A common law, a testamentary disposition of land, without naming an executor was called a will; and such a disposition of chattels was then called a testament ad eundem. In the 12th century, "an Adm." in the representation of a deceased person, where no executor was appointed, was considered to have the powers of a proper agent, or minister. He is appointed in only 3 cases: 1. Where no executor is appointed. 2. Where he cannot act as executor. 3. Where he will not act as such.

Ex'ts of Adm. are considered in Chancery as successors to those who are entitled to the personal estate of the deceased. Hence, the jurisdiction of Chancery in cases where personally between Ex'ts of Adm. and the next in line, legal in equity.

In their in the haven disembarked by law, on the death of their ancestors, adventurers in a person entitled to the real property by testamentary appointment of a person deceased.

A legatee is one who is entitled to personal property by testamentary appointment.

The power of the "Ex't" over personal estate is merely that of executor, except so far as that inheritance is entitled to it. Over real estate, they have no power of "Ex't" any power, for real estate was not originally testamentary.
For salvation what can be more desirable than to be rescued from the snares of darkness? What is by right known than this [sentence missing].

1 st Dec. 1790.

[Handwritten text not legible]

[Addenda: 25th, 26th, 27th, 28th of another text, 9th, 18th, 3rd, 3rd, 3rd, 3rd]
An Ed. may have the devise of a real estate, the other
powers, by his will, or appointment of the intestate. So it
be, he will be divided to be sold for the payment of debts, the Ed.
not expressly empowered to settle in convivence in chancery, as
the proper person to sell, no other being expressly empowered.

But the Adm. has, in no case (as Adm.) any such
powers. And neither of them have any right to the real
while no such in any case.

A Legale receiver: his legate, then, the Executor... Adm.
were taken possession without the intervention of the Ed.
The personal property is charged by law with all the debts
of the deceased. But the real in Ed. in debts by especially by
debts of record only.

At common law, or rather since the statute of Mortmain,
debts or judgement, debts bound real estate from the first day
of the term on which judgement was rendered, and goods and
 chattels from the date of the execution.

But now by Stat. 26 can 2 they bind the land as against
tons, free purchasers, only from the day in which judgement
is signed; the goods by chattels only from the delivery of the
execution to the seller.

According to the act, one judgment is bound only in
The hands of the heir from the kind of the original will, purchased.

Specially creditors may sued to either the real or personal estate. And if they come upon the personal estate not sufficient to discharge all the debts, the creditors by simple contract are liable to lose all their demands as the case may be, without any remedy at law, since they cannot take real estate & are postponed to specially creditors.

But in the last case, chancery will relieve the simple contract creditors by letting them in upon the real estate for so much as the specially creditors have taken of the personal property. And hence the simple contract creditors, and in the place of the specially creditors, as to so much of the real estate.

This is effected by chancery's ordering a sale of the real estate in the hands of the heir. The same inducement is extended to general legateses.

If the rents of the sale are insufficient, an average is to be made.

Of creditors in equal degree, he who first obtains judgment against the executor & is entitled to his whole demand, even to the exclusion of the rest.
Land of one of two brothers, in equal degree, have commenced a suit at law or lib. a bill in Chancery, as the rule now is the Ex. cannot defeat the claim by standing paying the other.

I have too recuse to an executor for the payment of debts, the Ex. cannot for this reason be sued at law by a creditor as having debts; nor can he be compelled at Law to make sale of the Land: Land not being considered as effects in his hands so as to subject him at law.

But Chancery will compel the Ex. to do so, that even tho' the devise is not to him, if it be not to any other person.

And all such property of the deceased as his real or personal representatives holds for the purpose of enabling him to discharge those debts which were incurred on him as representative of the deceased.

Plots that are several distinct, so that real and personal that a such as descend to the heirs make him liable to suit, debts of the ancestor are claims upon him as being his real estate. So personal that in such property of the dec'd as comes to the Ex. he as much Schokes him liable to

from the use of the lands, devised to or subject to the use of the executor to pay debts &c. in legal assets, upon the principle that whoever comes to the hands of an executor as such is liable to debts.

Money raised as supra by trustees, is equitable assets by reason of the exclusive jurisdiction of chancery over proper trustees.

But it has been held, that when lands are subject with the payment of debts &c. devise to the heir &c. not devised, that is, when the interest does not pass by the devise, they are legal assets. For the statutes against fraudulent devices have given the specially fraudulent devices an action for debt at law against the heir of the devisee.

In conformity with the last rule, it has been held that money arising from a sale of lands, under a true power to sell for the payment of debts &c. should be legal assets, because the lands descend, the descent not being broken; but it is otherwise, if the interest passed by the devise.

This distinction is however exploded, or rather evaded by Lord Mansfield, who held that the descent was broken, or lost a power to sell, as much as by a devise to sell carrying the interest, unless words.
a. landing descending to an heir are to be applied to the payment of debt due, before lands in speciality learned can be settled. The rule in question when the lands are seized to the payment of debt.

If the testator charge debts upon the heir's estate, and is the personal surety, the heir may come when the heir is not a bound tenant. But in case the testators intended to that the personal fund shall not be diminished. This rule is distinct from the former one, where the personal fund is exhausted by bond, writs, or similar contract creditors are allowed a credit to the heir, which which obtains when there is a deficiency of personal assets.

The heir as before remarked is liable to specially debts to the amount of his debts assets; yet the interest of the estate may on the executor 35 Rev. 25. Ohio tit. 2. to 19. Cro. J. 1936.

8. So the interest may pass to the heir for a part of the rest to the other part, but if the interest against debt have a satisfaction from one, the other may be satisfied by an absolute

or if a debt is owing by the contract of the debtor, he not named, as far as they have assets unless where from the act of the contract, they must be performed of all by the relation in person. Page 11.

The heir is not bound even on the special contract of the
...and Adm. 2.

evermore until a person named, because according to the old
English laws no this violed, then goods chattels cannot be
seized and not the land and inde; were liable to execution on
the common creditor of the tenant.

And therefore the heir or holder the land is not new liable
until such a party appears for it.

The body of a debtor was not originally liable to an Execution.

Widow's Dep't in Land Act 26.

A. The case where the heir is bound, or rather where the
administration descends with the land, the land cannot be taken
in execution. The Ex. is against the lane only.

A. The land is assigned to the creditor not in for but till the
issue and prejudice shall have discharged the debt. The land
is liable in the hands of the heir, because otherwise the ac-
tion of debt allowed at Common law against the heir, would be useless. This is the only instance in which lands
could be taken in execution founded on personal actions at
common law in behalf of the subject. Yet the king may al-
ways take land in Execution in defect of personal service.

A. The lands of the debtor while in his own hands were not
made liable, that is half of them to Ex. or debts by the law.
This Statute granted the writ called Clapet. The same year, the Statute de mercatoribus was passed, enabling a debtor to discharge all his debts by a recognizance in the nature of a vires vacuus.

The person of the debtor was first subjected to Ext. ex deb. by Statute 25 Edw. II, which gave a captious and inconveniencium. Executors are sued on the contracts of the deceased only in his lifetime (not in the debt), because they are liable only in respect of property which they hold for others (not in their own right), which they do not themselves owe. But it has been held that charging in the debt of the deceased is now covered by verdict under Stat. 1 Edw. II bar 2.

So this rule there is an exception, where the Ext. ex Debitore personally liable as he may be in certain cases, as for rent incurred on a lease for years, after the death of the testator, as intestate, for he is charged on his own possessions, the debt having never been in debt.

So he is chargeable in the debt of the deceased in cases of a devast servit, that is after judgment against him on ext. de bonis movibus, so he shall not be charged with a devastavit, or as a servant.

The heir must be sued in the debt of the deceased because he...
has assents in his own right. The debt descends with the land. Charging him however, in the district, only as being entitled under the Acts 16 & 17 Geo. 1 D. 1795. 1 P. 361. 770.

A common law the heir would defeat the especial, as debts by the land before action brought. But if the aliened after the debt was purchased, or a debt filed in the court of King's bench, the land was liable in the hands. In such cases the judgment having relation to the land of purchasing the original suit or citing a bill in P. B. A judgment against the heir binds the land by right, it is therefore, however, in case of a judgment against the ancestor. But now by Stat. 3 & 4 Wm. 3. & Mary the heir in case such an alienation be not taken in hand, as is his estate to the value of the land sold, yet the land sold is not liable in the hands of a bona fide purchaser. So that the heir alienate before after action brought, it is a question whether the rule stands as in common law.

It is noticed that the testator cannot bind the Exe, where he is not personally bound. Hence it can be said that the Exe. shall pay £10. no action will lie against the Exe. in this case.

Formerly lands devised were not liable in the hands of the
The common remedy
The personal injury proves to be such
who are, for fear to pay the debt
of the party not a sufficient answer to the debt.

The common remedy proves to be such
who are, for fear to pay the debt.

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who are, for fear to pay the debt.

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who are, for fear to pay the debt.
Of Executors and Administrators.

Executors & Administrators are the representatives of deceased
men, that is to say, those personal representatives in their stead what
affect their personal Estates.  1 Cor. 13:9.  Co. 1. 2 Bac. 139. 3 d. 28.

An Executor in a representative of the deceased by the last
will of the deceased.  His duty as Executor is to execute that last
Will.  2 Blackstone 1 Cor. 507.

The appointment of an Executor is essential to the existence of a
Will.  Co. 1. 139. 2 Bac. 39. Godd. 82. 2 Bl. 507. 2 Blackstone 288.

To make an Executor it is not necessary that the word
Executor be used; it is sufficient if the intention of the deceased
be made known to the appointment as Executor.  A will of 2
salv. 177. 2 Sal. 25. 2 Bl. Godd. 82. Dyer 80 87.

A disposition of personal property is called a Testament,
not containing the appointment of an Executor is called a Testament
so to appoint in the distribution of the personal property of the de
ceased.  In some of the books it is called a Codicil.  Book 2.
2 Sal. 2. 2 Bac. 39. 3 d. 269. Godd. 274.

Since there may be a will without a testament, since in
doctrine of an Ex. is by testament or gift to him of the goods
of the deceased an Ex. being bound to pay debts.  And a Testa
ment of an Ex. makes a Will.  2 Bac. 39. Godd. 82. Words.
The common remedy

The personal remedy refers to 

who are, therefore, to pay the debt

of the estate of certain debts. 

who are to be preferred and the other

have no claim but there is a residue

often payable if debts, they are buyers

for legal debts or those exceeding 

for a deficiency than an average of

money or bond and overpayment debts

therefore when is not to be equal for

the debts which are offset, liable, but

not a duty of them, insolvency of debtors

by reason of neglect liable for, but adverse

Real to relieve a fund for common debts

very the creditor's debt (unless) it will

the other debtors may be the insolvency

of the estate of the insolvency of the

Treasurer, liability to insolvency of praemunary

of any sum of debt but the paid under

paper - of lands, lands for payment of

debts that are escheats debts - the common

been, of such debts - the lands in the land

of many and escape leading by paying

God, leading themselves. The expectation that

the demand may be for in the debt

in the demand may be for in the debt

creditors may sue but, but are not

satisfied, there is, and escape leading by paying

foremost in the debt. The estate in the debt

also, wherein lands are deemed to pay debts
the devisee to be taken in ben continuation. The devisee therefore the devisee has no remedy either at law or in Equity in a

But now by *Natali 3 &c, l. 10* the devisees of *L._n are said to be against some Creditors, who may have debt against

With the heir of the devisee, against them both jointly. And it is a question whether the devisee can be free, unless the devisee

in the payment of debts or raising portions for younger children is not however, within the statute. But devisees are good if a bond creditor cannot defeat them. He is paid only like other creditors pari passu.

The heir of an heir is liable for the bond debts of the ancestor of that person to whom he inherites. But the second

heir is liable in no case. *Supple* further than the first,

heir has debt, and owes it apprehended, unless he has absolved himself from the first.

In *Ev. 3 Adm._ if an heir clearly is not liable, so much

on the bond debts of the heirs ancestor for the heir himself

to liable only in respect of the sum has person not being charged.

But if the heir should alone the said to defeat creditor, could

it would follow the money into the hands of the executor.

"
The facility to pay debts according to the
laws and custom, before the debts are
fully paid to pay the debts first, the pecuniary
on fees. This is spoken in two ways: first, if only part of
the pecuniary sum is paid, the money
must be an average tax, or all
spoken in words and parts of the specific.
The specific, either what is pleased of
the specific, as enough. But if
all the specific is paid, there
are many in the hands, and there is reckoning
among legates in the will, the rule of law of
equity and where there is an agreement
between us, such as can take place
of the specific of property called prior
permanence where the specific can
be taken or sold as below. If any
merchandise is sold, the sale can
be sold or sold, the sale can
be sold to pay debts. The sale of debts due
from the land to estates of delinquency
and the reference of land due
consequences whether real or personal
consequences of delinquency
and one offset, of the magistrates personal
or personal consequences regarding
the history of the law, that consequence
to a bad executor, and

1st Biv. 211.
2nd Biv. 368.
3rd Biv. 223.
3rd Biv. 246.
God. 274.
God. 271.
God. 271.
God. 271.
God. 271.
God. 271.
God. 271.
God. 271.
God. 271.
Who may be an Executor.

The person who may make tells known. There, may be Exe. Persons of almost all descriptions may be Exe: as, for example, an infant is an infant in every sense of the word. Br. 23. 307. If one appoint an infant in ventive or mere, the mother to be received of two or more, they are all Executors.

An infant cannot act as Exe. till he is of the age of 17 till he attains that age, an Adm. during minor estate must be appointed. Godd. 102. 2 Mas. 521. 1 Ed. 256. 12 Ed. 74. 12 20. 241. Regularly. The acts of an infant, even under the age of 17 are not binding. Thus he cannot sell the testator's goods or spend to a legacy. And when after the age of 17, he is not bound by his acts to a legacy unless he has assets to pay debts. 16 13. 257.

An infant executor cannot sell the testator's lands for years, even to pay debt, even under the age of 17. 597. It has been held, that he may sell goods to pay debts, or any other person by his order. This power is confined to the general will.

An infant (Exe. of the age of 17) is bound by his acts in Exe. of done according to the duties of an Executor, as if he discharge a debt or payment. 12 Com. 215. Mod. 130. 852.
The meaning that voluntary can only relate to the expense of voluntary transferment as that a bond voluntarily given is paid over to all debts but premises to other voluntary issue it is of spurious unless after settling the estate a debt made involuntary is paid to those persons from the legacy must refund to not obey to pay them legacy and they have security only to refund without being necessary.

2. 375
Rom 5:35
1 Cor 10:1
9
1 Bar 377
God 102
Wen 243
Law 135
3 Bar 121
Wenew 243
2 Bar 377
Wenew 243
2 27
God 103
1 76
5 Co 206
2 181
5 Co 2 254
Law 135
1 Del 730
2 181
5 Co 2 254
Wenew 243
216 300 310
2 Bar 377
6 149
The words and concepts in the text seem to refer to legal or financial matters, possibly discussing the implications of releasing debts or liabilities. The passage mentions actions or roles that are not clearly defined by the handwriting, making it difficult to provide a coherent translation or explanation without further context. The text appears to be part of a larger document, possibly a legal or financial record, written in 18th or 19th-century English.
be erroneous. The judgment is in favor. This distinction is probably founded on the rule that an idiot cannot act till he is of age. As an infant cannot be executor, they may be the ward of the court, and make an allowance for the infant. 4th, 79, 20b. 2d, 232, 690, 1249. 18th, 73, 66b, 112.

But if they be cured, the infant can not be

hears any guardian for an infant. Defendant may be made liable by misprision by covering up his own sins for which he has no remedy against his attorney, but against his guardian, he has a remedy. An infant plaintiff, however, is not liable even for courts.

A femme covert may be an ex. According to the law if the spiritual bonds of the common law, she is considered

as a femme velo capable of doing wrong, even alone, without doing harm to the state of ex. without the husband's consent. The common law binds the spiritual courts in this respect.

And therefore of the husband's consent, the common law, and this spiritual Court attempt to compel her to act,

A prohibition will be issued.

So on the other hand, the wife consent in marriage.
...But by the common law, the wife cannot take upon herself the office of executor without her husband's consent.

2 Bac. 378
Godsh. 118.
1 Corn. 235.
Wentw. 209.
281. 291.
2 Bac. 378.
Adov. 117.
Wentw. 203.

2 Bac. 378
Wentw. 203.

2 Bac. 378
and she cannot be amenable to habe. Law: all as before her by the husband's consent against her own. But if the husband actually administers she is bound by his acts during coverture she cannot plead as ago.

To if the wife administered without her consent her acts be void against them they are not to plead that she never was Ex.

If in same title be named Ex: future, before the intermeddles with the estate, if the husband administers this is such an acceptance as will bind her, she can never afterwards repose it. This rule probably implies the wife not to have defective.

A former executors if it is void may without her husband's consent make a will, or rather a testament of such goods as she has or has.

On the contrary it is reported by some, that the husband's consent, before or after is necessary.

But it seems not disputd that she an Ex: may make an Ex: of the goods which she holds as Ex: And this seems much the same as making a testament of the Ex: as such, will have the disposition of the goods.

The King may be an Ex: But he may nominate others.
There is taken upon them the execution of the last. They may be vice or the representatives of the deceased.

1. Incorporation of an aggregate cannot be an Ex. because just as a body joined to special purposes, 1 Exs. cannot take the oath to make the bequests of the will.

The latter reason is the substantial objection, for the corporation may be an Ex. because it can take the oath.

1. According to the civil深远 laws, corporates, trusts, etc., etc., cannot. 2. Others can, not be Executors.

By the English law no person is declared an being Executor by public forces against the civil law. Their
courts persons attainted may be Ex. because they
declare issue in alter's will.

Yet they cannot make wills for their goods or for

Ex. persons excommunicated cannot be Ex. for being excluded from the church, they cannot disburse the goods of
the deceased in their wills. This is the only disqualification under the English law arising on default.

An alien may be an Ex. to him. He may have
the administration, that is, the disposition of lands as
well as moveables, because he lives in another court.
But it is otherwise by the civil law except in military testaments which are governed by the jus gentium. It is a question whether an heir can maintain actions on Ex. It seems to be conceded that he may hold the estate by the weight of authorities, that he may sue.

Idiots and lunatics are incapable of being executors, for they cannot execute the trust, nor even determine whether to understand it. As if an Ex. be one man, a Demonstration may be committed another.

The prerogative court cannot give to any person to any person because he is free of inquest, for he derives his authority from the testator. L. Bacch. 361. 1 Alb. 25.

Nor can the prerogative, that is the spiritual court, demand money, that of security since the testator required none.

But Chancery concerning the Ex. as trustee will compel him to all the trustees to give security of insolvent.

So where the Ex. is not insolvent, is willing the assets. Chancery will compel him to give security.

So on a suggestion of insolvency in the Ex. Chancery will order the deliver of the deceased not to the Exo. creditors.
Pron. 23 to this note.
What Persons may be Administrators.

All persons who are not legally disqualified may be administrators.

1. A person cannot act as an administrator till the age of 21, so that he cannot give bonds to the ordinary, which every administrator must do. 3. Co. 365. 12 H. 104. 561.

The right to administration may devolve upon an infant as next of kin, but he cannot administer till the age of 21.

It seems proper to say that an infant cannot be admitted for no one is admitted till administration is granted by the ordinary.

The case of a widow under 17 months as created is different for she is compelled by the appointment of the heir or heir.

1. Some courts, may conceive, with the consent of her husband be administrators. For clearly she may be entitled as next of kin, if I find no disqualification in her case any more than in the case of an infant.

If an infant be alive from a rule laid down by Judge Coke, that a spouse caud in commumy postponed to others in equal degree. It is also held by some of the books that she may be administratrix.
A Finance and E. M. marrying, her husband is liable during one
act. But for her acts committed before marriage even to a
constituent.
I say the husband in the last case is only bound
during coverture. But in every other instance may allow the
acts only of the husband after the wife's death.

The question how arises. May not the Legatus Grant of
her property the assets in equity.

Equations aggregate, sometimes cannot in Adm.
for they cannot take the oath to discharge the duties of
Adm. and corporations will, I suppose, may be so in the
case of executors.

An Eherent cannot be Adm. for he cannot discharge
the good in his own.

An elected may be Adm. for an Adm. acts in aut.
directly may owe.

So, I presume, a person attainted as in the case of executors, for if
vice in aut. direct. 1 W. & M. 18.

So an alien may be an Adm. as well as executors for
same reason. The same question arises as to an alien enemy
in the case of executors.

Aid of Lunatics cannot be Administration.
The origin of Administrators.

It has been said that administration, that is, the disposition of the goods of intestates belonged originally to the personal effects.

According to other books the heir was entitled to the rent, to wage upon the goods of all intestates Colton.

There is no power of general revenue.

According to Saladis, the one of dispense of intestates goes belongs to the Lord, that is the Lord of the Manor.

The jurisdiction of the ecclesiastics in casuolary matters of administration is said to have commen in the time of Richard II.

However, let come the brown over the treacle with their branch of the monastic, except so far as it has previously been granted, as a parochial to Lord of Manor.

The Bishops in exercising this authority, disposed the goods of the intestate in various ways, or in the their hand.

This power of the ordinary, draws after it that of the intestate of debts, as being thought unreasonable, that the debt should be proved to the satisfaction of him, whose rights it
distributing the goods of the deceased was suspended by it.

The ordinary, not being amenable to any one, he did as he pleased with the whole that remained, after deducting the reasonable his costs or the two thirds of the widow and children. In those of the early portion of the earlier system in England, a man having a wife, children, and goods, and these of his chattels, administration extended to neither. If he had no wife or children, it could be granted that the whole of administration was extended with his right of disposal.

The ordinary was not bound to pay even the debts of intestates. But, when a will was made, the estate was always bound to pass the debts of the testator to the extent of the assets.

When the law stood thus, the ordinary discharged the goods of the intestate in person if they did not abound others.

The first which went to the power of the ordinary was by Stat. of 2 Edw. 3, 13 Edw. 1.

This statute obliged the ordinary to pay the debts of the intestate to the extent of assets, as Exrs. were before obliged to do.
This Statute is said to be in accordance to the Common Law; But let it be asked in accordance to what Common Law? where is it to be found?

The Statute of Estoppel. 2. tells us that the surety, upon payment of debts, to the discharge of the ordinary. The nature of this remaining power occasioned another consideration of the Legislature. And a Stat 31 Edw. 3 was made enacting, that in case of intestacy, the ordinary should settle the next and most careful friends of the intestate's domain to do.

This Statute is the origin of Administrators, that in offices of the ordinary or jurors appointed by the prorogative court to prevent the intestate as to personal property. Therefore at Common Law no demand existed an appearance.

