of one only, the rest? In a later decision, the C. held that the others were not bound. The acceptance of one cannot bind the rest unless they are in partnership, which was not the case here. There is no doubt in my opinion as to the correctness of this decision. Yet in the report of one of the decisions the Reporter adds "Ex lacamer graec." Sal 126, D'Angers Magazine.

You see, in the same, is required of a factor, and of other Agents, viz. fidelity, diligence, honesty. He is not liable for inevitable accidents. He is only to use ordinary diligence. Therefore he is not liable for loss by theft. Ordinary care has been taken. Co. P. 89, per pl. Dyer. On Liability Molloy 995, 4 Co. P. 89.

So on the other hand, the principal must conduct fairly - for if he by his conduct or words subjects his factor, as e. g. the principal sends his goods to represent them to be of such a kind that damaged goods, and the factor sells them without opening the bales as undamaged goods, without meaning any fraud, but on the advice of the principal, representations, from the purchaser does a right of action, at the factor. He is not to compensate the damage. But the principal is liable to the factor for his damnification. So is the principal liable to the
purchasers, if they choose to use it to his; so that the factor has a remedy on the principal, if the purchasers on the factor or principals. See 168, P. 179.

There has been a set of decisions on a particular point, which appears to me strange ones. Suppose the factor when employed as above to transmit business in a foreign Country, may send out Ships for the duties to change them to the March of an his account carrier with him. Since it is not an uncommon thing for factors, if they are not honest men, to smuggle the goods without the revenue duties. But why should he do this? As I shall above, he changes the duties over to the principal, this he did after smuggle them. He runs the risk of being found out. If he escapes he makes money, if caught he is liable to his principal, so in some Countries punished severely. Now it is not strange that this should be practiced, but it does appear to me strange indeed, that the law should decide that the factor was entitled to this charge, that the Merchant could not question it. I hope never to see a decision of the kind in our Country. If the factor is entitled to recover such charges, it is setting a great inducement before Rogers to break the laws of Society. If the principal is engaged in the plot, or connivance to commit one of the crimes, he ought on conscience to pay the factor this charge of duties, but it is so as other way lying upon him for it is an illegal contract, it cannot be enforced in Law. See 168, P. 179. (The factor cannot recover there).

The sale by the Factor must necessarily be in the name of the principal, whatever the factor does with the money given to
Sec.iberatorius.

Of Factors.

takes it to himself. But the factor cannot pledge goods for his own use; if he does it would not be good inches of the pledgee. But in this case he must be a known factor, or if he is not a known factor but appears to the owner, the pledgee will hold the property pledged. He has an authority to sell the goods, but not a pledge, 778 or 1178.

A factor is very often limited in his purchases. He is allowed to buy only so much. Now if he buys more the principal is still bound for the purchase, upon the ground that every one who trades with him, cannot know into the extent of his commission. The principal has no more, him up as his agent, but it is always presumed that he will not exceed his authority. If this is a left however, the factor is liable even to his principal for exceeding his authority, 703 in 638.

In one respect a factor differs from all other agents. All agents are liable for damages if they exceed their authority, but the factor if he injures his principal by exceeding his commission, must not only pay the damage, but he loses all his wages. This was more recently regulation entirely, for if an agent exceeds his commission, he must pay damage to his principal for the loss he has sustained, but he is still the owner his wages. In Ireland such case the contract binds, and his principal is to hold it if he loses all his wages. Neglect of duty by which a loss happens will make the factor as liable as if he exceeded his authority, as if he is directed to prosecute as done and commits de left happens, he is liable, lost his wages. 778 May 1699.
Another important thing is that the factor, as a factor, is not a principal as a principal is a principal. The principal is a person that he, or the factor, will say, he may not pay all the duties to the factor, and then they cannot, or if they do they may be compelled to pay them over again to the principal, and if they are able to pay them over again to the principal, after having one paid the factor, they may come or how I know that out of the factor if he is able to pay. The contract is sometimes made in the name of the factor, sometimes in the name of the principal, but it makes no difference who's name it is made. If a note is made payable to the factor, it has the legal, the principal, the equitable title, you will remember that this applies only to factors publicly known. If they are private agents only, it is very different. They are then supposed to be traders for themselves. This was unanswerable, the case previous to American Revolution. Almost no the Merchants South of Philadelphia were private factors generally, but now I consider business as the they were dealing for themselves. The principals, supposing they were able to pay, notified the debtors to pay them or factors. The debtors would then pay the factors, and the debt was whether they should be compelled to pay over again to the principal? Determined they shall not be thus compelled, the factors were not publicly known as such.