Before this Statute ordinaries had began to appoint them to act in their stead. But these did not sue or were sued, being mere servants or debtors to the ordinary.

This Statute enabled them to appoint under it to sue for the recovery of debts due to the deceased.
as executors might, and subject to actions by creditors, as Eq. were before subject to, and the ordinary was, by that. But an Act of Admin. to distribute the estates after paying debts.

Administration by whom granted.

Whence the right of proving debts, &c. demonstrating, that as of disposing of the goods of the decedent may have originally, under the right of granting administration, as well as of granting probate of wills, now belongs except in certain special cases, to the individual creditor. As has been said, that the king is the supreme ordinary of the kingdom, has such man grant letters of administration. But the right of the king has since been denounced.

Yet if a person die intestate, having no heirs to the practice is for the king to grant letters intent, and the ordinary pronouncing the solicitors administration.

The admission is done, however, to be not de jure but from courtesy or respect. The ordinary may in such case dispose of the goods or free claims of he is not alleged, I suppose, to appoint an Administrator.
Ex officio Adm. in the case of a deceased indentured servant, according to usage or entitled to his estate.

In certain cases, the courts have by immemorial custom the right to grant administration before wills are admitted, but in no other case.

In Connecticut, an Adm. in a neighboring State, in which the indenture was made, may be admitted, as the will may be admitted, according to usage.

But it is not the Connecticut rule, as it appears in Hen. Black, 267.

Who are entitled to administration?

By Statute 51 Edw. 3: the ordinary is bound to grant administration to the next kin or lawful children of the intestate. And the words have been construed to mean "the word of blood", who are under no disability.

Yet it seems to have always been held that the husband was entitled to administration in his wife's estate under this statute.

But was the wife entitled to administration on her husband's estate? According to one case it appears that she was given to the exclusion of the husband's kindred.
There are several next friends, that is friends in equal degree, the ordinary might perhaps select the most of them. The statute of the ordinary was enforced by Stat. 21 Hen. 8. which allows him the great administration. In the widow or next of heir or child, whether he or near one in the same degree gives him the power of appeal which he pleased.

Next friends seem to have been considered so synonymous, except that the husband and widow were included in the last words. This statute seems to have been considered in some measure an explanation of the 31st Ed. 3d. which gives the power of selecting the next of heir to the wife or joining them. Both statutes together are the basis of the law on the subject.

The statute does not seem to give the administration to the husband on the wife's death, but he has always been held entitled to it.

Self-administration is not liable to distrain to the heir of the deceased, tho' there has been some controversy on this point. See 293.

And now by the statute 12 Edward 2d and 2d Ed. 3d. are liable to distrain: if husband's heir of three wives or by Stat. 20 Ed. 2d. declares not to be within the statute 12 Edward 2d.

Hence if the husband die before administration taken his representatives that as two Ed. or 3d. will be entitled to administer.
administration to his wife estate to the exclusion of the next of kin in equity, if the ordinary is said by Lovelace to be compelled to grant it.

The husband is even called "next of kin" in one or two cases. In such cases, administration of the goods which she had been left to her husband, but to the next of kin to her testament.

By the Statute 31 Ed. 3 ch. 31, the ordinary is compelled to grant administration of the husband's effects to the widow or next of kin, but he may grant to either of his election or to both. 1 Show. 351. 1 Term. 315. 2 Pka.

Where the intestate leaves no wife, administration goes to the next of kin. Among kindred these in the nearest degree, are preferred. And of next of kin, in equal degree, the ordinary may take which he pleases. This is a general rule to which there are exceptions.

Administration when granted to two or more may always be joint, for some cases require several administrations may be granted of several parts of the goods. Thus administration of one heir may be granted to the wife of of another to the next of kin, as children, brothers, parents etc.

But if an interest thing as a Bond to a certain person several administrations cannot be granted. If two the appointe, may
They must be jointly appointed.

The degrees of kindred are consecrated according to the civil law and according to the Common or Common law. Therefore children are descendents of parents, & according to the civil law, the consultation is from the deceased to kindred a gene & does not extend amongst claimants but in defect of children, the both are in equal degree.

The law is thus

1 Children 2 Parents 3 Brothers
4 Grandfathers e. c. 3 Act. 702, 1st. 453.

Females are entitled equally with males in the same degree.

In computing the degrees, propriety, not quantity of blood is required. Therefore half blood is equally entitled with the whole.

Do the claims of the nearest kin or next friend, an own daughter, brother, he or she extends to their representatives, so that representatives as such exclude more distant kindred, than their parents?

The Statutes I believe do not mention representatives nor do the Books generally. But it seems according to one authority that under the Stat. 31st, ed. 3, the right of representation does extend, as in distributions.

The order under 31st. ed. 3 is said to have been, 1st husband or wife, 2. Children or their representatives, 3. Parents.
1. Brothers or Sisters, their representatives, &c. Not being so as to representatives.

If none of the characters just mentioned, that is, husband and wife, next of kin will not accept, a bonâ fide may by custom be Admin. in England, he is the next claimant.

If there be no husband, wife, or next of kin, the King according to usage appoints, or rather recommends the ordinary appoints, however.

If he, or his representative, who is intestate, having good reason to think administration must be granted. But in this case the 21st Edw. 3 and 21 Hen. 8 do not govern the ordinary.

He may grant administration to the ordinary ligatus in exclusion of the next of kin, on the pretension that the deceased intended to prefer him. But here such a pretension does not exist for the ordinary is given to another. The Statute of Hen. 8 requires it to be given to the next of kin.

But may the ordinary appoint any other than the ordinary ligatus unless he be disqualified? This is a doubt at present. I seem not for the reason just given, that it is sometimes said he may.

If a testator died intestate as to a part, that is, no ordinary ligatus being adequate, the next of kin. I presume would be entitled; so as to this part the case does not differ from the
common prayers of intercession.

If a residuary legatee is entitled to administration, either the testator himself, or the executor, must have the administration, the godson speaks only of an executor who is universal, legal, or residuary legatee.

On the death of all these characters, the ordinary may grant administration to such person as he pleases, as he might have done by the Statute 31 Edw. 3.

The power these appoits are now it seems, in a proper Adm. as the before the Statute 31 Edw. 3 he was merely an attorney or servant to the ordinary.

Or in this case, the ordinary may grant letters to such person to collect the goods of the deceased, these do not make him Adm., but a kind of技术和 a master to gather and keep the goods, solely of to do some other acts.

When an Adm. demands minor acts of an infant, he is appointed, the ordinary in not called by the Statutes on the subject; for he is but a curatrix for the infant, but no interest or benefit but in right of the infant. He therefore is not liable to appoint next of kin, to the testator or infant.

A person named by does not appear before the ordinary, on being summoned to appear or refuse, he is excommunicate.
If an Adm. died, his Exx. are not administrators to the intestate. Administration must be committed anew de novo non. The Adm. cannot be named in the trust; where in them because he has no interest except what he derives from the ordinary. The trust therefore comes to the ordinary.

So if an Adm. died, his Adm. is not Adm. to the last intestate; or there is no priority between the 2 Adm. of the first intestate. A can have no Adm. unless he is appointed on his estate. None the second Adm. is appointed to administer the effects of the 2nd Adm. only, not of A.

Therefore it is necessary for the ordinary to commit administration after the death of the deceased not administered by the former Adm.

Next the Exx. of A, Exx. the latter having proved the will in the Exx. of A; for the power of an Exx. is founded on the appointment of the deceased, & this appointment is founded on a special confidence in the Exx. - He may therefore confide to any one in whom he has equal confidence, that is, after he has proved the will.

Ex. and Adm.

The whole authority belongs to B.

But if after the death of A, B dies, leaving 2 his Ex. to the said estate.

Yet the Adm. of Ex. is not the representative of A; for the Admin. in this case, has no relation to A, there being no heir acknowledged.

The Adm. is commissioned to administer the goods of A, and those of A the original testator.

Therefore, administration de bonis non communi, as well as annexed must be granted of which thereafter.

If three ejects A. Ex. die, leaving an Ex. the latter is not A.

If A leave A his Ex. if N dies leaving B an infant with C; administration during minor actus of B be granted to C. & it is not the representative of John Stiles.

Whenever receive the course of representation from Ex. to Ex. is interrupted by any one Adm. of all the goods are not administered, administration must be granted of the goods, not administered by the last Ex. or Adm. —

Administration de bonis non communi, administration may be special, that is of certain specific parts of the estate, not administering the remainder being committed to others.
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The manner of proving Wills.

The ordinary may do this on the instance of any party interested, as to the case, to have the will proved.

According to some, the will may be asked on the instance of any person, that he may know whether he has a legacy left him.

In ordinary may request the testator prove, till the bill is proved.

If it be uncertain whether the testator is alive or dead, the fact is to be judged of by the ordinary, and there be good presumptive evidence of his death, the will is to be proved, as if the testator be in dead and lasts, if the common sense is, that he is dead. But if the testator be living, the bill must be vain at midle, the ordinary having no jurisdiction.

The term within which the will ought to be proved is not settle of any precise rule. It is left to the discretion of the ordinary. But regularly, the existence of the will ought to be made known to the higher court, within six months from the death of the testator. There are two modes of proving wills.

In the common law, as where the testator writes the will, without a seal, the husband or wife, or theexecutor interested, &c, desires himself, that it is the true will, while a true will of the testator, & the judge, when this proves it.
24. In summa law, that is where the need of new evidence are added to the present evidences are examined.

When an executor leaves the estate in common form, he may be summoned to have it opened, join sworn of law, but it is therefore when the testatrix is in form of law.

The Probate Law little in common form may be questioned at any time within the 30 days next after, but not when hold in form of law.

**Executors Refusal.**

The title of an executor being required to the being named by the testator not appointed by law, he may refuse to accept the executorship in the last instance, & then administration under testamentary annuities must be granted.

With it is said that the ordinary may compel the ex. to prove the will, if he makes his election to accept or refuse the executorship, he cannot compel the ex. to accept.

But an ex. cannot assign his office as being fiduciary, nor can he refuse by any act or in any way by a declaration that he will not accept, that is this alone will not force him. It must be by some act recorded in the essential trust. In a case in Sec. 292, however, where the ex. refused, the record was only that they desired to accept he yet that renunciation was held not.
binding.

If there be but one Ex. named, she refuses admission. When a testament or annex must be granted, the Ex. can never afterwards have the will or act otherwise as Ex.:

And may he sustain his refusal? Prove the Will before administration granted?

Yet in one of two Ex' in absence before the ordinary, if the other prove the Will, he may administer at any time. Afterwards, even after the death of his to Ex., for the Executorship which survives, she is subject to any Ex. of her to Ex., for as the will is prove, the ordinary has no authority to make this refusal during the life of him who proved the Will, and he may afterwards, since probate by one Ex. enforces all to act.

But according to the civil law, the annunciation is promptory of continuance:

So the Ex. refusing in the last case may release estate, due to the testator. — See on Letter to 26.

So the Ex. who refuses must be named in every action brought by the others, but if otherwise, when the action is against the Ex., because the blames in the latter case is not supposed to know that any other persons are Ex. than those who act as such, of which hereafter.
After an ex" was administered, he cannot renounce. For by the act of administering he accepts the executorship, which determines his right or election spoken to himself liable to suits.

It is a general rule that whatever the ex" does with the effects of the testator which shows an intention in how to accept the same amounts to an administering, or that he cannot afterwards renounce. So also any act which would make one an ex" devisor, is an administering. He deemed an election of executorship.

As for example, the taking possession of the testator's goods, converting them to the ex" own use. Now let's.

To taking the goods of a stranger & administering them under an application that they are the testator's goods, amounts to the same thing.

But it would not, if he should take the goods of the testator, claiming them as his own.

So if he receive debts due to the testator, or relieve the testator's debts.

As also if there be two ex" gone without the consent of the testator, taking possession of a specific article bequeathed to him by the testator, this is an administration; for a legatee cannot take his legacy without the consent of the ex".

But in those cases, if the judge knowing that the ex" has
Ex. and Adm.

has administered will notwithstanding accept his refusal (grant administration) to another, the grant is good & the Ex. cannot afterwards assume the office.

that if after administration granted only because the Ex. did not attend on Summons to prove the will, the Ex. chooses to accept he may do it, & administration must be repeated.

And if after the Ex. has refused & administration granted to another, it adverse to the judge: that the Ex. had adminin. and before refusal, I suppose the judge may repeal the administration & oblige the Ex. to accept.

If the Ex. adverse to the judge, he be suitably execrated, the Ex. is he cannot afterwards renounce it; for he has by the oath accepted. You can the ordinary refuse to ad mit him; even tho' after taking the oath; he had refused, if he do a mandamus his.

The manner of granting administration is in what cases it is granted; under this head will also be considered the different kinds of Administrators.

Administration must be granted by writing under seal & by handwriting.

Administrator is to be granted when one dies intestate.
hence the person entitled by law to the administration has a general authority, Jade for himself as Adm., that is, not for any other who have a superior right.

The ordinary may take bonds for due administration in all cases, even where it is even to administer to annex.

It may be granted jointly to two or more, if one die, the office survives. This therefore is different from the common cases of delegated authority, as a letter of attorney for two, where on the death of one, the authority ceases.

But administration is called an office. Several administrations may be granted into distinct things, but not of one thing as a bond for $1000. — 3 Bl. 36. § 20. 78.

If a person be made Adm., without any limitation or restriction, he cannot renounce as to a part. Thus he cannot waive a term, the of less value than the rest. He must renounce in the if at all. The same rule I suppose obtains in cases of administration granted generally.

2. It was formerly doubted, whether administration could be granted to one during the absence of the Ex. out of the realm, but it is now settled, that it may be.

So where the rightful Adm. is absent out of the realm.

3 Sel. Law Reports 23.
1. To a temporary administration may be granted while the right of the Adm” is in doubt or in question. But why should it be granted in the case of an outlaw, when an outlaw may be sure no more than if he
was notorious. This kind of administration however ceases when the absence of the
owner by of the Ex” or rightful Adm” are removed.
2. So it may be granted pendente lite: I daubbe to cease when it is
decided, yet it was formerly doubted whether administration could be
granted in this case.
3. So if there be a doubt about the right of administration
it may be granted pendente lite.

These temporary Adm” are capable of being liable to be sued
while their authority continues, even Pendente lite.

4. If the Ex” names refuse administration cum testamento annexo
so to be granted that administration de bonis non for none of the goods
are administered.

5. So if the Ex” die before probate an immediate administration
is granted cum testamento annexo, that is not administration de
bonis non administrato.

6. If the Ex” having actually administered die before probate an im-
mmediate administration is granted cum testamento annexo because
he died before he understood the execution of the will.

7. So if one make a will inane to Ex” an immediate admini-
...
administration in testament, annexes a grantee. Part of an heir, die being goods, undistributed administration de bonis non in granted.

So of the ex. die intestate, after proving the will administration de bonis non in testamento annexes is granted, for the ex. has administered in yard.

By the 3d rule of law of the original Ex. is Admin. had not an action recovered judgment &c. without taking out execution. The Admin. de bonis non could not vice out execution & in any way take advantage of the execution argument he not being prior to it.

But now by the Acts 17 car. 2 Jac. 2 the Admin. de bonis non may have a new process on the judgment when it is rendered in a writ.

When the ex. in this case dies intestate the testator is said to die intestate.

An Admin. de bonis non is entitled to all the personal property of the deceased which remains not administered &c. specie, at homs, household goods &c. So too money received by the original ex. &c. as much & kept by itself so it can be identified, so too debts due to the original testator &c. But if the original ex. took a Note for a debt due to the testator the de...

acceptance
acceptance of the title on such an allotment of the property that the title vests in the representatives of the original Adm. of the estate of the Adm. de Vonis now.

10. If the Ex. be under the age of 17, administration durants minor actes that is till he attains the age of 17 years, must be granted.

So if the person entitled to administration be an infant, administration durants minor actes that is till he attains full age must be granted.

An Adm., durants minor actes being but a curator for the infant, the ordinary must appoint whom he pleases.

It is laid down, that administration granted during the minority of an infant Ex. under 17 determines on her marrying a person of full age, as she becomes intersted with him in her right as Ex. 17 is of age to act. But this is denied to be lawful by some authorities.

If an infant is a person of full age, the Ex. administration durants minor actes is not granted to a third person, for the one of full age may execute the will of administration to a third person is void.

That it is said that the Ex. of full age may take administration durants minor actes to declare an Ex. or Adm. durants go.
So if two infants be or one of the age of 7, & the other under, the same may execute the will & administration during minority acts as not to be granted. In this case I conclude the other can not take administration during minority acts as no reason but an adult can be Admnr.

If the die leaving a his Ex. & the leaving from infant his Ex. & C. be appointed Admnr. during minority acts of B. he not the representative of 1 & 2, the he acts for B. who is the ex. Then must be an Admnr. during minority acts of B.

The authority of an Admnr. during minority of an Infant, Executor or Administrator.

It is said in Congres (who however cites no authority on the point) that the Admnr. during minority acts of one entitled to administration has for the time all the power of an absolute Admnr.

But it seems to be established that an Admnr. during minority acts has not such a general power in the estate of the deceased nor such a general authority as an absolute administrator has. For his authority is generally given him as commodum & indicium, so that he is in the nature of the bailiff to the infant Ex. or Admnr.
There are authorities which state the case of an Adm. duravit minor to that of an infant, and, indeed, he is generally regarded as if he were the infant's personal representative.

The authority of an Adm. duravit minor is generally greater than that of an infant, but not always.

If the new authority is special, he may generally do all acts which are incumbent on an Adm. for the advantage of the infant (the estate of the deceased). Thus he may perform a legacy if there be other objects sufficient to pay debts, but not otherwise.

An Adm. may act under any circumstances, as at his death. 2 Bacon 381, 2. 1 Com. 250, 8. So he may sue if he wish.

There is an exception to this rule when the administration of the minor's estate is granted generally.

But as he can do nothing to the prejudice of the infant, he cannot sell the goods of the deceased estate for the payment of debts, which is a case of necessity, by which they are dischargeable, in which case, a bailiff may sell.

Nor can he make a lease of a term vested in the Adm. 2 Bacon 381, 1 Com. 250.

There is an exception to this rule when the administration...
administration during minor's acts is granted generally, that is, not ad commodum i.e., when he may leave a trust vested in the care of a good, till the minor attains the age of 17 years.

But it is now laid down, that the Adm. even in this case may sell the goods of the deceased, except for the payment of debts.

When administration may be repealed.

It was formerly held, in some decisions, that the ordinary court would not in any case repeal letters of administration once granted, he having executed his power.

But it is now clearly settled that administration may be repealed for various causes, the main arbitrarily, as in when unduly obtained. This happens if administration be granted on the ground of a supposed intestacy, when there is a will which is valid. Then on probate of the will administration must be revoked. Secondly, where in a case of actual intestacy, administration is granted to one not legally entitled to it, or to next of kind to a some sort excluding the husband. Here it must be repealed in favor of the husband.

So if granted to a stranger when there are kindred not disqualified. And so if granted to next of kind, under testamentary annexes, when there is a residuary legate.
Administration, as is said, may be appealed, without a sentence of revocation or by granting a new administration, which is itself a reversal of the former.

The consequences of repealing administration.

It is a general rule, that where the only objection to an administration is, that it is to a wrong person, & if be afterwards repeated on a relation by the ordinary, all the intermediate acts of the first Adm. are good, as if he gave the goods of the intestate to another; for this is a lawful act, that is, such as a rightful Adm. may do.

In this case, if the first Adm. was a creditor to the intestate, he may retain like any rightful Adm. to satisfy his debts.

But if an Adm. whose letters are repeated by citation made a gift of the intestate's goods by curtesy, before the appeal, the gift is void as against curators by Stat 13 Eliz, this gift as against the second Adm.

Yet in the last case, if the first administration be set aside on an appeal to a higher ecclesiastical jurisdiction, the intermediate acts of the first Adm. that is, between the appeal taken, & the appeal, I suppose are void.
The grant is not voidable, first void.

Therefore if the administration be regularly granted, tho' to a wrong person...

Administration has been granted to a wrong person, and for this reason, negated to a relation, therefore invalidly, and voided of lawfulness. Such may not even be a fraudulent grant and void.

If made without basis as a judgment in favor of the law, an appeal that judgment may only be the intermediate each are void.
Appeal on citation is only a repeal of the former order of administration, and does not affect the original order, but a counter-sentence on an appeal, acts directly on the sentence as sealed from which it is suspended by the appeal itself. After a repeal is considered as if the seal were extorted.

Note the case in 6 Co. 18, & Bay 224, where the appeal was after an allowance on citation.

And if the court (on the last case) had named judgment against the debtor of the deceased, before the appeal, the defendant may be relieved against the creditor. 

To if the debtor be taken in execution on this judgment he may be discharged on motion.

Administration granted by incompetent authority, as a Bishop of a wrong diocese, is void.

Equally to the rule that a repeal upon citation does not make void intermediate acts, it has been decided that if one die intestate, so will be found approved as so will if he had been an intestate afterward, revoked on citation & administration granted all lawful acts, that is, such as a rightful Executor might do remain good; thus a creditor, who paid the supposed Executor, is not obliged to pay the same debt to the rightful Executor.

But the rule, that after a repeal on citation, all lawful acts remain...
suspicious: the male with a nose + horn
resembles with 661 from 198 to 28 March
the case of Joseph with the sons of fury

Eph. 7:6

[Handwritten notes on the right side of the page, seemingly unrelated to the main text.]

1 Cor. 2:13
17 Mac. 193
2 Sam. 11:5
1 Matt. 19:2
10 a. 21
206
24 Nov. 192
Feb. 83
Shem. 91

3:15

264
2 Pac. 140.
remaining good does not apply where the deceased left a child, will, but to cases of actual intestacy only.

If the deceased have left an Executor or the ordinary not knowing the fact grants administration of the estate afterward, proves the will, he shall void all previous acts done by the Admin. — for the Ex. had an interest of which the ordinary could not deprive him. The ordinary had no authority to grant administration for he can grant it only upon "a dying intestate" (the administration is void).

Justice Buller seems strongly to disapprove of this rule. If the ecclesiastical courts have jurisdiction, says Buller, their sentence as long as it stands, unrepented shall avail in all other places where they have unquestionably jurisdiction; the testator as he proved to be being constitutionally dead.

So if the deceased left two Wills, of which the former was executed by the latter of the Ex. of the former, prove of the testament of the Ex. executor by the testament executor all the same acts of the first Ex. are bad. Buller strongly denies this rule with reasoning. But was not the "two bad" cases of intestacy?

When the first administration is reversible on citation,
of the acts of standing administration suppressing no will when they are the government which they in some judge 114th opinion.

The case of law really the laws reading the first administration grounds in the first 114th 24th opinion.

21stc. 411.
1strev. 411.
1strev. 428.
21stc. 246.
1strev. 277.
21stc. 280.
21stc. 153.
21stc. 150.
21stc. 1122.
1strev. 303.

31stc. 1301.
1strev. 1717.
1strev. 380.
1strev. 247.
5th 1210.

31stc. 190.
1strev. 158.
2. 114.
21stc. 4212.
5th 919.
5thc. 152.

21stc. 412.
the authority of the first Administrator ceases on the repeal of the
be liable for all the debts in his hands to the rightful Adm.,
even for all unlawful acts.
But his lawful acts pending the citation can well be believing as good.
The effect of an administration's being void ab initio, or of
its being made so by a repeal, on an appeal is that all acts
of the first Adm. are considered and may be treated as the acts
of a stranger; and thus for example he may be sued as a
trustee.
Yet in this case, if the Adm. have paid debts legacies or funeral charges, which the rightful Adm. ought to have paid, the Adm. shall recount the amount so paid in
in damages that is, claims or be allowed so much in mitigation
of damages.
In these cases when the administration is void or
made so by a repeal, a voluntary payment of a debt to the
original Adm. does not discharge the debt even tho' a
release is given; the debt of course must pay it over again.
Justice Buller contends against this rule in case of a
repeal of administration by on the probate of a will, tho' not
in case of a repeal of any kind upon appeal.
But it has been hitherto that if a debtor pay money on a judgment &c. to one who is Edo. de facto having a probate under seal, he shall never be sued to pay it again.

So doubtless if paid to an Adm. de facto by an judgment & execution.

Where then is the necessity of an Audito Declararum?

After an administration granted a new administration be obtained by fraud without a repeal of the first or the second Adm. released. This administration is then repealed, the release is void except as against creditors.

What acts an Executor may do before Probate.

As the Ex. derives all his interest from the will, the property of the testators effects is vested in him before probate on the death of the testator.

Proving the will is called a "necessary ceremony". It is properly a necessary evidence of the Ex's right.

1. 1495. Lovel, p. 123. 2. 50 Ed. 291. 3. Godd. 124.

Hence a plea that the Plaintiff who owes as Ex, has not proved the will in Pari. It should be that he is not Ex, then it would be necessary for the Plaintiff to produce the probate.
This evidence of the Ex’s right (viz. Probate) is necessary to
be said because in the Probate there is an inventory exhibited
of other acts to be done which are for the benefit of the Credi-
tors & legates.

As therefore the Ex’s derives his right from the will he
may before Probate do many acts which shall be valid.

But an Adm’t can do no valid act till letters of ad-
ministration are granted; for he derives his whole author-
ity from the appointment of the ordinary. By “valid acts”
are meant acts affecting the effects of the rights of claim-
ants (their interests). All other acts are those which any person may do.

The Ex”, may, for example, take possession of the tes-

tator’s goods before probate. He may enter the heirs house
if he can do it without breaking (take securities belonging

to the testator). 2 And 277.

But he may not break an inner door nor even
a chest for that purpose.

So before probate he may assert to a legacy
(sheet aint is binding except the interest in the


So he may pay debts & legacies, receive debts &
give deceptive satisfaction. Lev 174. 5 Go 282.
But if one entitled to administration should receive debts or give releases before administration granted, he might after obtaining administration recover them again for the right of action was not in him.

So the exors. may before probate sell, give away, or otherwise dispose of the goods of the deceased, but it is otherwise in the case of an Adm. Or

So if a bond of the testators, be conditioned for payment at a certain day which happens after the testators death, but before probate, it must be paid by the day to the exors. or at common law the penalty is forfeited.

So on the other hand, if the bond was made by the testator, the exors. must pay by the day, tho' before probate, or the penalty accrues.

But now by the Stat. 4 Ann. penalties are joined in bonds of law on payment in Court of the principal, interest and costs.

A person named exors. is said to be a completed exor. to all purposes, except that of bringing actions. But he cannot bring actions it is said before probate. 1 Mod. 213. 2 Mod. 416.

But even this restriction is to be taken with two im-
important qualifications; indeed it seems to be inaccurately expressed. For

It does not apply at all, except to two cases, viz. to actions of debt & other actions the testator contracts life such actions as tools are accused in the life time of the testator.

Therefore, before probate he may maintain his halfs to recover replevin & for injuries done to the goods after the testator's death; even in this case he may declare upon his own proceeding.

He may indeed maintain an action in his own name, without describing himself as Executor. Hence a probate of letters testamentary is not necessary. So before probate he may distrain or allow for rent, when the reversion for a term of years comes to him from the testator & the rent accrues after the testator's death, because the rent accrues after the reversion is vested in him. Yet he can not do those acts if the rent accrued during the testator's life. So before probate he may maintain suit & on a sale of the testator's goods by himself, for her
The will is his, and the testator and administrator.

With respect to actions of debt or other actions on the last will, contracts by to be not made as laid down that the donee cannot before probate bring an action even in this case.

It is clearly agreed that he may in those cases commence an action before probate, but he cannot maintain the action or declare before probate. This was may be done before probate; it is sufficient if he produces his letters testamentary at the time of declaring, when he must make his proof.

These remove the impediment of intils.

Of Co-Executors.

If there be several executors they are deemed in law but as one person respecting the testator: Their interest is joint, entire and indivisibly. Therefore it is a general rule that the act of one is the act of all.

Hence the possession of one is the possession of all. Sale or gift of the whole, by one is valid, it being regarded as the contract of all for a release by one of actions, debts &c. Inuring.

So if one grant all his interest in the testator's land for years to a stranger, the whole belongs for each has an entire indivisible interest.
So of one exit, the part of a debt due to the testator. The case of ex. in is different from that of joint tenants; for each is possessed of the whole, there being no part or moiety in those possessor.

So of one grant here interest in the testator's estate to his ex. nothing passes by the grant; for each was possessed of the whole before.

So one exit cannot have an action of account of the profits of the estate against the other.

Both exit have a right to plead different pleas. Therefore a demand of attorney to confess judgment against all is ill the judgement shall be set aside on motion. (Rolle 94B.)

But one of two Admen cannot make a valid release nor convey any interest so as to bind the other; both must join for the authority of the Admen in joint tenancy. This rule was never doubted. Godol. 134.

There is an exception to the last rule, where the Adm. may sue in their own right or in trustp.s declaring on their own possession. Hence they are considered as principals and as representatives. And here one may release the right of action.

None of the above dies the power survives, so in the case
Adm. x. 2 Korn. 514. 160. 918. 1 Korn. 87. 3 St. Tho. 59.

Is it not that an Ex. may compel his Co-Ex. to ac-

count with him in chancery for a money of the effects. Ex.?

So if the Ex. be made residuary testators, one may sue

the third in the Spiritual Court for a money; for he is in

the character of testator.

It is a general rule that one Ex. is not chargeable

for the wrong of his companion, his not further liable than

in the goods which come to his hands.

Yet if all the Ex. join in giving a receipt for money ac-

tually received by one only, all are liable at law &circa;
as if they had all received, that is, each is liable for the

whole. This rule is however different in Equity; there the

actual receiver is only liable for receiving in the substance;

joining in the receipt is matter of form only.

As all the Ex. make but one person in law they

are regularly to be all sued, fall to sue. Clinton 45.

If an action be bad against an Ex. a plea that another

is Ex. without avowing that the latter has administered, is ill;

for if the Co-Ex. have not administered the bill is not sound

to have that he is Execut. But if one Ex. once alone

it is sufficient for the Defendant to plead that there is
another Ex 

and 

Adm 

another Ex. without knowing that he has no interest, because the part is not supposed to be within the cognizance. 

An action is brought against one of the several executors (she does not plead the mistake in statement to this the disadvantage of it). 

In case of two Ex. one refuse to accept or present, yet he must be named, there must be summons because the object of summons is to prevent the Ex. not acting, from returning. The effect of the summons is to take away his bribe to the end to make him so busy. 

But if a bribe be committed on the goods of the testator, while in the possession of one of several Ex., he alone may sue for it; for how he need not sue as Ex., but in his own possession. 

A contrary rule is hitherto in some of the books on the ground that the possession of one is the possession of both. 

An executor de son lois. 

In Ex. de son lois is a power he without any authority from the deceased or the ordinary does such acts as belong to the office of an Ex. or Adm. 

In general, any enlargements intermingled with the
acts of the deceased will make a stranger an ext de vno tool.

Thus, for example, taking possession of the assets (excluding them to his own use), paying debts out of the assets; receiving money or debts due to the deceased (in general, all acts of acquiring, transacting, or possessing the assets will make a person unauthorized to be an ext de vno tool.

The value of the assets taken is not material, since even a mething of cows is sufficient.

In paying legacies out of the assets, taking a specific legacy without the Executor's advice, or by placing where none is Executor or any other plan than a single Executor for by any other he admits himself to be Executor.

So the widow of the deceased becomes ext de vno tool, by taking more apparel than is convenient to her degree.

A stranger takes possession of the assets, and delivers them to another, the latter is ext de vno tool.

By Statute 43 Eliz if goods of the intestate are given by sale to a third person or a release given by virtue of a debt, the donee or releasor is ext de vno tool.

If one intermeddle with the assets, even in pursuance of directions from the deceased he is an ext de vno tool.
To a preceding gift by the deceased himself, will
make the donee executor de son tort or to creditors, from
the necessity of the case; but not as next of kin. Legacies
can be paid so good an against them.

But one may do many acts relating to the effects of
the deceased, without making himself an executor de son
	
tort. 2 B.

Then feeding or taking care of the deceased's cattle, pay-
ing debts of the decedent out of one's own moneys, repairing the
buildings, when suffering for want of repairs, providing ne-
cessaries for his children, will not make a person executor de
son tort.

So taking the effects under the claim of necessity un-
less the claim is merely colorable, a mere artifice, in how
he does not undertake to act as executor. —

What acts are sufficient to make an executor de son
tort, is a question of law.

The rule, or at least the principle of discrimination
is this. — "If the act of the stranger be such as fairly
warrants the inference that he claims the management and
disposal of the effects he is executor de son tort but otherwise not."

In the last case, the act in such case belongs to the office of
The above rules as to what acts make an executor de
von test apply in their full extent only to such cases where there
is no rightful executor or administrator, so those where there
was none at the time of intermediate. For after probate
of the will, or after the testator has otherwise administered, or
after administration granted, common acts of intermediate
are taking possession by converting, embezzling, will not make
an exec co von test. For there is a rightful exec co, if the
goods taken after probate are asper in the hands of the
rightful executor they having come to his hands.

Yet the wrong done is liable as a barbarism to the exec.
But if after probate one not only intermediate, but
claims to be exec, he is chargeable as exec de von test.
And it seems from Salter's that this claim may be infrin-
ged so as to subject from certain acts, such as receiving
paying debts, tho' not from common acts of intermediate,
that is, such as are in the nature of common law.

If the intermediate be before probate be or in cases of
interlocutory before administration granted, the stranger in-
termediating an exec de von test, the the act in nothing more
than
than taking probate, he is liable on oath in such cases to deliver over the goods to the several executors by before action brought.

The grounds on which an executor is not liable to executors is, that from his acts creditors have cause to presume that he is a legal representative. She has no right to do so, for his presumption, unless his own wrongful acts have caused it.

An executor is not liable to all the debts of an executor, although without having any of the profits & advantages of him. Thus he is liable to be sued as executor, but he cannot sue as such.

He cannot retain for a debt due to himself. He may, even against creditors of an inferior degree.

Lord 527, 620 Ch. 530. 2 Ser. 137. 2 Scho. 51. 193. 447. 218.

And if he pay debts with his own money, he may retain the amount so paid.

So if after administering he obtain letters of administration, he may retain for his own debts as against creditors of an equal or inferior degree.

For the letter of administration Always the wrong except that he is still liable to be sued by the name of
of executors and he having, however, the administration, gains the privileges of a rightful administrator.

Such apparently contrary to the last is, that an executor and after having the last letters of administration may be charged in a suit against him as creditor that he cannot for being thus described about the suit, for no to other purposes the wrong is charged.

An executor must be limited as far as he has assets to the rightful creditor or administrator, to all creditors of the deceased and to legatees. 3 Co. 30. 2 Bac. 391.

An executor must when sued by the rightful creditor or administrator is described not as creditor, but as a charged and common hawker. 1 Hem. 288.

But if the creditor or administrator be a creditor to the deceased he may bring debt against the executor deceased with the averment that none of the assets came to his hand.

In actions by creditors an executor must be named.
"Ex" generally.

As a general rule, that an executor de voce hot is liable only to the extent of debts received, but against creditors he is allowed all payments made to other creditors of an equal or superior degree.

He may plead due administration by giving such payments in evidence to support the claim. But in a suit against the rightful "Ex" or "Adm" he cannot by pleading such payments bar the action, as the plea of such payment is therefore ill.

Yet on the general rule he may recover, that is, be allowed in mitigation of damages, the amount of such payments, unless perhaps the rightful "Ex" or "Adm" be by such payments prevented from retaining for his own debt.

These lawful acts however bind the heir or devisee disposed of against the rightful "Ex" or Administrator.

Though an "Ex" de voce hot is generally chargeable only to the amount of the assets, yet if he had no assets, and is called upon by a creditor, he is liable for the whole demand, whether or not he have assets to that amount. — Exodus 20. 1 Peter 4:10.

It is said however that on these cases, where the va-
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value of the effects received in very lodging, the debt is for but may
be returned in Equity.

In this case he bare alone administrand he shall not
be discharged before the whole receive.

A trust is a rightful by a gain of a ton test, they may
be wise privity of privity, but it is otherwise in cases of a
rightful void, for an Exon & Admon cannot be joined in action.

A common law, the Exon & Admon of an Exon de ten test
were not liable to Creditors, as they were in Equity.

But now by the 36 Car. 2. the Exon & Admon of
an Exon de ten test are liable at Law to Creditors.

Making Debtors Executores.

By the old English law of a debtor was made by his
debt was discharged. The reason assigned why the law should
claim his debt in this case, was, that he could not sue
himself.

But it has since been holden that his debt is debts
in his honor for the payment of the debts Legacies of the
dead.

So it therefore is said of law to pay the debts
Legacies he may still retain his debt; the reason of which
so that the debt in such instances is considered as a conditum.
And it is the better to judge that he is discharged only when he takes the conditum. There have been no cases recognising this principle, but a clear
fact is that it is a rule in law that the debt of an administrator who is never entitled to a conditum is not discharged
by his appointment.

In England the procedure is evidently regular, only
there is something in the will clearly manifesting the testa
tor's intention that he should not die. 2 Elia. 379.

And in his right to withhold payment of his debts
against those who claim under the Will of the Testator
is founded on the idea that he is entitled to the recov-
erance. It may be a question whether he have such a
legacy as would bar his right to his conditum, he can
certainly raise his debt against such claimants.

Of making Creditor Executors.

Admitting the testator, Executor, for such case
the Executor may retain so much of the testator's estate
as will satisfy himself, but this must be provided that
the debt is in an equal degree with such creditors; and
The words of the contract, as a man stands against a public law, especially where the laws are of a public nature.

As if administered by quakers to a quaker, he may neglect so much of the public as inestimable affects be not satisfied himself but this also must be undertaken with particular equal degree.

These rules from the nature of the object are receivable & just. For as the beneficiary who first commences an action gains a priority to all others in equal degree, so an est. must bring his action, that is not lost. For himself, he must not be allowed to sue for his own debt, in person, not all others the in equal degree.

But an est. de son fort who as a beneficiary cannot receive because this would be allowing him to take advantage of his own wrong.

An est. is not obliged to take in hand when there are not assets enough to pay the whole debts.

An executors right to the surplus.

In England if an est. be appointed it has been a question to whom the remainder of personal property, after the payment of debts, legacies &c. belongs.
Formerly the legatee himself was always considered as residuary legatee. But now if any considerable legacy is not appropriated to any particular purpose he will on the death of the testator be considered as residuary legatee, the board of chancery will order a distribution as in the case of administration. Still however if no such intention can be inferred from the will, the legatee will be considered as residuary legatee.

An ex.c. in England has no wages for his trouble. A legacy bare the ex.c. right to the residuum in these cases only, where it is proved of an intention in the testator that the ex.c. should not take the residuum. And proof is admissible to show that notwithstanding the legacy the testator intended the ex.c. should be residuary legatee; but this rule does not hold in view here.

It is laid down by legal writers, that in cases of this nature, hard proof is admissible to establish an equity against an implication that no hard proof may be admitted or allowed to establish the legal import of a will or other instrument, when such import varies from the equitable construction. Yet such proof cannot in this case be admitted so
attainst the purpose, in contradiction to the true legal construction, but the former must be collected from the instrument itself.

Of Wills.

The declaration of the mind, by words or writing, in disposing of an estate, to take place after the death of the testator.

So every will thus made be an executed.

A testamentary instrument not appointing an executor is called a testament.

Generally, any person having under no particular disability may dispose of his personal estate by will.

And in all cases the presumption is in favor of sufficient discretion and ability, so that the burden of proof lies on those who would contest the will.

Both reasons of the following descriptions cannot make a will: 1. Idiots. 2. Persons of unsound memory as lunatics. 3. An aged person cannot make a valid will, if it appears from his conversation at the time of making the will, that he was not of sufficient discretion. 4. If the testator were unable, through ignorance, or blindness, or other causes, to read the will, it must
must have been to him, fourth recording must be proved. Generally, any slumber person cannot make a will, but proof may be admitted to show, that such a person knew the extent, had understanding sufficient to make a judicious disposition. A drunken man cannot make a will. A drunken man cannot make a testament of labor or goods. A will made under any restraint of fear is invalid. I would learn that in this case, the cause of fear, whether actual or imaginary, ought not to be regarded. The noun declarer of making wills, is according to some authorities 12 in males, 8 12 in females; this for the age of 15. But some there suppose it be 13, because according to Lord Hardwick the civil lawyer governs in this respect, by which this was the age.

A husband cannot dispose of his wife choses in action, chattels real or paraphernalia. By will, he may dispose of all by deed, except the first line of paraphernalia.

A human by will disposed of in bulk, held in joint tenancy, because the free consent of interveners between the right of the testator, and that of the devisee is legible.

Inferences of a chattels interest may be by way of executory devise to bend over after an Estate for life,
provided that the remainder men be all in equal shares of the estate of the decease and the contingency upon which the remainder is to vest, happens within a life of lives (21 years) or the duration of a year.

The life men must lodge an inventory of the heirship limited over in the Court of Chancery, if a thing in rem, must give security which shall be afterwards.

An estate tail cannot be created in personal property, if an estate tail be given to a man the heir. The only absolute remainder vests in the next after.

The reason assigned for this rule by English lawyers is, that an estate tail in personal property cannot be leased by a fine or recovery. Therefore, if it should not exist, it must be thereafter which the law authors.

A will of personal property ought regularly to be in writing signed and published by the testator.

It is not necessary that there be subscribing witnesses to any of a devise of real property, if the testator's name be written by himself or anybody of the will as a subscribing witness. There is indeed, an instance given by Lord Bredin, where the testator's name was written by another person, yet being approved by the testator was held as


to be sufficient signing.

If the testator cannot write, his mark, with his name written by another, will be sufficient.

It is said too, that the will of it be in the handwriting of the testator, without signing, is good, but if it be in the hand writing of another person, in certain cases. It is laid down as a general rule, that if a will of both real and personal property be well executed, as to the personal property only, it is void only as to the real. In some part of this rule it is alleged that the intention of the testator ought not to be unnecessarily disregarded, for the will is good in part. This intention, so far as this part might not to be disregarded.

But this reasoning is not satisfactory, for it is not improbable that one part of the will was made with a view to the other, and that the intention of the testator would be violated by permitting the legatee to take all of the personal property, and come in for a share of the real.

At Common Law, necropalous Will, might be made of personal property. But the restrictions imposed on this kind of wills by the Stat. 28 Geo. 2, had almost a decisive effect. —
The duty of executors and administrators.

The first duty of an executor or administrator is to make an inventory of all the estate which can be ascertained in his hands, and to procure an appraisal of it by justice proper under oath. After this, the executor or administrator must account with the court of probate for the proceeds in accordance, but is not liable at all costs to pay the amount of the appraisement. If the estate be sold for less than the appraised value, the executor is not liable to the heirs unless he incurs by his own fault or negligence. But if the heirs to burden themselves, he is liable to have been to an action by executors.

But if creditors were in common form for their debts, they must ground their actions mainly on the inventory.

If the estate should be sold for more than the appraised value, the executor gains nothing, but must account with the court of probate for the excess of the sale.

A judge of probate ought not to reject an inventory, without this being to which a disputat. For this decision cannot affect the right of laying the same as common law.

So executors may be liable to execution, but after an
received by him unless he has made some reasonable delay.

If an Exequt or Adm't submit to arbitration & the arbitrator award against him the payment of a certain sum, he can not随后 in ever the want or spite as to the claim.

At first no facts come to hand, nor how liable insinuates.

An informal commitment to an Exequt, or any much of money de {from the tontactor, does not shake the eq: personally liable. —

The power of duty of an Exequt or Adm't are very nearly the same. There are however some points, in which they differ.

Exequt or Adm't are bound for their tontactor to the extent of their whols only.

The payment of debts.

The Exequt or Adm't is bound to observe a certain order in the payment of debts.

This order is as follows.

1. General charges, expenses of the rent, being recovered.

2. Debts due to the king by order or specially.

3. Debts by particular statutes or equations (e.g., Debts of very, 5. Statutory debts.

4. Debts on simple contract.

This part of the English law does not present a very
reasonable picture to the mind. For simple常德 matter, where claims are new, the most numerous, being post-dated to all others, may be disclosed at their whole value.

Claims in equal degree, the Ex. may pay what he desires. But he cannot know a demand in present, which return in future to those which are already payable, unless the latter are of an inferior degree.

If the Ex. have paid a demand of a lower degree, while there are others of a higher degree unpaid, he has no effect, he is personally liable. But in this case he is excused if he did not know of the latter.

A creditor may gain a priority to having in equal degree, by what is called legal diligence.

Voluntary time is contributive to all debts, but he is not entitled to legacies.

If a creditor elects to the payment of a bond given by the deceased, on the ground that it was voluntary the Ex. may be held, being the party into chancery, to litigate their claims at their own expense. He may make demand according to the decision then given.

The enquiry may always be made into the consideration of bonds, when these persons are interested.
Ex " and Adm".