The factor has a lien upon the property in his hands not only for his commission, but for the balance of accounts in his, from between him and the principal. The factor is obliged to pay with the property, till he is paid. Factors are frequently men of great property, and when they are the principal, they have a lien to [illegible]. Bar. 389.
Sex Mercatoria

Of Factors

The factor is sometimes a merchant himself. Sometimes he has an interest, it that of his principal; sometimes he requires him to take better care of his principal's than of his own. As in, suppose he sells $1000 worth of his principal's goods, & $1000 worth of his own in Credit. If the mony is sold, afterward J. S. pays $300: this must be applied to the payment of the debt due the principal: after this he pays $500: now this must be applied in the same way. And if it becomes insolvent, and cannot pay any more, the factor is the loser. This is correct; for if the first payment were to satisfy his own debt, he might ruin the principal; he might know that J. S. & Co. pay but $1000 yet says he is to trust him with $1000 of his own, & $1000 of his principal's property, & the payment shall satisfy my debt at all events. For this reason, the factor is careful to have confidence in the ability of the purchaser, when he knows the first payment is to go to satisfy his principal's debt.

If the factor having property in his hands dies or becomes bankrupt, his estate in one case, or his interest in the other, have nothing to do with the property of the principal. The money taken immediately after the factor ceases to have an authority over them. In some cases they may be mortgaged, that they cannot be seized as debts from the factor propy as if the money is all thrown into one demand, in such case it rests on the creditor. In another, it is held over to the principal. The result is the same (i.e. in case of death, & leaves property sufficient to pay) whether the property is divided immediately as the account. In case of bankruptcy it is often hard, for the principal will not be a loser. 2 Coran 638, 182.
Sex Abercatioria.

Of Stopping Goods in Transitum.

This is a right which merchants have of stopping goods after they have sold them. Now there is nothing more contrary to L. & C. principles than this. If A sells his horse to B, and C takes him, I give here his note payable 3 weeks hence, the horse was not stolen: to A & B neither have the power of receiving from the contract. But A's creditor may lay upon horse immediately. After the contract is closed, A has no right to detain the horse, the 2 parties can sell it. If A is a receiver of bankruptcy, now a merchant sells goods to another, the vendor becomes bankrupt or is bankrupt, now if there was no right of stopping, the goods in transitum the vendor has to put up with a dividend—but there is a principle which is a creature of L. & C. Hence, providing that the goods may be stopped in transitum. Thus may be seen the goods have been delivered to the vendor. As e.g. suppose goods are taken down from the shelves, marked off, packed up, charged in the books to the vendor, now at C.E. these goods possess A. If the contract is at an end. But by the bill of the vendor finding that the vendor is a bankrupt, may stop the goods in transitum, and let them go out of the store. Again suppose the goods are delivered to the vendor order to be carried to a certain place & are carried out of the store, still the vendor may stop them in transitum, the same as if they had been stolen. The right exists as much in the latter as in the former case.