It is the duty of the Ex. to retain assets for the payment of debts in presence of creditors in future. If the Ex. is having their retainer assets become a bankrupt to lose payment, it is somewhat doubtful whether the creditors can secure the assets in the hands of the legatees and executors. It seems reasonable, however, on principle, that the creditors should secure the assets, in this, as in common sales.

No time is limited by the English law for the exhibition of claims against the estate of a person deceased.

If the Ex. have paid all the whole of the estate, observing the priority of claims abovementioned, so once he may proceed from administravit.

Legacies.

After the payment of debts, the next duty of an executor is to pay the legacies.

A legacy is defined to be a gift or bequest of particular goods & chattels by testament.

The person to whom a legacy is given is styled the legatee.

An Ex. to whom a legacy is given, may not prefer himself as in case of debts.
Ex "Deo et Amo"

At the death of the testator the intestate rights of the legatees commence, the legal property of the legacy still residing in the testator, the may dispose even of a specific legacy for the payment of debts. The estate of the legatee holds legal property in the legacy, if any slight matter may amount to an affect.

Recoumians & Specific Legacies.

Specific Legacies are bequests of things specified.

Recoumian legacies are bequests of sums of money made in general terms, which do not identify any particular parcel.

Specific legacies are liable to Creditors before specified.

Specific legacies are also liable to Creditors of the other effects insufficient.

But if a part only of the effect is taken for the payment of debts, the legatees whose parts are not taken, are accountable in Chancery to make a reasonable allowance to those whose legacies have been taken.

This rule however obtains only where it is necessary to take a part of the specific legacies. For if the Ex. has taken any legacy of this kind, he shall be liable to the amount of the legacy so taken.

The specific legacy is lost or destroyed by any remediable
accidents, the legatee to whom it was given, must bear the loss.

After the payment of specific legacies, if there be not effects sufficient to pay all the pecuniary legacies, there must be an average.

Part of them be not sufficient to pay the specific legacies, those who are first paid are always preferred, if there shall be no average between them.

There are cases where pecuniary legacies are preferred to specific legacies, and this preference depends wholly on the intention of the testator.

Thus if all the personal estate at a particular place or places be bequeathed in specific legacies, when there is no personal estate elsewhere, if afterward a pecuniary legacy is given to be paid out of the personal estate, the specific legacies are chargeable with the pecuniary legacy, these being no other revenue property from which it can be raised.

**Vested and Lapsed Legacies.**

A vested legacy is one which of course vests in the legatee or his representatives.

A lapsed legacy is one which cannot be taken by the legatee, but sinks back into the residuum.

If a legatee die before his testator, his legacy is lapsed.
The legatee who has the residuum, if there be one, is entitled to unvided legacies; but if there be none, a lapsed legacy will go according to the statute of distributions.

By this rule there are one or less exceptions. It has been decided that if the legacy lapsed by the death of the legatee, leaving the testator it goes to the residuary legatee and to the residuary legatee. But if it lapsed by the failure of the condition on which it is given, it goes to the residuary legatee.

A legacy given to A payable at a future day in a word lapsed. Next a legacy given to a man at a certain age, does not vest till he arrives at that age; but he dies before the time fixed as to become a lapsed legacy. Per Ch. 21. 2 Esp. & L. 295. Th. 820. Now distinction seems to be over nice (probably tend to defeat the intention of the testator). The rules of distinctions are scarcely not without exception.

If such legacies are charged on real property the legatee dies before the time at which they are payable in one case and given in the other they shall lapse. This exception is taken for the benefit of the heir, who is always a favorite of the English law.

Another exception is, that when the legacy given at a future time is paid upon interest, it is not lapsed the testator dies before.
before that time. Per Ch. 517, 1. Sec. 512. 3. &c. 6. 45. 2. 255, 263.

So also, when the legacy is to be paid out of a certain sum which yields an annual increase, it is vestive.

Chancery will compel the heir to pay a legacy charged on his land, at such legacy before or if it be vestive. If the legatee die before the day of payment, the heir will hold it to the exclusion of those who claim under the statute of distributions.

The same may be shown to legatees in whose deceased legates are charged.

The heir who is entitled to a lapsed legacy may demand payment immediately after the death of the first legatee (provided he shall do so) a year & a day to pass, no delay to be excused by the lapsed.

A legacy may be made with a proviso, that if the legates die before the lapsed, or before the legatee arrives at a certain age, it shall go to another, & such limitation will be good.

**Conditional Legacies.**

No man order a legacy to be given on condition not to distribute the will, the legates commence a feud whereby the divisibility of the will, yet this is no forfeiture of the legacy, if there were probably cause to argue.

It is a general rule that all conditions in restraint,
marriages are to be considered strictly being prejudicial to society, as they hinder the propagation of the species.

Legacies to which are annexed general conditions in restraint of marriage, vest absolutely, if the conditions are void, or where the condition is, that the legatee shall not marry a person of a particular profession or calling. 1 Bos. 379.

But a legacy left by a husband having a family debt due to his wife, on condition of her not marrying so exempted from the above rule. For the husband is supposed to have in view to be interested in the nurture & education of his children; on this account the condition is allowed to be binding.

Yet if there had been no children or a legacy has been bestowed by a stranger, the legacy would vest, if the condition would be nugatory, that being, as it is said, no good reason why widows may not marry as well as maidens.

As conditions restrictive of marriage before a reasonable age, or not to marry at a particular place have been adjudged good, so also a restriction not to marry a heifer.

Legacies given on condition of being relieved of the legatee many without the consent of a particular person are not subject to forfeiture, unless limited to another upon breach of the condition.
Where a legacy is well given.

1. A last will being made, when the testator is presumed to be indisposed, the law regards his intention rather than the technical import of the words used to signify that intention. And therefore any words which manifested an intention to create a legacy are sufficient.

2. In all descriptions, who may claim to be legatees, the intention of the testator must be sought.

It has been adjudged, that grand children may take under the description of children, if the testator had no heirs; but grand children are considered as children in no other cases.

A man devise legacies to all his children by grand children, and it is settled that this extends only to those who were in the testate when the will was made.

Property given to be equally distributed among the testator's relations, or among his poor relations or among his relations of good moral character by is to be decided according to the statute of distributions, the description being the general to have any efficacy. This doctrine is now fully established.

When [property] is given to a number of children to be distributed according to the discretion of a particular power named in the will, the division made by that power will stand.
stand, unless manifestly unjust or monstrous.

3. It is said by Godolphin, that in order to find out the testator's meaning, with respect to the things which he intended to give away, it is necessary strictly to regard the time when the will was made; for it is presumed, that the testator's mind was not altered, unless it otherwise appear by sufficient evidence. In another place however, he observes this rule must be understood as the testator makes use of the words in the present or future tense; that is, whether they refer to the time past or the time to come, they shall be understood to relate to the time to come.

But it is now settled that a gift in a will shall be held to be personal property, all that he had at the time of his death. No more will pass, whether the form of the personal estate be increased or diminished after the making of the will. The rule respecting real property is directly the reverse; for of this, such a part only will pass as was the testator at the time of making the will.

A man's personal property, all being bequeathed in a particular place, extends to all that he may have afterwards, in that place.

By a bequest of a particular thing, at a certain place, this
The thing poses, whether it was at the specified place, or not, at the time of the testator's death.

Where a legacy shall be a satisfaction of a debt or duty.

The doctrine which obtained for more than a century in Chancery was, that if a man gave a legacy to a creditor, it should be considered as a satisfaction of the debt, if it were equal or superior in value to the debt, or not otherwise.

This rule, it was supposed, was supported by the intention of the testator long after the bond for a long time undisturbed. But succeeding Chancellors, rejecting this supposition, laboring to take the particular cases out of the grasp of this rule. And now by judicial adjudications it is virtually abolished. The following exceptions are taken to the rule:

1. That the legacy in order to operate an extinction of the debt, should be ejectum generis. 3 Bl. 226 n. 3. Pach. 394.
2. That it should be payable at the same time, or at least as soon as the debt. 3 Poth. 95.
3. That there be no clause directing previous payment of the debt.
4. That the rule does not apply against an illegitimate.
6th. That the intention of the testator to extinguish the debt by the legacy, be apparent.

2. That it be expressly given in payment.

If several legacies given to one person, be exactly the same in quantity & quality for the same instrument, they are not cumulatice, but if otherwise, as where the same bequest is given in a will for a covert, it is cumulatice hereby; there are some circumstances, showing a contrary intention in the testator.

A legacy to a wife or other person entitled to money from the testator, by articles of marriage settlement, is generally considered, as intended to be a satisfaction, in all events of what is thus due, if the testator may have his election, as to which he will take, he cannot have both. 3 Kings xiv. 53. 1 Peter iii.

A gift to a legatee by a testator during his life is to be considered as part of the legacy bequeathed by the will, made previous to such gift.

The ademption of legacies.

Ademption of a legacy is the taking away a legacy which was before bequeathed. 

The ademption of a legacy, as never to be resumed, but must at
always be proved.

The accidental destruction, or the alienation of a legacy, may
be an ademption or not, according to the circumstances; but it
is not necessarily such; for the legacy be specific, it may
be replaced by a similar article.

To determine whether there be an ademption or not, recourse
must be had to the intention of the testator. If the aliena-
tions cannot be accounted for, but upon the supposition that the
testator intended to alienate the legacy, it is an ademption.

But if the legacy be so lost or destroyed or disposed of
that any other intention can be inferred, it is no ademption.

If a debt be bequeathed, if the testator calls it in for no
other purpose than to take it away from the legatee, it
is an ademption.

If the thing bequeathed be pledged or sold by the testator,
from necessity, it is no ademption.

But if the payment of a debt bequeathed were unexecuted
by the testator, or if the debt be in settling circumstances,
or if the testator were in want of money, the receipt of the
debt is no ademption. But the testator is answerable for the
value of it.

So in many cases where the legacy is destroyed, or
where a house bequeathed is consumed by fire & a new one ends by the testament in its place, there is no admission.

If a man by will gives his daughter £200, and afterwards on her marriage gives her the same, or a more than that sum the legacy will be extinguished.

If the testator bequeath a certain sum to one of his children, then the same instrument gives the same sum over again to the legatee, the 2nd disposition is not a repetition of the former.

It is laid down as a rule however to be rebutted by showing a different intention, that if the bequest be of goods described to be in a particular place they must be kept at his decease in order to give effect to the legacy.

But the removal of goods out of a ship before the testator's death is no admission.

**Abating and Refunding Legacies**

The Co. is not obliged to pay any legacy until the legatee gives security to refund if debts should afterwards arise. In as we have before remarked, no time is left the within which creditors must exhibit their claims, against the estate of a deceased person.

If a legatee on receiving his legacy have not given
security to refund in favor of debts afterwards appearing he is not compelled to do it.

This rule however, does not operate if the Deed when he had the legacy were ignorant of the existence of debts afterwards appearing or if he be compelled in Chancery to pay them.

Judge Pooe suggests that an action for money had received would lie joined in such a case the money is paid by mistake, & of course the consideration fails.

A trustee may come upon the estates of his debtor in the hands of his legatees by a bill in Chancery if the Debtor be insolvent but not otherwise.

Secunary legatee shall abate in proportion to the deficiency of assets.

If a legacy be given to an Exorc sequester in his care gains, it has no preference, but must abide in the same proportion as others.

So one legatee may compel a secunary legatee to refund where the assets become deficient that there was no provision for refunding & the he has still a remedy against the Exorc who may compel him to pay it out of his own pocket, if he voluntarily paid it away the estate
to the other legatees.

The Judgment of Legacies.

1. An Ex. ought to be careful in the payment of legacies to take a proper receipt or have sufficient vouchers because it is better to be stuck with an equitable demand as is not barred by the Statute of Limitations, the after a length of time a legacy may be presumed to have been paid.

So he ought to be careful to pay legacies into proper hands. For without a decree or order of a Court of Equity, he cannot pay them over to others of their relatives of infants.

And if without such decree or order an Ex. pay a legacy to the father of an infant, he does it at his own risk, but not if he pay it to any other guardian. For every such guardian gives security to discharge his trust faithfully.

If a legacy be given to a donee in covert, it must be had to the husband. Where a legacy is given to a donee in covert who lived separate from her husband, was paid to her. The receipt taken it was decided on a title by her husband that the legacy when he paid over within.
So where husband and wife are divorced a monia of them it has been adjudged that the husband alone can release a legacy left to the wife.

But this rule does not apply where property is given to the sole or separate use of the wife.

The time to be appointed by the testator for the payment of a legacy, if in payable at the end of the year from the testator's death. 1 Cliff. 696. 2 De 588.

This rule of the English Court of Chancery is copied from the civil law.

A legacy is payable to the representatives of a deceased legatee at the time originally fixed for payment.

The person who is entitled to a lapsed legacy may demand payment immediately after the death of the first legatee, provided a year and a day be past from the time fixed by the testator.

3. If a legacy be devised generally, it is regularly to carry interest from the expiration of the last year after the death of the testator.

But if the legacy being of full age, neglect to demand it at that time he cannot have interest, but from the time of the demand.
And here therefore may be remarked a difference between a legacy and a debt, the latter of which, if no time be limited for payment, it carries interest whether demanded or not. The reason of this difference is, that the legatee, who is a benefactor, is not like a debtor bound to search for the person whom he owes, it is sufficient if he advance the property in his breast, when demanded.

But tho' a legacy be given generally, no time ascertained for the payment yet if the legatee be an infant, he shall be entitled to the interest from the time of his fixed expiration of the first year after the testator's death the no demand he made, because no laches shall be imputed to him.

If the legacy be appointed by the testator himself, to be paid at a time certain it is not fully settled, whether it shall bear interest from the time so fixed, or from the time of the demand. Modern authorities favor the latter, as the is.

If a legacy be made payable to a child of the testator even at a future time for this provision be made for its maintenance, it shall bear interest from the end of the year immediately following the testator's death, be-
because the father was obliged to have provided for it while living but is presumed he intended that it should remain claimable after his death.

By the common law, money made payable at a certain day, bears interest from the time fixed for payment.

**Legacies now Recoverable**

The method of recovering legacies is by a bill in the ecclesiastical courts, or by a bill in Chancery. If the legacy is charged on lands, it is recoverable by a bill in Chancery only.

Where the debts of other legacies are paid and discharged...

Chancery compels the payment of a legacy, the personal property or the goods of trust.

**Residuary Legacies**

A residuary legatee in a future appointee by the testator to take the residuum, after payment of debts & particular legacies.

Where all the debts & other legacies are paid & discharged, such residuary legatee of any be appointed by the will, will take the residuum to the exclusion of all others, except in cases when leg-
legacies charged on real estate are lapsed or lapsed for the benefit of the heirs.

If a residuary legatee die before the debts are paid, and so that it does not appear to how much the surplus will amount, yet the Ex'or Adm'r of such legatees shall have the whole residue of the personal effects which remains over for and the E'd of the first testator.

So if there be a residuary legatee (the Ex'or must have the testator's effects out of the inventory or render value thereof which he puts in), the residuary legatee may file a bill of discovery against him before he has paid the testator's debts.

In what above the Ex'or is entitled to the surpluses has been considered under another head.

But if no residuary legatee be appointed under the will & the testator's intention be manifest, that the Ex'or should not be residuary legatee, the residuum is distributed as tho' the testator died intestate.

**Donatio causa mortis**

A donatio causa mortis is a specific present, made by a person in contemplation of death. This gift is always conditional; i.e. if the donor recovers, the
the devise is not intitled to the property.

If the devise die, the legal property of the donation vests immediately in the devise without the intervention of the Ex or of any other person. To give effect to a donation cavae must be the delivery of the thing given, or some act amounting to it by the devise.

A gift of this kind is not good against creditors, but no action lies agst. the devise in such case, he not being entitled with the gift.

Judge Reeve supposes that the devisee, who claims agst. the devise, must bring his action against the devisee in his own name. For the representatives of the deceased being bound by the gift, the Ex. or Admin. cannot in either case, inventory the devisee, since the devisee is recoverd.

It seems that a devise in action is a negotiable nature may pass as a donation cavae makes, but if it be not negotiable, the better opinion seems to be, that it will not pass. Bost Reeve. In Chancery may protect the assignment as on other cases.

Distributions.

After payment of debts & legacies, the Admin. in Council make distribution of the personal estate.
The mode of distribution is settled by the Stat's 22, § 23, which directs that after payment of debts, legacies of the widows, share, the residue shall go to the children or their representatives, & if there be no children to the next of kin & their issue or representation. No representation is admitted among collaterals, beyond brothers & sisters children.

In the ecclesiastical courts, the management of the estates of deceased persons, the rule of the civil law was adopted to determine who are the next of kin pointed out in the statute of distributions.

The distributee's share went to the heirs of the intestate at his death (of course all persons who shared the claim, ante obi victor distribution).

Distribution shares vests in an infant in ventris formae under the statute of distribution. No distribution is made till after the expiration of one year from the death of the intestate.

The personal estate that goes to the next of kin in the preceding line & their legal representatives that is, to children of their issue in infinitum. As long as none of the stock remains in any of the direct degrees, the estate goes free (if legal representation).
But after the de facto extinction, the estate is distributed among children and barbers. Some however content that this distribution in this case is for the former. Lord Justice Throckmorton says that when there is no representation, as in this case, the distribution cannot be so arbitrary.

Flavors related in equal degree to the deceased are justly given to one more than to another except their in the descendant was direct ancestors or collateral which was in the degree of Asquith.

In the civil case, according to the common law, the ascendants are calculated in degrees of Asquith.

The few representations among collateral, extend no farther than to the children of brother Asquith. Beyond this degree, brother can claim in the same right only.

If there the brother's children of the progeny in clear the part of those children also the nephew's who survive shall take the whole estate to the exclusion of the grand nephew's if they are of the progeny that is to the exclusion of the grand children of the brother's children.

A statute of James places the mother in the same rank with
with other modes in the distribution of personal heirship. But the degradation of the mother takes place only when she has only sons and no children living.

In the distribution of personal heirship, there is no distinction made between the whole and the half blood. The civil law which regulates the distribution, regarding personal heir, does not.

Husband of a woman deceased is using the mother after nothing because whatever she might take would be her husband.

After a divorce if the father or mother a wife or a father of mother being still alive, it is doubtful whether the mother would be entitled to any money or not. But on the other hand to her husband, whether has ceased in this case it would seem that on principle she would have a good claim.

If the divorce was only a marriage of there she could not claim any share of the personal property of his children with her husband while living, because the husband's right to his property still continues the after her husband's death she might. And in all cases, where the
marriage was not at birth void, she is entitled to a share after the death of her husband.

The frater according to the English adjudications takes to the exclusion of the grand parents. But are these decisions reconciled with the governing rules?

Children in ventu fe male are by the act as well as by the common law considered as being in perpetuity, taking priority according to the rules of descent & distribution. And in heirs of such an infant, an incapacitation may be quitted they would.

**Cases Distributed**

**Case 1.** John tools died, leaving a wife & 3 children.

*Answer.* One 3 goes to his wife, the remaining 2 1/3 to his children each taking one equal share.

**Case 2.** John tools died leaving no wife but 3 children.

*Answer.* The estate is divided per capita among the children.

**Case 3.** John tools leaves 2 children, 1 of whom is dead.

*Answer.* The 2 children take each 1/3 & the grand child the remaining 1/3 as representative of his father.

**Case 4.** John tools died leaving a child & his child. A widow he left a child & his child. His dead leaving children of 4.
brothers' children of the half blood, & his uncle George & Edmund Miller. Also, the brothers' children of the whole & half blood take the estate free and clear in exclusion of the uncles, they being in the 3rd degree of kinship.

Case 9th. The same case as the last, only Sam is known to be dead without issue, so is Tom dead but he left a wife, &c. Also, Dick & Sally are entitled to 1/3 of the estate being the next of kin to the deceased. All the children of Tom are entitled to the share 1/3 being the legal representatives of his father, Tom.

Case 10th. All the brothers' children of John Miller except Sally are dead, but all the children of Tom, &c. &c. the children of Dick are living.

Ans. In this case Sally takes 1/3 of the estate as next of kin to the legal representatives of Tom and another 1/3 each of the others being the representatives of Dick.

Case 11th. All John Miller's brothers' children are dead, Tom left a child, &c. Dick left children &c. &c. Sally &c. &c. In this case the old stock being extinct, representation comes to the issue of John Miller's uncle George & Edmund, together with the children of Tom, Dick & Sally divide the estate free and clear, being all in the 3rd degree of kinship.
Answer. In this case the child of John Miles took 1/3 being issue of the deceased; D his grandson took 1/3 being the legal representative of his father A; & the third 1/3 is divided between his children of B. In his representatives or representatives take per shares and per capita.

Case 5th. John Miles & his 3 children are dead; but Abraham a child D. leaves 1/3 & 6 leaves 4, x, etc.

And the 1/3 being divided representatives and so one. The children of A, B & C, take per shares all standing in the same degree.


And the children B & C take each 1/3 & D the remaining 1/3 as between all of their father A.

Case 7th. John Miles left a wife but no issue; his father Rachel & his mother Mary, his brothers & sisters of the whole blood Tom, Dick, & Sally, of the half blood Sam, Miles, & Swan Pope, & his uncle George & Emily Miles.

And the wife takes 1/2 of the estate according to the statute then being no issue & the father the other 1/2.

Case 8th. The only relatives living were Tom, Dick, & Sally in his mixture of the whole blood & Sam, Miles, Swan Pope, &
Case 18. John Ailes died leaving his Grandfather Solomon his brother, Tom & his mother Mary.

Ans. Had it not been for the Statute 1st Jac. 2d the mother wou'd have been entitled to the whole estate being in the 1st degree but now she is entitled to an equal share with Tom. The Grandfather Solomon is excluded as in the last case.

Case 19. The same as before, only Tom is clear without exception.

Ans. The Mother takes the whole estate for the Statute does not operate against her only when there are brothers & sisters of the propositus or their legal representatives living.

Case 20. The only relation of John Ailes is Tom; but his estate is been after his death.

Ans. Tom and Salty take the estate per capita for posthumous children are considered as in the estate equally with others.

Distribution is compellable in Chancery. 1 Com. 131. 2 Termii 362. 1 Com. 252. 2 Com. 204.
Case 12th. Same case as the last, only George & Edmund the
under are dead without issue.
Ans. Now M, N, O, P, D & R being the next of kin decide
the estate per capita.
Case 13th. The same as the 12th, only M is dead leaving 12

Ans. Now N, O, P, D & R take the whole estate in exclusion
of the children of M, because representation extends no farther
than to the 3rd degree.
Case 14th. M is dead leaving 1, 2, 3, so are N, O, P & D dead,
leaving 4. 4 leaving 5 & 6. 6 leaving 7, 8, 9 & 2 10.
Ans. D takes the whole estate as next of kin to the ex-
clusion of the children of M, N, O, P & D.
Case 15th. B is dead leaving 11, 12, 13 & 14.
Ans. In this case the children of M, N, O, P, D & R divide
the estate per capita, being the next of kin to the deceased.
Case 16th. George & Edmund left 4 each, George left 15, Edmund
left 10 & 5.
Ans. The children of George & Edmund share the estate with
those of M, N, O, P, D & R, they being all in the same degree.
Case 17th. The only relatives living at sir. John's death
are his Grandfather Solomon & his brother Tom.
It is a general rule that personal debts are to be divided, debts accruing to the use of the country in which the intestate resides at the time of his death.

**Advancement**

By the Statute 24. 24. every child except the heir at law if he have no advancement from the father during his life shall in order to be entitled to a distributive share under the rules of distributions being what he had thus received unto his hands.

This rule however applies in those cases only, in which the father dies intestate as to the whole of his property. And therefore if he die intestate as to a part of his personal property, a child advanced by him in his lifetime need not bring such advancement into his hands in order to have a distributive share of the part as to which he died intestate.

Whatever is given for a marriage settlement is advancement. 2 Mils. 135. 2 Mac. 136.

It seems that the doctrine of advancement does not prevail in cases where a man has property of which he is ignorant, or which he does not mind in his will.
When a man gives a greater legacy to one child than to another, he dies intestate as to a part of his estate; this is not in the nature of an advancement, for an advancement must be made in the lifetime of the testator.

Devastated.

Any act or negligence of the Ex't or Adm't by which the assets are lost or injured, subjects him to a decendant, on which execution goes de bonis propriis, as releasing debts at a discount, submitting to arbitration except less than what was due, expending an unreasonable large sum for funeral charges, wounding the body of the deceased to be injured or destroyed, &c.

When in these cases there is a bond given, he may be charged on the bond.

If there be two Ex't, one is not liable for a decendant by the other, unless he has directly or indirectly contributed to it; for a decendant is in the nature of a partners.

If there be two Adm'ts, one having assets of the other, none is the former commits a decendant, both may be sued in the first instance, in the usual name, & judgment may go against both. But if no assets be found, non est will be returned, a vere facias will go aga-
against both, if then judgement will go against the receiver only.

If both Ex's have signed receipts, one only has in fact received, both are liable to Creditors, but the receipt only is said to legatees.

Actions by and against Executors &c.

In some cases, the testator or intestate might sue, when the Ex's or Adm's cannot. These are also some cases in which the testator or intestate might be sued, but in which, the Ex's or Adm's cannot.

The rule of discrimination between these cases in which the Ex's or Adm's may be sued, on account of the testator or intestate, or those in which he may not, has been laid down thus: "That the Ex's or Adm's is liable for the contracts, but not for the tests of the testator or intestate." But neither branch of this rule is strictly true, for there are cases in which the Ex's, &c. is not liable for the contracts, of the testator, &c., or, and others in which they are liable for the tests of the testator, &c.

The rule as now established, as to tests, appears to be this: "If the test committed by the testator or intestate were beneficial to both Ex's, the Ex's or Adm's, is liable, but
but of the Estate has not been benefited, the action does not
juvenile against the Ex' or Adm'., even tho' the Estate
of the party aggrieved has been injured by the fact.
Judge Reeve apprehends, however, that the enquiry
ought not to be whether the rights have been benefited,
but whether another has been injured by the tortious act.

At common law the Ex' or Adm'., was not liable
for any tort committed by their testator or intestate. The
recent liability of Ex'., is derived from the equity of
the Statute 1 & 2 Vict. 3. &c. subsequent to the 30th.
In the 30th, the word "adviser" is said to be used, for the word
in the 20th, "bulk" in "buries." Queer, does this Statute
impose a liability on Ex'., or merely give them a right
of action?

Have a right of recovery, for the hearts of the testator
or intestate services against the Ex' or Adm', however
the action brought against the latter must not fail in
fact, but on contract; & the usual mode of recovery is, by
specific performance, which cannot be traversed.

An action which would survive against an Ex',
he held, against the testator, if the latter did survive
the fact, the action does not abate. In this case the
action be such as would not survive, it must abate. If there
for, an action be lost against the executor on a right for-
covey which would survive against the exec. If the action fail
in fact, the last must according to the doctrine of principle
bake, if the plaintiff must resort to an action sounding in
contract against the exec. And where the action as well
as the right of recovery is such as will survive against
the exec., a sue facias must be served to summon the exec.
for answer the suit.
In a sue facias against the executors he cannot
state any matter which might have been interposed in
the original action.

It has also been observed that there are some contracts
of the executors which will not survive against the exec.
The rule of discrimination in this case is, that where
(no is usually the case) the contract is such that the
executor has received or is to receive any consideration from
the other party, on performance of the contract, the execu-
tor is liable.

But where according to the contract the executor
was not to receive any consideration moving from
the other party, but a compensation arising solely
from
from the performance of the contract in which the other party was not interested at the time of performance, the negligence of his executor is not liable. As it is an attorney who is to receive legal fees from the executor, if a wrong is done, two neglegence is excused in it.

Formerly no action survived against the executor in these cases, in which the testator might have sued his own. In some instances also the co. cannot maintain an action which the testator could. The rule is this, "that if the act committed against the testator have injured his estate, the co. may maintain a suit for the recovery of damages, whereas, he cannot."

When the suit is commenced by the testator, and of such a nature that it would survive in favor of the co., if the testator dies before judgment, the co. may make himself a party to the action by suggesting the death of the plaintiff, and enter his name instead of the testator. on the record. - WM & Mary.

According to this Stat. WM & Mary is a Def., die, his Def. must be notified in which case he becomes a party to the suit & judgment goes against him as Def. But on the other hand, if the claim...
were due, this Ex
neglected to enter his name, the Def.
would be remediless. This is a case omitted.

The Ex, may sue in his own name when the cause of action is founded on a contract of his own, or has ac-
quired since the death of the testator.

The Ex, when sued by a creditor of his testator is
not obliged to take advantage of the St. of limitations.
But if he thinks the demand just he may suffer
judgment in this case to go against him, without
being guilty of a devariant.

Whether an Ex is under an obligation to take
advantage of the Statute of Limitations, is a question on
which the English authorities disagree.

It is settled that in general he is obliged to a-
vail himself of any illegality in the consideration of
a contract. But it is doubtful whether this rule
extends to debts which in honor & in conscience ought
to be paid. The Ex is not perhaps warranted in wa-
vying all those legal advantages which his testator
might.

A count for money had received to the use of
the Ex, as such, may be joined with a count for mo-
there is however one cave in which an estate to the Parson may be liable to cockle. This is where the things the action in his own right as in a conversion or the pass in his own time.

What things are personal property & offsets inter mains.

It is a general rule that all personal property goes into the hands of the new & the real into the hands of the heir. But there are some things which seem to be personal property which go to the heir for the real hand some which appear to be real which pass to the heir. Thus fish in a pond, fowl in a barn go to the heir; but if the cattle had been hens they would have gone to the heir.

So too annual rent on land the seemingly personal but only goes to the heir while wheat growing at the death of the tenant passes into the hands of the heir.

The disposal of the residue of an estate presented vex when the tenant dies during its continuance, goes to the heir. Emblements are sometimes considered as real, sometimes as personal property. Their pass of course in a deed of the land if no injury be done to them it is a true pass. But as between the heir & the emblements are always regarded as personal property & also as between the Lord & the tenant when
had ye to the use of the testator.

And a plaintiff cannot join in one declaration a new

action which accrued to him as Ex., with one which he

has in his own right.

If that to which the Ex. owes, will, when recovered be

settled in his hands he must sue in his representative se.

(ioo. * rue). So the Ex. in all cases of this kind to sue

as Ex. or does the rule mean, that unless he sues in this

way, he is liable to costs. It cannot mean that he is obli-
ged to sue as Ex., nor is he exempt from paying costs

in all such cases.

When a promise is made to an Ex. as such, he may sue

as Ex.

Ian Adm. bind himself as Adm. he is personally bound

cannot plead "ploe administratis."

It is a general rule that when an Ex. sues, he sues in his own right, he is liable to no cost. At common law, no person is liable
to costs, & by them, & which governs on this subject, these only

were made liable to costs who sued in their own right. Ex. as

therefore, as they sue in right of another, do not come within

the provisions of the statute.

But the above rule applies only to Pte. who are Eq. & Newby.
when the estate determines at an uncertain time. It
be to redo the digging of which injures the
feudal. They
are to the Ex. I presume as well as to the tenant. So
are embankments not cleared.

By the old Law any thing allied to the feudal is
enough slighted was considered as part of the feudal or
realty. But the rule is now clearly reversed. So whatever is merely
adhered to the feudal is regarded as personal property, unless
its separation results materially injure that to which it is
affixed. This rule, as now established, holds equally
between landlord tenant, heir & Co.

Certain chattels were by the custom of England, transmuted
as real property by descent & are called their home.

A tenant or intestate due possessed of a term for years
it belongs to the Ex. or Admlt. If a lease for years comes
to the hands of the Ex. he must annually add to the in-
ventory the surplus of the noble & any, after allowing for
payment of rent, to the rule to the same with respect to all
acquiring profits.

If the tenant ouzed in Ex. make a lease, the rent on
his death goes to the heir.

All revenues however distant of time are real affects in
the
in the hands of the heir, & execution may go against him immediately to be levied when they shall happen.

Equities of redemption on the mortgages of the testator are in equity real estates in the hands but not at law.

If the testator grant an estate in vacuum vacuum the future estate of the heir is affects real when they shall happen.

If the testator be mortgaged a receive an estate in vacuo the estate in his death is affects in the hand.

The heir also in this case may compel a foreclosure.

The heir also in this case (may compel a foreclosure if he will pay the money for which the land is pledged, but not otherwise).

That species of personal property called paraphernalia regularly does not go to the heir or esx...

The last kind of paraphernalia never vests in the esx...

The second only on deficiency of personal affects. This subject has been considered under another head.

Administration Bonds

The Adm. must give bond to the public to discharge of their trusts. And the esx. are controllable by Chancery to give caution that is security they being trustees.
No person can be an Adm'r before he is 21 years of age. And the reason assigned is, that before that age, he cannot give bonds.

It seems to be the case, that when bonds are required of Infants, they are binding notwithstanding the principles of the common law.

If the Adm'r do no inventory, or if he makes a false account, or do not account, he forfeits his bond.

But the non-payment of a debt, or a default, is no forfeiture.

Non-distribution is a forfeiture.

**Court of Proceeding**

1st. If personal is sufficient it is deemed into money of the debts are paid.

2d. If there is not sufficient personal but more than sufficient will be paid, in that case the Assessors shall the defend to the court to have orders so made to be sold, as well pay the debts.

If it is necessary to sell all and then all is paid and willing lit. to the extent that sufficient there must the assessment, then shall be assessed and removed all such sums paid, then proceeding as aforesaid to examine the claim and what the prod's are assessed what they allow as the basis of the assessment and upon the peradventure by the same may stand against the claim and upon

Amount of what is required or any debt for a second among the maker is for the year.
Nod of proceeding against execution
as far as the estate of the said Francis Cooper—how ever
not against the estate of the said John Patterson and to
ext accordingly demand recovery there of—by taking
all in well if the twain and parts so unwholesome in
the usual course in the case of taking a
from the usual course of dealing in
the usual course of dealing—
the usual course of dealing
the usual course of dealing
the usual course of dealing
the usual course of dealing
the usual course of dealing
the usual course of dealing
the usual course of dealing
the usual course of dealing
the usual course of dealing
the usual course of dealing

embellishing announcing to the several of
payment of an interest shall be charged
value except as hereinafter provided
shall be paid with penally, without requiring
were subject to

A forum for the hearing of

not against the estate of the said
extends not only to a
founding, if necessary, to
removing
value, or the feeling of a stronghold—especially
strongest in the strongest
from, suggesting the strongest
which the Coa.
may be effective. [And against him there is
of the several purposes—should not
be

section is inserted, but that it is inserted
it it may have done great damage discovered and it was
not known that it was done. They had
neglected to bring in their claims they may now
and request it be forwarded. So much 1½ on the next
0th. There is a surcharge for a total of another
average and at amount of 1½ on the pound. So that
16½% was paid on the pound.
the surcharge was so great that the total
paid is twice of $1,000 dollars over the total
liability of the property.
A word of caution: pay the shareholder and the
wage one dollar, and forty cents, or may decrease to,
con. 527 (due) 850 - by 210. 5th to 132 - of the
execution of the articles by applying these terms
by the arbitrary

The difference of the English law is that of
Connecticut. It is by law that personal funds are
sent to pay debts except debts of fraud or
specialty debts. In other words, funds are
real, the mode of paying. In other words, funds are
real, the mode of paying. In Connecticut, debts
are except in public debt and debt subsisted
which debt was any part of debt can balance
multiplied, there is deficiency in both funds
and

no limitation of claims in English law in
Connecticut there is, to limit the average
applies only to the case of debts where in
multiplied were discovered to above their debts
that are learned money, covering, and made
new is a second defendant of simple. If
by in it has given no bond as in Connecticut
he does not if in last case he refuses to in
creating the note. Anand behold he balance on
hand - independently administered at a
monetary place. But as it is in Connecticut
for not responsible, the whole want beyond

If there, then even exceeds no plus which
public debt is reduced outside that whole.
The mode by which to determine whether an error in inference or not the question of convincing formal against secular, and the question of determining mean plant in mind of the law for a court to defeat the average law unless such evidence is equal to or not winning formal estate defeated the average law and under our last amendment passed before coming into effect a charter law.
Sheriffs.

Of the nature of a Sheriff's office and the mode of appointing him.

The word "Sheriff" is derived from the Saxon words "Shire" and "Reeve" which mean the governor or keeper of the shire or county. In modern law language the word "county" has supplanted that of "shire" 132. 339.

In Eng. Sheriffs are appointed by the king from a nomination of three persons from each county selected by the twelve judges and other high officers of state. Formerly they were chosen by the several inhabitants of the several counties 158. 340.

By virtue of several old statutes the sheriffs are to continue in their office no longer than one year; this rule however is frequently dispensed with and sheriffs are appointed "durante bene placito" and so in the form of the royal writ. It is now uncommon for the king to appoint what are called "Bailey Sheriffs" "durante bene placito" 102. 342. 48. 92.

In Colon. sheriffs are appointed by the governor and council, one for each county and holds his office during the pleasure of his creator, so that the office can determine here only by death, resignation or removal Stat. 359.
At com low the Sheriff must ride in the county for which he is appointed and if he removed ou of it he forfeit his office. It is supposes by many that this rule would be adopted in law.

A sheriff has regular jurisdiction out of his own county yet if it is necessary for the purpose of completing an official act, that he should go out of his authority it, he has authority so to do for that particular purpose - e.g. As if it should become necessary that a person he removes from Litchfield county go to the superior court now sitting in Hartford county and the court should issue a writ of habeas corpus for the purpose, hence no officer could take him from jail but the sheriff of that county he has authority to complete the act by carrying him thru Hartford county to the place of the court's sitting.

So also if the sheriff of Litchfield should be required to attach goods in this county belonging to a deft. living in a Hartford county he may, and has full authority to go into the latter county and there complete the services of the writ by leaving a copy at the deft's abode.

So also if a person in the Sheriff's custody should escape and flee into another country, the sheriff or his officers on fresh quit may take him in any other county.

The sheriff may at com. law appoint deputies or
under sheriffs, who become his servants, and may therefore execute all the ordinary ministerial offices of the sheriff, the maxim being "qui facit per alium fact per se."

By a recent act of the legislature of our, a sheriff cannot appoint a general deputy without the approbation of the court of law of the county for which he is appointed, but he may without such approbation appoint such deputy as a special deputy. A special deputy is one appointed to do some particular act and he has no authority to execute any writ or other act or have a deputation endorsed on the back thereof by the sheriff.

So also the sheriff of our county may appoint the sheriff of another county, his deputy without the court's approbation.

But this deputy cannot act out of his creator's county. Whether any one else than a sheriff can be appointed as such is uncertain; the rule is founded on usage and sanctioned by the state.

The deputy is removable by the sheriff at pleasure, for he is merely the agent, servant, or attorney of the sheriff; but while he continues in office, the sheriff cannot abridge his power or take away any of the incidents belonging to the office. Thus if one is appointed deputy of the
for the county of S. the sheriff cannot limit his authority to any one town, nor to any particular process.

In certain cases under our new statute the county court may on complaint being made to them, give a deputy, suspend the office of the sheriff, for a time, or disqualify him from ever holding the office again.

In Eng. the deputy, or under sheriff, acts officially in the name of the sheriff. When he executes a process, therefore he does it not in his own name, but in that of the sheriff. He derives all his authority from a contract made with the sheriff. Indeed, in the deed, one Eng. are never directed to a deputy sheriff but to the sheriff himself and the deputy is authorized by a general or special warrant from the latter.

In Con. writs may be, and generally are directed both to the sheriff, deputy, as well as to the sheriff, or they may be directed to the deputy alone. So that, the deputy here is treated as a public officer, and he makes his returns and endorsements in his own name.

And it has been decided by the superior court in Con. that a writ directed to the sheriff may be directed also by his general, or special deputy, thus they be not particularly described in the direction and that whether it be on mesne or final process.
A covenant by the under sheriff not to execute process of a certain description is void, as it is against law and contrary to his duty, which is that he execute all process which is offered him.

The authority being itself derivative, cannot be delegated to another. This rule holds true as well in "placito" as in "jurisprudence." The deputy therefore must do his duty in person, the others may lawfully help him.

Hence it is that an act made by the assistant of the deputy is not good. This rule however must be taken with some qualifications as will be seen hereafter. The authority given by the common law when personal and original may be delegated, but not when given by statute, it is otherwise.

If the under sheriff is guilty of a neglect of duty or suffering an escape to the sheriff may have an action on the case against him, for the sheriff himself is liable himself over to the jailor in the process. If however the sheriff has an indemnifying bond, he may bring his action on that and waive his other remedy.

A gaoler is also the sheriff's servant appointed and removable by him. This gaoler is a deputy for a certain purpose, viz., to keep the gaol or common prison in his county; it hence his right to appoint and remove the gaoler.
The sheriff has regularly no right to confine his prisoners in any other place than the common gaol or prison, the place appointed by law for the custody and keeping of prisoners. If, therefore, a sheriff should confine a person in a private house, or any place other than the common gaol, he would be liable in an action for false imprisonment; except where he was necessitated to do it, as if the gaol was broken down, blown down, burnt down, burnt down.

The sheriff being (as before defined) the officer, keeper of the gaol in his own county cannot himself be arrested in any civil cause; he cannot be confined in any gaol out of his county, for that would be unlawful; he cannot be confined in the gaol in his own county for as he is the governor or keeper of it, he can set himself at liberty; if a deputy sheriff should arrest him, he could instantly discontinue his authority by removing him from office; or if a constable could arrest him, should arrest him, he could not commit him into prison for this, unless done by the gaoler, who is a mere servant of the sheriff, and removable at any moment that the sheriff should please to do it.
The liability of the Sheriff for the acts or defaults of his Deputies, or under Sheriff.

The deputy being the servant of the sheriff, the latter is in many cases liable for his acts and defaults; the act of the servant or sheriff is in many cases the act of the master or sheriff himself. "Qui facit per silvum, facit per se."

Hence it is that the sheriff is allowed to take from his deputies security for the faithful discharge of their duty; that is, it is on the ground of the sheriff's own responsibility to the party in the process. The security taken is in the nature of a bond to save the sheriff harmless.

The sheriff himself is in many cases liable for the acts of his deputies. It is a general rule that the official acts of the deputy as to all civil purposes, are the acts of the deputy sheriff; but for the criminal acts of the deputy he is not liable, for the criminal acts of the deputy are not constructive, the acts of the deputy sheriff. To exemplify this distinction: If a deputy to whom the writ is directed refuses to execute it and in consequence of which the plaintiff in the process suffers damage, the sheriff himself is liable, and so also for a false return. But if the deputy has made the arrest, and then commits murder or an assault and battery on the body of the defendant.
sherrif is not liable, for he is never liable criminally for the acts of his sheriff
his deputies.

Again. It is very clear that the sheriff is not liable for the private
torts of the deputy; for it is only for his official acts that he is liable;
and in his private torts he does not act as a deputy sheriff.

Upon the ground that the sheriff is not liable for the pri-
ivate torts of the deputy, it is made a question whether, if the de-
puty were under an act against A, and instead of levying on the
goods of A, by mistake, or some other reason, levy upon the goods of
B, (the sheriff not being privy to the act) whether the sheriff is not
liable as the deputy as there has not pursued this warrant, or
whether the only remedy is not against the deputy. There have
been no decisions upon this point; but it is thought it ought
to be considered as an official act, and therefore that the
sheriff ought not to be liable. An official because the act
was not done by the deputy to levy on those A's goods but on
those of B. The deputy's pretended to act under authority of law
is no reason why the sheriff himself should be subjected —

At common law, the sheriff alone is liable for a neglect of duty
in the deputy. Thus if an under sheriff, or gaoler, suffer an escape
whether of them are liable in a suit to the B, in the process,
but the sheriff is, and the reason is that at common law neither the
under sheriff, as officers known at in law, and besides they are
tort, strangers to the P.I., in the process.

But for a tort committed by a deputy in his official character, he, as well as the sheriff, is liable to the party injured, the sheriff is liable because the wrong is committed by his servant, and in his official capacity. And the deputy is also liable Mr. J. thinks because the party aggrieved may consider the deputy as a mere tort-feasan. By a tort is meant an actual mischief, and not a mere nonfeasance, or neglect of duty, there must be a positive wrong done, and not a mere negative one, to make it a tort. Thus for a voluntary escape permitted by the deputy, the deputy himself is liable, for this is an actual tort; but for a negligent escape, he is not that being nothing more than a mere nonfeasance. So if a deputy has an execution in his hands, and sits to levy it, he is guilty of a nonfeasance merely; yet if he levy it upon a wrong person, he is guilty of a misfeasance, and he is liable as well as the sheriff.

In law, however, the undersheriff is liable for neglect of duty as well as a tort committed in the execution of his duty, and the sheriff is also liable in both cases, as at common law. The reason of this deputy's liability is that he is here known as the officer of the law. The process here being directed to the deputy, he is known to the P.I. as being a known officer, whereas in Eng. it is otherwise, the writ is never di
erected to them; in that country, he is not a known officer, and the pro-
cess is never executed in his name. Indeed, deputies are so well known in Con. that they may bring suits in their own name as deputy sheriffs, against third persons, as every day done on receipts taken by them for property.