This can you upon the ground that the vendor is bankrupt—if you stop the goods, he is not bankrupt you seize your right safely for all such ages occasioned by stopping them. The vendor always runs this risk. This principle of the bill of
established as a preventative of frauds ifeware not so personal on the part of bankrupts, would buy up large quantities of goods for the gratification of some one creditor. It is not established on the ground that the seller to day is more munificent or more entitled to lose nothing than the one who sold yesterday or years ago, I also have not now this right. If the property has risen in value between the time of sale and if stopping in transitus, it is only stopping it turns out that the vendor is not bankrupt, the vendor (I suppose) is not liable for the increase. This transitus must stop somewhere where Sappho, the goods are actually delivered bare in the hands of the vendee or his agent, as if they are put on board a ship to go to the vendee or delivered at the agent's place of residence, the transitus is at an end. It is not at an end till just before of the last conveyance which are to carry them to the vendee or are in possession of the agent at his place of residence.

2 Th. 265. 505.

Suppose a bill of lading of these goods has been delivered over to the agent, will that prevent the stopping of them? No. if they are still in transitus. But suppose the bill of lading has been assigned down to a bona fide holder for a valuable consideration; can the purchaser hold the goods, or in other words as he (the purchaser of the bill) secure? Why should not he secure? It has been determined that the bill of lading is a negotiable instrument; it will convey the property to the end as the As do. Supposed the transitus is at an end. The 22d a right to purchase the bill it being a negotiable instrument. 920126.
Sex. Nona. 

Here are a few observations to make, before concluding with respect to Mariners.

When there is no special agreement to the contrary by the captains, but they are to receive so much per month, they are never entitled to their wages till they get to the port of delivery, i.e. till they are entitled to their pay. The reason is that till the ship arrives they are not sure of receiving any wages. Other contracts are entitled to their pay monthly by their hands by the month, but sailors are not for if the vessel is lost before she reaches the port of delivery they lose all their wages. If the vessel performs her outward bound voyage, & is lost on the outward bound voyage, the sailors are entitled to their wages for the outward bound voyage, & to such only. Suppose the sailors contract not to receive their wages till they return of the voyage, & she is lost on her inward bound voyage, till they are entitled to their wages for the outward bound voyage. The solution is only to postpone the day of payment till they return. The Laws take care of sailors. It sometimes restrains them as to sous-maries. It restrains them from contracting not to receive their wages, now if the sailors agree not to receive their wages till the vessel returns, & she is lost coming back, the sailors are entitled to their wages till the last port before she was lost. Sailors when contracting for their wages never think that the vessel will not return. They may by means by the above Contract that they will stay till her till she gets back, if she does come back. 2 T.C. 130. 666.

20 Jan. 225. 1 Feb. 129. 179 3 Mar. 1844. 5 May 75. 6 Sep. 1834. 50. 1838. Seamen are entitled to interest on their wages from the time they are due.
Lex Mercatoria

There are certain regulations about seamen losing their wages. It is said they lose their wages by making disturbances on board. Now suppose the captain must mark them, take the merchant or infirnary of it. He will not pay them. Sailors or persons who do not usually go to board of the merchant does not pay them, they swear he will not. Those men, but suppose they do go to board, now their recovery will depend upon circumstances. If the disturbance amounts to mutiny or any thing like it, they certainly do not be entitled to their wages. So also a sick man may confine them for disturbance or put them on shore, but in doing this, he must act reasonably. He must not put them on a shore where they will starve. In some books it is said that for disturbance or board, the ship cannot mark them, so that they will lose their wages. In many cases fines them, or put them on shore, but if they will do not accept it. In such cases, he may mark them for non-payment of their wages. There, you see it is left with the captain to say what is rebellion. So likewise they lose their wages for wilful absence, which occasions delay as if the ship is to sail on a certain day, if they are not on board at that time, they lose their wages. So if they leave the ship before they are regularly discharged. The above there is this: seamen will not lose their wages merely for disturbance when this they may be confined or put on shore. But if they rebel, do not reasonably submit, or if they voluntarily resign themselves, or leave the ship at supper they will lose their wages. Nov. 30th, 1212. 1747.
Sex Mercatoria.

If a seaman becomes disabled in the voyage, be not perfous his duty being well when he set out; in that case he is entitled to his wages. If he was disabled when he set out, it would be otherwise. This is a mere mercantile regulation, unknown to the Laws.

276 $6,606.