It has been once or twice observed, that the sheriff is ex-officio keeper of the jail in the county for which he is appointed. If, after the death of a sheriff, and before a successor is appointed, a person escapes, no one is liable. It is clear that the old sheriff cannot be liable for acts committed after his death, even in his estate, for those escapes before his death; for "ex officio actio sum persona"—and it is equally clear that the new sheriff cannot be liable for acts committed before his appointment. Neither can the gaoler be, for by the death of the old sheriff his power "ipsa facta" ceases—therefore as said before no person whatever can be made liable for such an escape. In such a case as this, if the person actually escapes, the Pst. in the process has no remedy except by retaining the person—and it is doubted whether the Pst. could do this till a new sheriff is appointed, as he could not be committed to prison, there being no sheriff or gaoler in existence to receive him.

If a sheriff having begun execution of his levy upon property is removed, he may still proceed and complete the
Sheriffs

Service: for the service of the execution is an entire act. And it said that he "held over" till he has completed the service.

Of the authority and duty of Sheriffs

The subject which I am now considering is entitled "Sheriff" yet I have thus far considered under it all persons who are authorized to execute process.

In Eng, the sheriff is a judicial as well as an executive and ministerial officer. As a judicial officer, he holds a court of record, presides in it.

In law, the sheriff has no judicial power, it is practically ministerially the part executive.

A judicial officer is one who hears and decides causes, and is called a judge.

An executive officer is one who executes law by virtue of his official power, without any command from a superior.

A ministerial officer is one who executes law under the command of a superior. The judges of our courts are judicial officers, the governor of the state is an executive officer. Sheriffs are sometimes judicial and ministerial, but sometimes executive officers.

McGill will first treat of Sheriffs as conservator of the peace.
in which character they were purely executive and not judicial officers; and secondly as Ministerial Officers.

II. As Conservators of the Peace—they act by virtue of their general authority. They are the first executive. They are the first executive officers in the county and superior in rank to any person therein during their continuance in office.

At common law the sheriff may apprehend and commit to prison throughout his own county all persons who break the peace. At common law he is bound also to pursue and apprehend all thieves, runaways, felons, and other criminals, and commit them to prison for safe custody. And he is also bound to defend the county against any of the King's enemies when they come into the land.

And for all or any of these purposes the sheriff may command the "pale committati" and at common law every person is bound to obey their summons who is above the age of 13 years old and under the degree of a peer and if upon warning given they neglect to attend they are punishable by fine and imprisonment.

By the Stat. of Cov. the sheriff is bound to suppress all riot, tumults, convents, unlawful assemblies and for this purpose he may command the "pale committati." This seems—
to be merely in affirmation of the common law—& the same sheriff authorize him to apprehend all breakers of the peace which is no more than the law. Law authorizes him to do. the same stat. says he may command all constables person. within his county being of “sufficient age and stature” and in case of dis- obedience of his command. they are finable not exceeding $34, at the direction of the court. and the stat. has given to con- staters within their respective towns, the same authority that it has given to sheriffs within their respective counties.

II. As ministerial officers—sheriffs are bound to execute all legal process. process regularly directed to him, and on non- refusal they are by law subject to fine and imprisonment, and likewise liable in a civil action on the case to the party injured.

One stat. also declare that when a writ is tendered to the sheriff or other officer he must if demanded give a receipt for the same in order to facilitate the proof, the proof of the fact of delivery. And if on demand he refuses so to do the sheriff may call on the persons present to set their names as wit- nesses to such delivery. This also applies to constables in their respective towns. It is very rare however that a receipt is demanded for an original writ.

A known officer or a sheriff general deputy or com-
Sheriffs

...it is not bound to show his writ to the thief before he arrest his body or house on his property although the thief should demand that as soon as he has arrested his body or taken his property he must make known the contents of the writ within "all convenient speed" in order that the thief may obtain bail or agree with his adversary.

But a special deputy sheriff who is not a known officer or a person deputed by a magistrate for that purpose, if demanded to show the writ before they make the arrest, must demand it not be shown, this showing if required is because he is not a known officer—The true principle is this: No individual is obliged to submit to an arrest without having some evidence of the person's authority to arrest him; therefore one should attempt without furnishing this evidence the thief may lawfully refuse him. In case of a known officer, this evidence is furnished without any trouble without showing, but in case of a special officer, he derives all his authority from that particular writ, the writ which contains the evidence of his authority must be shown if required.

But in many criminal cases, anyone may without warrant arrest the offenders, here the person arresting cannot show any warrant or authority but still the person...
people is here provided for as to this purpose every member of the community is a "known officer" with full power, and authority given him by law, to arrest the offender, and the law of the land which gives this authority, every man is supposed to know.

The sheriff or his deputy may at com. law command the "prope constatatus" if necessary in the execution of his office. This applies to com. as well as in Eng.

But we have a statute declaring that in case great opposition be made against sheriff in executing lawful writs, signed by lawful authority, or in serving other lawful writs, and process, or in case there is sufficient that such opposition will be made, the sheriff is authorized with the advice of one assitant and a justice of the peace, to raise the militia of the county, and the state. Further declares that the sheriff shall not return that he cannot do execution and all military officers are disgrace not exceeding $67. No slave absit not over $10.

This is a distinct provision from the com. law, for at com. law all persons in the county were bound to assist, but by this statute, only the military force.

The same authority is given of alps to constatatus in their respective towns. Stat. 384. 385.

A sheriff is bound to execute all legal process.
regularly directed to him, but the execution of it must be regulated by the mode prescribed by law. He may not therefore break open any door or window of a dwellinghouse to arrest the body or take the goods of another; for the law concerning a man's house as his castle, and the breaking in might expose his family to robbery. The reason for this rule Mr. G. thinks very frivolous and in fact no longer existing and the rule remains established only by authority only.

If then a sheriff breaks the outer door or window of a house for the purpose of arresting the body or taking the goods of another, he is a trespasser. But according to a dictum in like case some old authorities the arrest is good, tho' the officer becomes a trespasser. This dictum Mr. G. considers as highly preposterous, for that a person should acquire a civil right by the violation of law is against the very fundamental principles of that science. The modern practice of the courts of Westminster Hall is to set the service aside, and give the person arrested an action against the officer, and so decided in the Delawarrv case. This question has never arisen except in this one case, yet Mr. G. conceives this as well as the practice in Westminster Hall as law.

This privilege of the outer door and windows of a mansion house, is to be construed strictly (as by Edmans)
SHERIFFS.

Says: "not to be extended by any equitativa and begun interpretation."

If however any officer can get peaceably into the house, then the window or door he may break open chests, boxes, or any inner apartments for the purpose of averting the body or taking the goods of the deft. but he has no right to break open any of them without having first demanded admittance to them.

This privilege of the outer door and windows extends only to the person, family, and goods of the owner or person dwelling in the house, and not to any stranger. A's manjion house his castle, and not the castle of A. if therefore B. is in the house of A. and the officer is refused admittance, he may break open the outer door, A. for the purpose of averting him, for A. has no kind of protection for B. There are the principal distinctions relating to this subject as to civil process, but it doubtless the propriety of this privilege in any case, and considers it as altogether arbitrary, there being not the least shadow of reason existing for it at this time.

This privilege extends however to cases of civil process only, and not to criminal; for if an officer has a criminal process, the manjion will not protect the criminal, for if an officer he must however in this case demand admittance, before he has a right to break break. The peace of the family is as much disturbed, as in civil.
cases, and the house as much exposed to thieves and robbers.

So also on a prosecution for a forcible entry and detain in, which is of a mixed nature, partly civil and partly criminal, the officer is allowed to break open outer doors or windows.

So also on a prosecution to compel one to find security for the peace, or good behaviour, the officer is allowed to break open the outer door or windows.

And in criminal cases there need not be even a warrant, or known officer, to justify the breaking the door of the criminal, for when a person has committed a known felony, but in order to make it a known felony, the offender must be detected "flagrante detecto", as it is termed in the books. An officer, or any individual, with or without warrant may break outer doors be, for the purpose of impressing him, and even demolish the house, if he cannot be taken without.

So also to suppress an affray, or to prevent a breach of the peace, any officer or private individual may break into the house where it is.

So also if the "affray" escape, and are immediately pursued by an officer of the peace, outer doors may be broken open to arrest them.

So also in a suit of reversion or "natum faciei prospicientem"
in ejectment, the sheriff may justify breaking open the outer door and windows of the house, if admission is denied him, for the wit commands the officer to turn all persons out, and to put the plaintiff into full and actual possession, consequently the sheriff has all power necessary for this purpose. Besides in this case the law does not consider the house as belonging to them in possession but to the defendant in the process, for he has had a determination in his favor of the court in his favor.

So also in any civil process the door of a barn not adjoining the house may be broken open, &c. if it thinks however not the barn may be, if it is not a component part of the mansion house, it may be broken open.

It has been contended that the store of a merchant is privileged but it is clear that unless it is under the same roof with the mansion it may be broken open.

If the sheriff's bailiff having entered the house lawfully is locked in the sheriff may justify breaking the outer door open for the purpose of setting him at liberty.

So also if a person having been actually arrested escapes into his house, it affords him no protection for as he is on an escape the outer door may be broken open to retake him.

This point has been decided in Eng. in a very strong case. A defendant opened the windows to converse with the officer, and the
...the conclusion that the same principles and methods...result from the evidence being...it is evident that...the same point...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it...the...it.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latter touched him; this was adjudged to be a good arrest, and
the officer there therefore justified in breaking the house to
arrest him —

This in ordinary cases an arrest made by breaking open the
out door or windows of a house is illegal, yet if while in such
illegitimate custody, the defendant committed an other ac-


crue, such tort arrest shall be good, but there must be no

said or collusion first to arrest the party unlawfully and then

charge him with an other action —

By the Eng. stat. 24. 35. and by a stat. of Law it is provided
that no civil process shall be served on Sunday; therefore no

such process served on that day is utterly void. The officer

serving it is of course guilty of false imprisonment; and the

person arrested actionable by habeas corpus —

But where a person actually in custody escapes he may

be arrested on Sunday by virtue of an escape warrant; for

the retaking is nothing more than the means of continuing

the officers custody — 2 Ed. Ry. 1094, 6 Mod. 25, 253 Salk. 626.

This subject naturally leads to the law of Escapes

which will here be considered —

An escape is where a person being under a lawful

arrest, and restrained of his liberty, either voluntarily or secretly,

makes such arrest or is suffered to go at large without
due course of law.

It is essential to the existence of an escape, that there be an evasion of a previous legal arrest.

Of the general nature of arrests—Every arrest in civil cases must be made in pursuance of lawful authority; an arrest made therefore without such authority is spurious and void, and no arrest at all.

Where an arrest is made by virtue of a writ or warrant, the rule is this—If the court from which authority the writ issues has jurisdiction of the subject matter, the arrest is lawful. It follows then that the person arrested is sundered from all restraint of the due course of law; it is an escape.

On the other hand, if the court from which the writ issues has no jurisdiction of the subject matter, it follows that the arrest made under it is void; if so the theft's going at large does not amount to an escape, and the officer first making the arrest is guilty of false imprisonment. Example—Supposing a single magistrate in civil cases issues a writ for an assault and battery demanding more than $10 and returnable before himself, then it appearing upon the face of the writ that the court have no jurisdiction of the subject matter, the arrest will be void; but if the demand of damages is $10 or less and there should be a misdemeanor in the writ, yet the officer must serve it, and the arrest will be good for the court.
Sheriffs

has jurisdiction of the subject matter.

The above distinction however is not universal, for there are certain cases where the court has complete jurisdiction, yet the arrest will be illegal and void, as if the process has no signature of a magistrate affixed to it, and so in law, if there is no certificate of the duty having been paid, here the arrest under the process being void, the prisoner going at large is no escape — so also if before the time of making legal service for the next court has expired, the officer should serve a writ returnable to a more distant court, such service would be void and illegal for no writ is permitted to overleap a court. It follows then that the defendant going at large is no escape. The rule laid down in the second and third sentences under this head presuppose a good writ, and therefore the three examples just mentioned are being exceptions to the general rule and more properly qualifications.

In this same process does not usually issue from the court applied to for redress, though it sometimes does and al ways may. Most of the writs returnable to our county courts are signed by a single magistrate; but when not before single magistrate they are usually signed by those who hear them.

The general rule of Crown Law applies and is one.
therefore is not sufficiently broad to reach all arrests on mere process in our practice. The general rule of com. law is predicated on the idea that, where the same court issue the writ and try it; so far as the com. law rule extends it applies to arrests when the writ is issued by competent authority, returnable to a court having jurisdiction of the subject matter, the arrest is legal and the going at large, is an escape. As if a justice of the peace in Litchfield county issue a writ to be returned in the county and returnable before the county court of the same county.

But on the other hand, if the process is issued by some competent authority and returnable to a court not having jurisdiction of the subject matter, the arrest is legal and the going at large is an escape. As if a justice of the peace in Litchfield county issue a writ to be returned if the prisoner is residing in the first place care during the life of the execution, it is no escape.

At com. law an officer having made an arrest or jail can delegate to a stranger the right to hold the prisoner in custody during his absence. If the officer does not actually delegate the right, he is guilty of an escape for in contempt of law he has set the prisoner at liberty. This point has been recently
decision in Eq. It is uncertain however what would be the decision here, if the question should arise; but it is presumed that it would be different here from that in Eq. inasmuch as our practice is directly in opposition to the principle established in the English decision.

Two things (as has been observed) are necessary to constitute a good arrest. First it must be in pursuance of lawful authority, and secondly it must be an actual, and 2d. regular arrest, or there can be no escape. The first of these two requisite viz that it must be made in pursuance of lawful authority has been treated upon. The second will now be considered.

I. There must be an actual arrest. Bare words will not make an arrest; there must be an actual touching of the body or what is tantamount to it, a power of taking immediate possession of the body, and the party's submission thereto, and therefore where the officer said to the deft. he being at some distance that he arrested him by virtue of a warrant he had had against him, & the deft. having a fork in his hand kept the officer at a distance till he retreated into the house it was held to be no arrest. But where the officer met the deft. on horseback, and said to him 'you are my prisoner' upon which he turned
Sheriffs

red back and submitted, this was determined to be a good arrest, but the officer never laid hand on him; but if on the officer's saying those words he had fled, it would have been no arrest unless the officer had laid hold of him.

If while one is under an arrest at the suit of A., in the custody of the sheriff, a writ at the suit of B. is delivered to the officer against the Deft., this delivery, if it facts amount to an arrest on the tort suit, or in other words is confined as in immediacy, in custody under B.'s suit—If therefore after such delivery, the Deft. goes at large B. may have an action against the officer for an escape.

III. An arrest must not only be actual, but regularly and legally made, otherwise generally speaking there can be no escape. Thus, in all civil cases the arrest must be made by virtue of a legal writ or warrant; and if there is no writ or warrant the arrest is not legally made.

The strict rule of the common law requires also that the arrest be made by authority of the officer to whom the writ is directed; i.e., the officer must be in company, but he need not be the hand which arrests, nor in presence or in sight of the party arrested. As where the officer sent his assistant forward who made the arrest he...
Sheriffs

being at some distance and out of sight, the arrest was held to be good. It is sufficient if the officer is near at hand and in pursuit of the same object.

An officer is not liable for an escape of one who is arrested on Sunday; for the arrest on this day being void, there can be no escape — Exp. 604, 605. 2 Bae. 2 B 36. 16 Mod. 175. 6 Th. 176.

So it seems if the arrest is made by breaking an outer door or window it is void, and therefore it could conclude the prisoner going at large is no escape — this is not a setytic point tho' it seems to follow necessarily from the arrest, being unlawful — Exp. 604. 5.

Tho' there can be no escape where there has been no previous arrest, yet the officer is in many cases liable for not making an arrest when he might have done it. If therefore an officer having an opportunity to make an arrest, neglects to do it, he is liable to the Plaintiff in an action on the case — Tho' the officer should have an opportunity to arrest the Defendant and omit to do it at that particular time, yet if he afterwards arrests him he is not liable — 2 Mod. 23, 24. 50. 83. 10 Mod. 257, 2 Bae. 836.
Of Escapes

Escapes are of two kinds: Voluntary and Negligent. Every person committed to prison is to be kept in safe custody. If then the sheriff or keeper suffers the prisoner to leave the limits of the prison, even for a moment, he is guilty of an escape. A subsequent return of the prisoner makes no difference; the officer is still liable he is guilty of a blot, and nothing of post facto will discharge the liability.

A Voluntary escape is one which takes place with the consent of the gaoler, or of the officer making the arrest. If therefore a sheriff arrest a person upon final process and permits him to go at large before commitment for a moment, it is a voluntary escape. The same if the gaoler permits after commitment. Mr. Justice Blaikie's definition is not sufficiently broad for it includes only such escapes as are from the prison and not those before commitment.

A Negligent escape is one which happens without the knowledge or consent of the gaoler or officer making the arrest.

I. Of Voluntary Escapes. If a sheriff or gaoler admits to bail one who by law is not bailable he is guilty of a voluntary escape. And if the sheriff or gaoler suffer the prisoner to step out of the limits of the prison or the yard, but for a moment.
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att'to the have a keeper with him, or even the sheriff himself with him still he is guilty of a voluntary escape. If he can prevent him to go out of the limits for a moment he may for a day or a year. If he can pre
sent him to go a foot over he may be sway a mile or ten miles.

The object of imprisonment on civil process is not for a punishment but a means mode of compelling the defendant to discharge his debts.

and for this reason it is that his transgressing the tinate is con
sidered as an escape. Imprisonment on final process is there contemplated.

If the officer after must on final process permit the deft.
to go out his custody for a moment he is guilty of a voluntary escape; for if the must is permitted to be interrupted for a moment
in it may be for a day or a year.

Before committed to prison on criminal process, are to be kept within the walls of the prison. But those committed on civil process may on proving security to save the sheriff
knows at his discretion be permitted to go at large within the limits of the prison yard; which limits are fixed in each county by the respective courts of law. Please see any slight transgression of these limits will be an escape.

It has been once decided in law, that if one confined on final process is brought up to court on a writ "habeas corpus
as testimonandum", the officer is guilty of a voluntary escape.
Mr. Gould confers this one of the most remarkable decisions which ever entered the human mind: monstrously absurd! does not the Com. law clearly allow such a writ? does it not compel the sheriff to arrest it? and can it then be possible that the same law should adjudge himself guilty of an escape in doing an act which he is compelled to do?

But if the officer who then brings up the prisoner on a warrant are deemed to have committed a voluntary escape. The rule is, the must bring the body to court in convenient time and in the most expeditious way. If a writ is issued by the superior court sitting in Litchfield County to bring up a prisoner from New Haven, and, if the sheriff, go round to New London by New London or Hartford, he would be guilty of a voluntary escape.

The same or a similar rule obtains, where an officer has made an arrest on final process and has not committed the defendant; he indorses him with an unreasonable time, then he is guilty of an escape.

So also, if after arrest and before commitment the officer suffers the prisoner to go abroad with a keeper, he is guilty of an escape. 1 Penn. 324. 2 Inn. 176.

It is a rule of the Com. Law that if the sheriff wrongfully causes a woman committed on execution to escape —
voluntary escape, and it is of no avail for him to attempt to prove that he has kept her in confinement all such testimony being
inadmissible.

If a prisoner having the tithing of the good yard manifests a disposition to escape or by once transgressing the limits, it is the
duty of the sheriff to recommit him to the wall of the prison and
if he does not he is guilty of a voluntary escape. Notice of that dis-
position must however be given by the warden to the sheriff.

If the prisoner who has the tithing of the yard before he has
manifested any such disposition the sheriff is guilty of a negligent
escape only. 13 St. 75, 127, 3.

The sheriff is never bound to grant the liberty of the good
yard, for a bond of indemnity is offered to him yet he may do it,
being a matter of mere discretion with him, and if he does it is at his own peril, and he must rely upon his bond of indem-
nity in case of an escape. There is a prevailing idea in the com-
munity that the sheriff is bound to grant the tithing of the yard
where sufficient bonds are tendered, but there is no law or state requiring him to do it but as I have before remarked he may do it if he pleases, and hence the bond which is
taken in valid in law, after a sheriff has actually admitted a
prisoner to the tithing of the yard he may at any time
he pleases recommit him to the walls of the prison without
III. Of Nigligent Escapes. There are such as happen without
the consent of the sheriff or officer keeping the prisoner. Thus, if the pris-
soner under his restraint by fleeing from the officer without
his consent or by beating the officer without his consent or
using any violence towards him it is a negligent escape; so also
if the escape thru the insufficiency of the guard it is a negligent en-
cape. Indeed if the prisoner escape in any way, the officer not con-
senting it is a negligent escape.

There is in many particulars a difference between escapes
on mere process, and on final process.

If one arrested on final process even for a moment the
officer is guilty of a voluntary escape, and it makes no diffe-
cence, whether the Deft. is merely arrested and not committed
to prison, or whether he is actually committed to prison or not.

But at Common Law a prisoner arrested on mere process and
not actually committed to prison may be permitted to go at large
without subverting the officer, provided he has the prisoner fort-
coming at the return of the writ. An arrest on mere
process is merely the means of compelling the Deft. to appear
in court—his custody is not intended as a coercive means of
obtaining payment, but simply to secure the Deft. to hold
him to test. The duty of a person arrested on final process is in
suitable to those coercive means of compelling the debtor to discharge
the debt, and therefore if he is permitted to go at large one moment
either before or after commitment, the officer is guilty of a vol-
untary escape.

In law, the rule is still more liberal for here in case of an
arrest on mere process the officer is not guilty of an escape
in permitting the prisoner at large if he has him forthcom-
ing during the life of the execution.

But if the debt, thus arrested on mere process is not forec
coming during the life of the execution issued on the judgment
the officer is guilty of a voluntary escape. And at law, the
officer is liable for a voluntary escape, if the prisoner is not forth
coming at the return of the suit.

The two last rules hold only in cases where the person
arrested on mere process is not actually committed to prison,
otherwise if he is actually committed to prison for then
the permitting him to go at large but for a moment is a vol-
untary escape. We have a statute in law in affirmation of the law
upon this subject.

Thus we see the principal difference between an es-
cape on final and on mere process is that the former is
followed up by a commitment, whereas the latter is not what
will amount to an escape on final process before commit-
Sheriffs.

When the court on main process is succeeded by a commitment to prison and the prisoner afterwards is suffered to go free, the debtor does not by pursuing up his original action against the debtor, waive his right of action against the sheriff if the prisoner keeps out of the way.

The debtor's remedy against the sheriff when the debtor is arrested on main process escapes is by a special action on the case. In this case damages are merely presumptive, they not being liquidated by judgment therefore are to be proved. In case this action may be commenced against the sheriff or any of the subordinate officers guilty of the escape.

For an escape on main process the debtor has his election of two remedies against the sheriff. He may at law maintain an action on the case or he may by virtue of two ancient Eng. statutes of Westminster P. & Richard P. bring an action of debt against him.

But there is a material distinction between the rules of damages in these two actions. If the debtor brings an action on the case against the sheriff, the jury are at liberty to give whatever damages they please; either the whole debt and cost or what they consider the special damages to be.
Sheriffs

and these special damages may amount to the whole debt and costs as the law may require. If the escape is not amenable to the justice of the state as where he keeps out of the way, the jury will give the whole debt and costs.

But if the Dft. elects the action of debt against the offic, the jury are not at liberty to give part or any of the Dft. escape give the whole sum for which he was charged in the original execution.

The stat. of N.C. seems to require that in case of a voluntary escape from prison whether on me or on final process, whatever the form of action might be, the Dft. in the original process shall recover the whole sum for which the Dft. was charged in the original process. If this construction be correct the stat. gives the same damages on voluntary escape as are given in Eng. law for escapes on final process.

Of Rescues

If one avowed on issue process but not actually committed to prison is rescued, the officer is excused in Eng. and if he is excused for an escape he may plead his return of a seizure in bar, or by way of justification. And the reason given in the books is that on issue process he is not supposed to have the paper constitute.
But where one is arrested on final process, a rescue is no excuse. For it is said in serving final process he is supposed to have the "pope comitatus" with him. But I cannot see the reason for this distinction. Why may you not as well suppose the pope comitatus with him in serving venue process as well as final?

But if after a debt arrested on venue process is committed to prison and then rescued it is no excuse, unless the same be made by the public enemies a rescue by whole or traitor is no excuse to the officer, for he is supposed to have the power of the county near enough at hand to rescue arrest them. Thus in the case of Ed. George Gordon's riot, it was found necessary to make a special act of parliament to save the keeper of the prison from the actions of creditors whose debtors were set at liberty thereby.

This rule obtains after commitment whether the arrest was on venue or final process. If the arrest was on final process it holds equally true as well before as after arrest commitment; but in venue it holds true only after commitment.

In those cases of rescue in which as the officer is not accused the Pillar has his election to sue either the officer or rescuer. But Mr. Gould & Sprague suppose that if he elects...
to proceed against the recoverer, that he waives his action against the sheriff
for by commencing a suit against the recoverer, he sues the sheriff of
his right of action against them, and on the ground it is that these two
gentlemen claim that he ought to be discharged.

The proper action against the recoverer is an action on the

The proper action against the recoverer is an action on the
case the same books say either trespass or case—this is not true
for cases and trespass are never concurrent, and it is by fiction
of law that trespass is concurrent with trespass—Trespass is it amis.
and Trespass in the case cannot from their very nature can be
concurrent. Trespass on the case, therefore is the only proper act-

In an action against the recoverer by the original Deft. the

In an action against the recoverer by the original Deft. the
jury may give in damages either a part or the whole of the Deft.
original demand, if they give the whole then the Deft. is notified
and cannot proceed against the recoverer; but if they give only
a part then he may pursue the action against the original
Deft. for the remainder.

In all the foregoing cases the party recovered is a good
witness against the recoverer and this party is criminal if
the Deft. be found guilty, yet shall this go only to the credit &
not to his competency.

Where there is a recovery of one actus rei under process,
in an action against the officer, his return of a
Sheriffs.

There is a sufficient and conclusive evidence upon the Pft., that it is done by the Pft. and is evidence in his own favor, yet the Pft. may institute an action against the officer for a false return, in which case the Pft. will recover if he can prove a false return.

In some cases, the official returns of an officer may be considered by common proof evidence; so that it could suppose that the former rule does not obtain here as officer's returns are not conclusive upon the Pft.

If however, the sheriff returns a seizure and upon these returns he recovers of the recouer, they may in an action against the sheriff for a false return prove that there was no seizure.

It is laid down in the books, that the sheriff may have an action against the recouer. But Mr. G. considers that this obtains only where he is liable over to the Pft. in the process, and as on mere process, he is not liable to the Pft.

He cannot maintain an action against the recouer. There is no instance to be found where the sheriff has ever sued the recouer for recouing one arrested on mere process.

If a sheriff brings out a prisoner on a writ of habeas corpus, a recouer is no excuse whether he was committed on mere or final process, and the reason assigned is that the sheriff had notice where the body was to be brought, if we have quashed against the recouer by quelling the paper comitatur.
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It is a general rule after a person arrested on final or mere process is committed to prison nothing but the act of God or of the public enemy will excuse the sheriff in case of a rescue in the latter instance and an escape on the former. It is laid down in Bacardis Abs. that fire will excuse him but this is not law for a great weight of authorities is to be found in contradiction to it — this also seems to have been the idea in Parliament at the time of the great fire in London in 1666, for they conceived it necessary to pass an act excusing the sheriff from all liability to creditors to creditors for such of their imprisoned debtors as were set at liberty by means of the fire — this point has recently been decided in the supreme court of N. York state who held that fire occasioned otherwise than by negligence tainting will not excuse the sheriff.

Of the difference between the consequences of a voluntary and a negligent escape.

It was anciently holden that in case of a voluntary escape on final process the prisoner was at statute discharged by the debt of the debt, and his liability devolved upon the sheriff. This is an unaccountable rule and clearly not law for the aptness or the nature of the case may require may have a new action of debt.
against the Deft. that is an action of dett founded on the judg-
ment on which was originally committed on a sise facias and
upon this a new execution; or by the stat. 869 if W. & S. he may
have a new execution against the prifoner, or if none of these
proceedings are necessary he may retract him on the old execu-
tion.

If the sheryff permits a voluntary escape where the Deft. is es-
serted in mere process, the Deft. may have him retaken on an escape
warrant; but the officer cannot and this warrant may be directed to
any person. The reason why an escape warrant is necessary is that
the original process must be returned to court. But if the sheryff
is guilty of a voluntary escape on final process the Deft. may
retake the Deft. on the original execution itself, for in this
case it is not necessary that it be returned; or he may have
a new execution and retake him, or have a sise facias or he may
have an action of dett against him which last is frequently
useful, because in this he may recover interest on his execu-
tion whereas in the other cases he cannot. Mr. Gould thinks
that in neither of these cases escape warrants are used in law.
The usual practice here is, for the sheryff or keeper of the pri
immediately to pursue the escape with or without the grope,
or advertise him and have him arrested in which last case
any one may retract him under the advertisement or he
Sheriffs

may pursue both modes at the same time.

In all cases where voluntary, the officer pursuimg the escape cannot retake the escaper for they are parties criminal.

And besides it is a settled maxim in the law that no person can acquire title right out of a wrong or violation of law by himself. "Ex malo non excitat actio." Indeed it after a voluntary escape the sheriff or gaoler retakes the prisoner he is guilty of false imprisonment.

And it is a clear rule of law that a bond taken by the sheriff to save himself harmlessly from the consequences of a voluntary escape is void, as being against law, it being given to induce the commissign of an offence. Indeed it is an universal rule as applied to contracts that an undertaking to do an act in violation of law is utterly void.

When the escape is negligent the sheriff may retake the prisoner or he may have an action on the case against him; because he is immediately liable over to the Dft. in the action procaps; and the sheriff may do before the Dft. commences a suit against him—be in this case if a bond has been given to the sheriff to secure him against the consequences of a negligent escape he may sue upon the bond for the bond is allowed to be good by law. So that in this case the sheriff has remedies. And it has been decided in law, that a person escaping may be retaken on an escape warrant in another state from that in which he
If an officer in criminal process escaped, escape he is punishable by fine and imprisonment. And if in doing it he makes the prisoner, he is at law, due guilty of felony.

An officer who after ascertaining a felony shall suffer an escape is punishable by fine, or having been guilty of a misdemeanor, but if he has been guilty of suffering a voluntary escape he is punishable as the criminal himself is. If the escape was guilty of murder than the sheriff officer is to be punished as to a murderer. But if the escape cannot be found the officer is punishable by fine and imprisonment only, for it would be unjust and improper to punish an accessory for what the principal himself has never been guilty or convicted of.

If in the case of a negligent escape the sheriff has been compelled to pay the debt to the plaintiff. Mr. G. does not see why he may not maintain an action of Indemnity against the escapee, as money paid, laid out, and expended for the use of the latter and it has been twice decided at nisi prius that where the escape was voluntary on the part of the officer and he has been sued and compelled to pay over the debt to the plaintiff in the original process, that the officer may maintain the action of Indemnity. But in two subsequent cases Ed. Kenyon has decided the above decision not to be law, on the ground that
of Officers being prictice criminals. Mr. G. thinks the two decisions
at New River to be the most correct — one of which was by Justice
Gates a very able lawyer and the other by Mr. Justice Gould. The
Sheriff ought to have an action on the case in this case as he
has been compelled to pay money for the escape, which in equity
is good conscience the ought to refund to him. All the objection
is that the sheriff has been guilty of a breach of the law or an of-
fence — the sheriff has committed an offence, his under officer has
it in full, but is it not settled clearly that no acts of the under-
sheriff shall affect the sheriff criminally?

If after a negligent escape the sheriff retakes the prisoner
on fresh suit, by which is meant a retaking before the Pipt.
commences an action against the sheriff his liability to the
Pipt. is discharged. Where a sheriff retakes on fresh suit in
Pipt. an action is afterwards brought against him, he must
plead the retaking specially but in law he may give it in evidence
under the general issue.

But if the original Pipt. commences his action against
the sheriff, before recaution, a subsequent recaution will not
excuse him for the Pipt. by commencing his action attached
in himself a right of recovery and no subsequent act of the
sheriff can est the Pipt. of his right.

But a voluntary return of the prisoner before action
brought by the P'tt. against the sheriff discharge the latter, for this is equivalent to a reception on fresh suit.

But in case of a voluntary escape on final process, a reception on fresh suit does not excuse the sheriff; for in case of a voluntary escape he has no right whatever to retake. Neither will a voluntary return into custody before action brought discharge the sheriff from his taintility, for this is only equivalent to a reception on fresh suit.

And the rule is the same tho' the escape was on main process, if he escaped from prison.

It is said that the sheriff has no right to discharge a prisoner committed on execution, even upon payment to him half of the contents of the execution for the benefit of the P'tt. if therefore he does receive the amount of the execution and discharge him he is guilty of a voluntary escape; and the reason espoused is, that it is the duty of the sheriff to keep the P'tt. in custody until he is discharged by due course of law, for the sheriff is not an agent of the P'tt. to receive his monies but an agent of the Law. Mr. G. observes however as a consequence of this rule that if the sheriff should pay over extender or take in the whole amount of the execution to the P'tt. that on an action brought by the P'tt. against the sheriff nominal damages only would be recovered.
Sheriffs.

An escape by a prisoner having the tincture of the yard, it being a neglectful one, a retaking on such suit a voluntary return before action brought against the sheriff, will save the tater’s lien statute.

But in these cases in cases of a retaking on fresh suit or a voluntary return before action brought, the sheriff may recover nominal damages on the bond of indemnity given for the security of the prisoner; and the reason given is that the condition of the bond is broken.

And after a prisoner has thus escaped from the limits of the prison yard, neither he nor his bondsman can compel the sheriff to receive him into custody again, tho’ he may do it if he pleases and the reason why the sheriff is not compelled to receive him is, that he has been guilty of a wrong and thereby subjected himself to an action.

But after the creditor’s remedy against the sheriff is barred by the statute of limitations, the sheriff can not compel the prisoner’s bondsman for the tater due on the obligation in case of a neglectful escape.

The bondsman may therefore be released by audit, querela against the tater. It is a judgment rendered against him for the escape of a prisoner where the original creditor’s right of action is barred against the sheriff by the statute of
limitations.

Under a count for a voluntary escape against the sheriff, the plaintiff may give in evidence a negligent escape and that will support the declaration. And the plaintiff, on his part, may plead to a voluntary escape any defense that he might to a negligent escape and this without traversing.

This mode of pleading is not used in Con. Here a voluntary escape is declared on as such, and a negligent escape as a negligent escape, one.

For a voluntary escape the undersheriff or gaoler is liable as well as the sheriff himself, but for a negligent escape the undersheriff a gaoler is liable; sheriff only is liable.

The rule is the same in Eng. as to title the sheriffs and their deputies—Dee. 603. Com. 408. 6.

If then the creditor or defendant in the execution sues the gaoler for a voluntary escape as he may do, the sheriff it seems is excused—Dee. 612.

If after an action of Debt, brought against the sheriff for the escape of a person committed on execution and before plea pleaded the original judgment on which the escape was committed is reversed, the sheriff may plead not that record and then save his liability.

But after judgment actually rendered and execution iss
False Returns

If a sheriff makes a false return he is liable to an action on the case in favor of the party injured thereby; and this rule holds true not only as to the sheriff but to any public officer serving under them.

If the sheriff makes a false return when he has actually made no service on the deft., the latter may maintain an action against him.

In law, when a false return is made the deft. may plead in abatement and the deft. being in this case the suffering party may have an action against the sheriff for such false return.

The governing rule on this subject is that in all cases of a false return the party injured, whether Plff. or Deft., has a right of action against the officer making such illegal return.

If the sheriff make a false return of "nonествимо," the deft. may maintain an action on the case against him.

As to expenses that insufficient of goods, our state bar.
introduce a law unknown to the Com. Law, but if a prisoner escape, this the insufficiency of the gaol, the county and not the sheriff is liable. Stat. Com. 280, 1 Port. 43.

Under the stat., an action for such escape is not by an action at law but by an application to the county to court in the form of a petition is aggrieved by their decree he may have an appeal to the superior court. The reason why an action will not lie at law, is that the form of the stat. is such as to preclude that mode of relief; and besides, a county is not amenable at Com. Law.

In general, however the liability of the county under our stat. is nominal only for it has been decided that if the prisoner escaping, is responsible the P'ty. must pursue him and not resort to the county; and if he was not responsible, the creditor, can have lost nothing by the escape, therefore, the county ought to be only nominally liable, and in no special damages we all, all that are given.

There is one class of cases in which Mc. Gould thinks the responsibility of the county is substantial; thus where the prisoner escaping is responsible by any means of the escape, defeats the P'ty., if his remedy which would otherwise have been effectual. In this it is Mr. Gould's opinion that the county would be liable for the whole debt.
The sheriff as well as the county is liable for an escape through the insufficiency of the gaol, if the escape was actually facilitated by neglect in him or the gaoler.

Miscellaneous Rules

If a creditor voluntarily discharges a debtor taken on execution, whether committed or not, he cannot ever afterwards retake him, or enforce any other remedy against him, and the reason is, that the imprisonment is in satisfaction of the debt, and the creditor by discharging him relinquishes all further claims.

And that the Dft. should discharge the debtor in consideration of a promise to pay the execution, yet he cannot retake him on the execution nor can he maintain an action on the new promise, or bond taken for that purpose nor can he enforce the original judgment.

If the new agreement made by the debtor in consideration of his discharge should be defeated by himself when sued upon it for some informality in the agreement, the original debt is totally extinguished and the Dft. remains no longer liable on the original judgment.

And it is now a decided point that a bond conditioned for the rendering in execution a person once taken upon it and
and voluntarily released, is void as being against law.

If two joint debtors are taken in execution, a voluntary release of one from custody by the P'ty, a creditor is a release of both; the consequence then is, that the one released nor his Co-debtors can be taken in execution. Salk. 574 l. r. 6. 55. 4 Feb. 93.

But under the Law Merchant, the holder of a Bill of Exchange, or a Promissory note after having taken one in for in execution and released him without actual satisfaction, may sue an other and take him in execution and if he release him without actual satisfaction he may sue a third and so on till he has sued the whole. But in this case it is to be observed that the endorsers are not joint debtors, for they are distinct and independent in every other, each one is a new owner of the bill and if it is supposed that if they were joint debtors the Law Merchant would give way to the Law. Law. 3 W. N. 14. 93. Chitt. 147. 155. 1729. 34. 201. 20.

It was formerly decided that if a sole debt, imprisoned in prison that the debt was forever extinguished, and the reason given was that the debt having elected his highest remedy right to strike the consequence.

But this rule was never agreeable to the rules of the Law, for it is in no way analogous to a person having two remedies given him where by stopping one, he waves the other. The imprisonment of the body is deemed a mere pledge for the re-
Debtor's certificate of the debt, if therefor the prisoner be without the fault of the debtor, the latter can never be considered as having waived his remedy for the loss of the pledge does not work an extinguishment of the debt which it was intended to secure.

But if one of two joint debtors die in prison on execution it does not an extinguishment of the debt or to the other but only as to him who died & c. 86. c. 143. c. 81. 850.

But by the stat. 219. it is declared explained and enacted that when a sole debtor debtor dies in prison execution may be used out against the estate or to the debtor had never been imprisoned.

A bond given by the prisoner to the sheriff, condition that he will abide a true prisoner unless he has paid the debt and expenses is void or being against the stat. 20. sec. 6. The superior court of this state seem formerly to have adopted the idea that such a bond is void only as to the bond. Mr. Gould thinks it void as to the whole for it is an established principle that if part of an entire contract is void, it renders the whole so.

Stat. regulations in Cor. of Gads. and Gadess.

The law relating to this subject to this subject has already been treated of in a great measure under the general title of thiefs, what has not remains now to be considered.
A person legally committed to prison for any offense is by the law to bear his own charges and the expense of commitment if he has means and ability to do so and for this purpose his estate is subjected if he has any but if he has none he may be ordered in service or in service to labor until he has paid it, but if he has neither means or ability nor able to labor, then the charge must be paid out of some public treasury.

As our law stood till within 4 or 5 years past the offender had not means to defray the expenses they were uniformly paid out of the treasury. But the law now is that if such charge cannot be obtained out of the estate or service of any body prosecuted or upon such charge if it shall be before the superior court shall be paid shall be paid out of the state treasury and if before the county court out of the county treasury and if before an assistant or justice the expense shall be paid out of the town treasury. And even when he has means and ability to discharge these expenses they are in the first instance to be paid out of the state treasury in pursuance of an order from the superior court, out of the county treasury in pursuance of a similar order from the county court and out of the town treasury by order of the assistant or justice but in this case the offender must reimburse the treasury.

Our state provides that if a garrison receive from a pris
come for fees a quarter sum than than the law allows, he is liable in an action on the case to the party injured for double damages, and if to such fine as the county court of the county wherein the offense was committed upon information or complaint made shall think fit to impose.

When a person is committed to prison in any civil case, he is obliged to bear the damages charged of his own support unless he be admitted to the poor prisoner's oath. This oath is in substance 'that he has not any estate of the value of 10 dollars or sufficient to pay the sum for which he is imprisoned.' On taking this oath he is obliged no longer to bear the expenses of his support and may be discharged from prison by the sheriff unless the P'ty supply the debtor with a weekly support.

This oath only operates to discharge the body only from custody for if he has any estate or afterwards acquires any, it is liable to be taken in for the demand.

If the P'ty do not furnish a weekly support, the debtor may go out of custody and the cannot be retained; the his property may 1st or 15th.

The prisoner is not admitted to the poor prisoner's oath of course; for the law requires that the debtor give the creditor 4 days notice to appear and show cause why such oath should not be administered. This oath must be administered. It is
Stat. 221.
2. 1 Root 179.

Stat. 221.
2.

Root 179.

Stat. 221.
2.
SHERIFFS.

Instant or Justice of the Peace.

If the application for the poor prisoner's oath is unsuccessful, the debtor cannot make a new application, unless it be to the chief judge of the county court, and one justice of the peace or to two justices of the peace "quorum nullum" giving an notice scalf to said, 222. Stat.

If the oath is administered in the first instance, the creditor may appeal to the judge of the county court and one justice of the peace, or two justices of the peace "quorum nullum" who may receive the said cause. Sot. 222.

But the charge of the prisoner's support, if defrayed by the debtor, must be paid eventually to the creditor by the debtor himself and it becomes a part of the original debt, all of which must be paid before the debtor can be released. Stat. 222.

It is a rule of our stat. as well as of the Con. law, that felons and debtors are not to be imprisoned in the same room; and if they are the gaoler is subject to a fine by the Con. law and by our stat. to an action on the case in favor of the debtor to recover treble damages. Stat. 222.

If it should happen that any county is destitute of a gaol any person in such county liable to be imprisoned may by lawful authority be sent to the common gaol of the next adjoining county. Stat. 223.
It has been observed that where a prisoner has been admitted to the tenantry of the yard the sheriff may order him into close confinement when the plea. And by one stat. also the county court may order into close confinement any one committed on execution issued from the superior court in which case the superior court has the same authority, and if the sheriff refuse to commit the person when so ordered he is guilty of a voluntary escape.
Inns and Innkeepers.

At Law, any one may exercise the right of an innkeeper employment of an Inn-Keeper unless it is inconvenient to the public, for they are established and act without licence. And he who thus assumes the character of an Inn-Keeper becomes liable to the duties attached to it.

But at Law, inns may merely from their number become common nuisances at Law, and the Keeper may be indicted for a common nuisance in such case at Law. It is to be observed that when the number is too great, those inns which have stood the greatest length of time are not to be indicted but those which are new and the trust established in them. Inns which were set up after there were a sufficient number, and hence become a nuisance. The way that the public suffer an injury in this case is, that when the number is so great the business of each is of course small and no one considers it an object sufficient to make to make proper arrangements and accommodations for travellers.

At Law, Innkeepers by being disorderly may become a common nuisance and in this case the Keeper may be indicted at Law as for a common nuisance.
the Inn harbors thieves, robbers, drunks and all.

But in Law, no inn can be lawfully established unless licensed by law this license is obtained for one year only from the county court in the county in which the Inn is set up which license issues upon the recommendation of the civil authority, selectmen, constables and grand jurors of the town. Stat. 12.

No person except he is thus licensed can keep an inn in Law. And if the inn so established become too numerous the Keeper cannot be indicted as at Law. Law for the court has sanctioned it.

If an individual establishes an inn without license and entertains people he is subject to a penalty of $10 for the first offense, $20 for the second and so on doubling for every offense the 1st the offender cease violating the law.

For disobedience to the laws regulating inns, and inn keepers, the keeper’s license may be suspended or canceled by the civil authority & selectmen till the next court, and the court may renew the suspension a continuance it till the expiration of the year for which such license is granted.

Mr. Gould concludes that this provision cannot suit the common law enactment for a disorderly inn, reviews the provision made by the state, as affecting a--
Innkeepers

The duties of Innkeepers

Their duties extend generally to the entertaining of travellers only and keeping their goods and effects.

The innkeeper is not made the keeper of the person of his guest but merely of his goods.

If an innkeeper refuses to entertain an individual without offering sufficient reason, on being tendered a reasonable compensation he is liable not only to the person injured, but to a public prosecution - 4 Del. C. 165. 3 Beech 181. 1 Hawk. 245.

If the inn is already full, or the keeper's family sick, it is sufficient cause for refusing to receive a traveller. The cause must always be a substantial or reasonable cause and what amounts to such a cause must be determined by the trials.

If as before remarked, the keeper's duty does not extend to the person of his guest, then he is not liable for assaults that he may receive from third persons while at the inn.

If the host or his servant sell to the guest unwholesome food or liquors, he is liable in an action on the case and the reason is that the traveller is under the
Innkeepers.

security of trusting to the honesty and fidelity of the keeper in those particulars, a violation of this trust ought therefore in justice to subject them.

The principal rules as to the liability of an Innkeeper have been noticed under "Bailment." A few additional rules therefore will close this branch of the subject.

An Innkeeper is not discharged from his general liability for the goods of his guest either by absence, sickness or insanity, and the reason assigned is that he ought and it is his duty to provide against consequences contingencies of this nature in as much as they are infirmities incident to human nature. [Cited text]

An infant innkeeper is not chargeable in the character of an innkeeper, for his privilege takes place in consequence of the general custom. [Cited text]

If a host refuses to receive a guest upon sufficient cause and the latter persists in tarrying at the inn, the host is not liable for any loss which he may sustain of his goods, but the reason is that it is the fault of the guest in continuing.

If the host require the guest to lock his apartment, he will not be liable for the loss of his goods, still in the event of a loss occasioned by the guests neglecting
to comply with the request, it appears from the current of authorities that the innkeeper is liable for it is said that the host is not liable for any loss cannot discharge the breach of his duty by such a request or direction.

At any rate it is clear that the delivery of the key of an upper apartment to the guest does not discharge the innkeeper, tho' the goods are lost in consequence of the door being left open by the guest, 8b. 89. 3 Moore 183.

An innkeeper like a common carrier is liable for the goods of his guest when lost, altho' he knows not their kind or value; yet if he demands a knowledge of the articles, and is deceived as to their kind and value, yet if the goods are lost or at least to the amount of the property represented to him by the guest by Gould has given his opinion at large under "vindictive" words that 8b. 96. 3 Moore 178. 5 Bac 183.

The liability of innkeepers for the goods of their guests obtains only in favour of travellers, and such a board at their inns at the price paid by travellers it would not therefore extend to a neighbour or to such as board there at the price of board at private lodgings, for in this case they do not receive them in the character of innkeeper.
Innkeepers.

but nearly at private houses.

Innkeeper and Guest are correlative terms, but Innkeeper
and Boarder are not.

An Innkeeper is not chargeable in the owner's absence for
the loss of goods for the keeping of which he receives no reward.
By the owner's absence alone no mens rea or animus
sine mens rea is imputed such an offence
as that he is not considered as a guest. In order that he should
be viewed as a guest however it is not necessary that he be
"in praesenti" for if his goods are "in praesenti" (by which
is meant the custodio) it is sufficient.

But for any goods for keeping of which he does receive
a reward he is liable in the event of a loss or injury tho the
owner has left the Inn for any length of time — Therefore
if one leave his horse or cattle and go for a month say
here as the keeper has a reward for their keeping he would
be liable in case of a loss — But if the traverler leave inanimate
property as his baggage (for keeping of which the
innkeeper receives no reward) he would not be liable as in
keeper in case of a loss or injury — since he may make himself
liable on a contract in which case he would be considered
as a Bailee of the thing in mind (see Bailment) and
liable in that character.
Innkeepers

Of the Innkeeper's remedies against his Guests.

The remedy of the Innkeeper against his guest is twofold:
1. By action.
2. By retaining his person or property till the price is paid. He may detain his person for all expenses that have occurred. But his horse cannot be detained except for the expense of keeping or a Taytor may retain a garment till the expense of making it paid, him, yet he cannot keep it for a general balance.

If however the Innkeeper once abandon his profession by permitting the horse or guest to leave his house or barn, he has no longer claim upon them but must resort to his action. If however the guest goes away with his horse without the Innkeeper's permission, the latter may retake him on fresh suit, so of the person.

The Innkeeper however may not use the horse which he detains and if he does he is ipso facto guilty of a conversion.

The Innkeeper has the same remedy under our Stat, as at Com. Law, this his action on the cap is in many, in many cases abridged.

An Innkeeper in Com. can maintain no action for his money till one month after the delivery, but within two days (or 48 hours) from the delivery, this provision regards replies.
Bailment
When the person or house of a guest contains and is found
promise is made by a 3rd person to pay the expenses provided
the Banker will deliver up the possession or bind the state
of feared & prejudice notwithstanding. It is to be observed that
it is not strictly to pay the debt of another, but merely to pay
a certain sum for the giving up a security or pledge.

23 Dec. 1855.
3 Dec. 1856.
1 Feb. 1865.
Bailment
* When the person or horse of a guest is taken and a promise is made by a 3rd person to pay the expenses provided the Banker will relieve up the profession of binding the stat. of frauds & perfumery notwithstanding. It is to be observed that it is not strictly to pay the debts of another, but merely to pay a certain sum for the giving up a security or pledge.

* 3 Dec. 1835.
* 3 Dec. 1836.
* 1. Wils. 204.
Bailment.

Bailment is a delivery of goods from one person to another, on a condition expressed or implied, that they shall be returned by the person from whom the Bailor is not to be liable for the goods according to his directions when the purposes for which they are bailed are answered.

Thus, if A. deliver goods to B. to keep while A. is absent, or if one deliver cloth to a dyer to colour it, is a Bailment.

The person who delivered goods is called the Bailor, and he to whom they are delivered, the Bailee.

The authorities upon Bailment are very contradictory.

Every Bailment vests a qualified property in the Bailee of the thing bailed.

APawnee is distinguished from other kinds of Bailors, is said by Coke to have a property in the goods.

But there is no such distinction. A Pawning has a nature of it, it is true, from the Bailment a stronger interest than some of the other kinds of Bailors; but all Bailors have a certain kind of property in the goods.

From the Bailee’s obligation to restore the goods or things bailed it follows that the Bailee must keep it according as to the terms of the contract, and he responsible to the Bailor if it be lost, or damaged; still however
Bailment.

As the bounds of justice would be transgressed if the Master in all cases were made liable at all events, it is a general rule that he is not liable if the fault happen without any fault of his, or damage happen without any fault of his.

But to determine when he is in fault, the nature of the bailment and quality of the thing bailed as well as his own contract are to be considered, for different kinds of bailment require different kinds and degrees of care and diligence. To ascertain the different degrees of diligence required in every case constitute the principle difficulty of this title.

In considering this subject, I shall compare the authorities and dicta in the books with the principle of the law as laid down in the books by Jones.

Of the degree of diligence required of bailiffs in different cases.

The most general rule is that the bailiff is bound to keep the goods with a degree of care proportionate to the nature of the bailment.

In some cases this degree will be greater and in some less than ordinary diligence for the degree of
Bailment.

care are various.

In order to understand this rule we must define the different kinds of degree of care and neglect.

Ordinary diligence is that which ordinary men of common prudence use in the management of their own concerns.

The degree of diligence on both sides of this standard or measure are not distinguished by any private denominations. What excess is called more what falls short is called less than ordinary diligence.

To every degree of care or diligence there is a corresponding degree of departure or neglect; thus the omission of ordinary care or diligence that is such as every rational man of common sense and prudence takes of his own affair is called ordinary neglect.

The omission of that care which every attentive and diligent man uses is less than ordinary neglect; this is called slight neglect.

The omission of that care which even neglect negligent and care less men take of their own affair is greater than ordinary neglect and is commonly called gross neglect.
Bailment

The last degree viz. gross neglect is generally regarded as evidence of fraud in the Bailee, but not however in all cases as where the Bailee suffers his own property to be lost by the same negligence by which the Bailee is hurt.

In order to apply the general rule first laid down under this head to particular cases it is necessary to observe the following rules in its members.

I. Of the Bailee the lessee or benefactor of the bailee only nothing more than good faith is required of the Bailee, he is liable for gross neglect only that is for a violation of good faith.

There is a dictum in Co. Amys contrary to this rule. It is not law.

There is however an exception to this rule. When the Bailee by a special agreement makes himself liable for loss than ordinary neglect, and perhaps in some other cases.

The books generally agree with this rule when taken with its exceptions.

II. When the Bailee is only benefited he is liable for slight neglect, that is bound to more than ordinary care — And here the same reason operates as in the former rule viz. that it would be hard
Bailment.

for the person who does the gratuitous act that he should sustain
insure the risk and not be indemnified in doing the act in
case of loss or damage unless the other has been guilty of gross
or ordinary neglect. He who receives the benefit ought to bear
the burden.

III. When the bailment is a benefit to both parties, the
obligation hangs in equal balance, therefore the bailor is
bound to use ordinary care only and is liable for ordinary
neglect.

The last three general rules are derived from
the Roman law.

So far as the mere private justice of the case
is to govern these rules will hold in all cases. But
there are cases certain rules that are governed by
general policy and in which these rules do not ob-

Of the different kinds of Bailment.

In the division of Bailment several eminent
lawyers have differed. According to some of the books
there are six kinds for Mr. Jones divides it into five.
We believe it four. But it is thought proper to
Bailment.

I. The first kind of Bailment is called Depositorium, and is a delivery of goods to be kept by the Bailee with out reward from the Bailor. The person to whom the goods are delivered is called the Depository or sub-\(\text{a}\) rector, the naked Bailee.

II. Bailment of the second kind is called Come modatum, and is a gratuitous loan of goods which are usually to be used by the Bailee and which are to be specifically restored by the Bailee to the Bailor. The Bailor in this case is called the lender and the Bailee the borrower.

This kind of Bailment differs from Marturium, which is generally gratuitous. But this is a loan for consumption and to be paid for in property of the same kind, but not in the same property; as in the case of money, wine, \\(\text{c}\), in these cases the duplicate property is transferred to the borrower who in case of a loss must bear it at all events.

III. Bailment of the third kind is called in law Latin "Locatio ou locatio-conducetio et", and is a delivery of goods into the hands of the Bailee to be used by him for hire. The lender is called Locater and the hire Conductor.

Jones makes this subdivision of his 3rd kind which...
be called Locatum.

IV. Bailment of the fourth kind is a security for a debt from the Bailer to the Bailee. This is called a pawn or pledge and in Latin - caudum et frigvni. The Bailer is generally called pawnor and the Bailee the pawnsee.

V. The fifth kind of Bailment is a delivery of goods to be carried on some other act done about them for a reward. It is called when the goods are to be carried loco - loco etiis mercium vehendam. When some other act is to be done about them it is called Locatii opiri funt.

This kind includes a delivery of goods to a common carrier or to anyone who receives them in the course of a public employment and to a private carrier or other person. A delivery to a private is included one of a private professional character or to a barker, tailor, or other mechanic, and ro to Bailiffs, Factors, etc.

VI. Bailment of the sixth kind is delivery of goods as in the 5th case, to be carried or for some other act to be done about them; but the carrying or other act to be done is gratuitous. This kind is called Mandatum or mandate and the Bailee Mandatory.

We shall now consider the different kinds of Bailment in their order.
I. Naked Bailment or Deposit

Naked bailment or deposit is a naked bailment to be kept by the bailee for the benefit of the bailor as a matter of promises.

In this case, the bailee or depositary is bound only to good faith and kindness, at most only for gross neglect.

But it says "ordinary care will excuse the depositary which seems to imply that less than "ordinary care" will not, but he evidently uses the words "ordinary care" without any definite meaning.

But he is not always liable for gross neglect.

Indeed generally speaking, he is not liable at all for neglect as such, considered as such in the abstract, but for fraud only. If even gross neglect doesn't commit evidence of fraud, as where he treats the deposit as his own goods he is not liable; thus if the depositary be a careless idle man drunken fellow and leaves his doors open by which means the deposit together with his own goods are stolen he is not liable.

There is however an exception to this rule where the depositary by special agreement makes himself responsible for less than ordinary neglect he may then make himself liable to any extent.
Bailment.

There is perhaps no principle on which exception is taken when the depositee is in consequence of the bailor's officious care offering to keep the goods, tho' the acceptance is general, for the owner is prevented by this officious care from interesting himself in the performance of the duty of care and vigilance. It is then for the decision of Jones that he ought to be liable for ordinary negligence. But this rule is too refined to admit of application. The old authorities are contrary to the general rule first laid down under this head.

The doctrine advanced in Southwell's case is in substance this, that every acceptance to keep implies an agreement that the goods shall be kept safely, which would subject the bailee for his own ordinary neglect.

Thus, the doctrine is inapplicable to the general rule by which we are to determine the liability of bailors. It is clearly and expressly overruled by a weighty authorities. Indeed, the doctrine there is advanced contrary to the decision in otherwise clearly accountable with the general rule.

Some have taken the distinction between a special to keep safely where there is a valuable consideration and where there is none that is in the former...
Bailment.

case such baiee would be bound by his agreement, and that
in the latter he would not for it would be a subsuming
them.

But this valuable consideration would altogether
alter the nature of the bailment, and under it a baila-
ment of the first kind. So that this dictum if it were
well founded would not affect the law on this subject
as to depositaries.

But if it is not founded on principle for the
delivery of the goods is a sufficient consideration for
the special undertaking.

It has been held that where goods have been
left with a depository in a locked chest of which the
Baiee takes the key the Baiee is liable for the chest
only and not for the goods for they it is said are not
introduced to the depository.

But in opposed to this decision because the de-
Baiee has no title tover over the goods as long
benefit when out of the chest as when in and as much
power to defend them in the one case as in the other.

It is remarkable that neither Holt or Coke take into
consideration the circumstance that of the Baiees being
ignorant of the contents of the chest or not. But this
circumstance we should think ought to be the criterion.

But this a depository may subject himself by special acceptance to keep safely, yet this will not amount to an assurance at all events even if reduced to writing, or where the loss happens by the act of God.

It is also laid down that a special acceptance to keep safely will excuse him from losses happening by the acts of wrongdoers, but this rule is laid down too extensively, the meaning of it is evidently this, that he is excused by such acts of violence as he cannot resist. Robbery generally speaking does excuse the depository.

A special engagement to keep safely amounts to this that the depository will use all ordinary care and diligence in keeping the goods safely, for if his liability were to extend any further, he would be liable even in cases of robbery or inevitable accident.

He is not excused where the loss was occasioned by theft.

If the depository refuses to deliver the goods on demand without lawful excuse it is evidence of conversion for which he is liable in trover.

He is also liable in terminus detinui and in Assumpsit or the promise express or implied but trover is
Bailment.

the most extensive remedial action and is best adapted to this case.

Jones says if the Depository is at any expense in keeping the goods Bailed, he may sue them as an indemnity for the expense at which he has been in keeping, or if it be a house, or couple may ride the house moderately and with the care regularly, by way of compensation for the charge.

II. Commodatum.

This kind of Bailment is a gratuitous loan of goods to be used by the Bailee and to be specifically returned.

Here the benefit being to the Bailee only, he is bound to more than ordinary care, and is liable for slight neglect, or as it is sometimes called, paid for the least neglect.

Thus if a horse be borrowed by the Bailee, his servant puts it into his stable not locked, and the horse is stolen he is liable. But it would have been otherwise had the stable been locked.

According to Jones the Borrower is liable for some
Bailment.

in case of mere neglect, theft, unless he can prove extraordinary care on his part.

A bonnuser is not liable for a loss by such force as he cannot resist.

Therefore generally speaking, the bonnuser in this case is not liable for a loss by robbery there being no guard against open violence.

But a bonnuser is liable even for robbery if he expose himself to it, by his own rashness, as if he should leave the high road, and pass through a haunt of robbers especially in the night season.

So a bader of this second kind is not liable generally for any of the accidents called inevitable such as a lightning tempest &c. But he may make himself liable for losses there occasioned by a previous breach of trust, as if he bonouses a house for one journey and goes another or detains him for a longer time than that for which he is bailed. Here he is liable for all accidents as he would be for robbery.

This rule applies to all kinds of Bailment.

So he may be made liable to those accidents occasioned by his own rashness.
This kind of Bailment is a delivery of goods to be used by the Bailee for hire. As a horse to ride for.

By this contract the Bailee or hiree gains a transient qualified property in the things bailed and the bailor an absolute right to the expenditure of price.

Hence the bailment being reciprocally beneficial the Bailee is liable according the force for no less than ordinary neglect being bound only to ordinary diligence.

But it is said by Hott that he is bound to the utmost diligence if so be he is liable for slight neglect and that the liability of a hiree is the same as that of a borrower who is a Bailee of the second class.

This doctrine of Hott is the foundation and support to the rule as laid down by Powell and Buller.

But if Hott's proposition is only a dictum he, sider Hott himself and Powell after him do make a difference between the hiree and borrower as to their liability they do lay down the rule generally that the hiree is excused in case of theft but then
Bailment.

But there is no such rule thus generally expressed in favor of the borrower in the same situation. In the case of the borrower, it is said that he is exonerated from such a fine as he cannot resist, where the idea of the least neglect is excluded.

Again it is said by Justice Powell that if the hirer be robbed without any misprision in himself, he is not liable; but no rule is prescribed so favorable to the borrower. Indeed Hott says that the borrower is liable for the least neglect, because he has the use of the things hauled.

Hott relies for his authority solely on a quotation from Blackstone, which does not warrant the conclusion. For in Latin, *suscipit actio* is often used when the quantity is not expressed intentionally in the suspension.

There is then no decision nor clear authority requiring more than ordinary care and diligence in a hirer, and a principle seems to acquire more since the bailment is beneficial to both parties.

The thing being hired is to be kept with ordinary diligence; and hence the hirer is exonerated in case of no blame except occasioned by his
Bailment.

imprudence or want of ordinary care. But when a home is hired, the hirer is liable if it be stolen by reason of the statute door being open.

IV. Pawn or Pledge.

A pawn or pledge is called in table latin radiis or pignori acceptaties and is a delivery of goods as security for debt due from the bailor to the bailer.

If one deliver goods to another under an absolute sale, but it appears from another instrument that the delivery was to secure a debt and it is agreed in the latter that the vendee may sell the goods when he pleases and that the vendor be subject to the vendee's right to sell may redeem, the goods are a pledge.

This contract being a benefit to both parties, to the vendee by securing the debt, and by the pawnor by procuring him a credit or delay of payment. The pawnor is bound on inexcusable neglect, for no less than ordinary neglect, this rule is fully established in English books. In Lord Raymmond it is said expressly, that true diligence by which is meant ordinary care excuses the pawnor.
Bailment.

It has been held that the bailee is bound to keep
the goods pawned as he keeps his own property, because
he has a property in the goods.

So has the bailee a property in the thing bailed.
This doctrine in Coke would subject a pawnor
for gross neglect only; or not even for that as the case
may be, but this is contrary not only to the general
principle but to the weight of authorities.

A pawnor is excused according to the gravity
in case of robbery unless it was caused by his own
fault.

It is held by Coke that if a pawn the statute
the pawnor is not liable because he is to keep it
only as his own goods having a property in it.

But Jones holds unconditionally that he is liable in case of mere theft, because a bailee cannot
be considered as using ordinary diligence who sup-
ports goods he is to be lost by stealth.

I have as to the case of theft; for it is a
prehend a question of fact, in every case of theft
whether ordinary care was used or not, and the gen-
eral doctrine of Holt he seems to leave it on this
footing:
The bailee gains like other bailees a qualified property in the thing bailed.

This interest is determined by the tender of the money due and the whole interest reverts to the bailee tendered and refused being in this case equivalent to payment. 4 Com. 272. or 273.

Therefore if after payment a tender and demand of the pawn, the bailee retains it. It is a wrong done and is liable for any loss or injury at all events even for inevitable accidents.

This is one of the exceptions to the general rule of the bailee's liability.

On refusal to redeliver after payment or tender the bailee may maintain trover.

If the refusal be by the bailee's servant acting regularly in his master's business, the bailee may in this case if he elect maintain upon the implied promise to redeliver.

A refusal to redeliver on payment or tender is an indictable offence at common law and this on the ground of policy.

It is said by Jones to be laid down by Blackstone that on tender and refusal the thing pawned
Bailment.

cases to be a pledge and becomes a deposit. I do not find it laid down by Bullae nor can the proposition be true for a depository is liable for gross neglect only, but the pawneree in this case is liable for a loss at all events.

By tender and refusal the money it seems he sees, he sees, the property of the pawneree, for tender and refusal are equivalent to payment so after refusal the pawneree is liable for the money to keep to the pawneree and is liable to gross neglect only.

In some cases the pawneree has a right to use the pledge and others not. But this right, when it exists, is said to be founded upon the pawnor's consent expressly given or presumed.

This presumption of consent generally exists or not as the pledge is likely or to be made better or worse or not at all affected. Thus where a hound is pledged the presumption exists, for by use he is confirmed in useful habits, so that the pledge is made better.

So if it will not be injured by use as when jewels if are pledged the pawnor's consent is presumed. But here the pawnor uses the things pledged at his peril, he will be liable even in cases
Bailment.

of robbery and I suppose for inevitable accidents.

So if the Plaintiff be at expense in keeping the
pledge he may use it, as where a horse or cow is pledged
by way of recompence. The cow indeed is better
by the use, is there is a presumed consent in this case,
that is, the rule founded upon it? The Plaintiff in
this case and in the first is not I suppose liable for
robbery while the things are in use or in the last
case. The right in the last case big that of jewels.

According to the Roman Law the Plaintiff was
obliged to account for the benefit of the use—
but not at Com. Law.

So to according to Jones a depository may
use the thing bailed when the keeping is an expense

But if the Plaintiff will he worse for using
the keeping is not expensive the Plaintiff may
not use it, or where clothes are pawned. Here the
presumed consent does not exist.

If he does use them known in the first in—
Bailement.

...I conclude, on the case, for unlawful use in a conversion. Rom. 12:1.

The law of the pawn is said by Bell to apply to goods found.

According to Powell, the law supplies a contract, by the finder, to the owner in ordinary diligence.

But, in some authorities, it is said that the law binds to keep it safely ready for negligent keeping, &c. (Bell. 2. 21.)

In first thought, the finder does not seem able to be held on principle for anything less than gross neglect because the sole benefit is to the owner until the owner is capable of paying the finder for his trouble. But there is a great difference between finding and deposit. In the latter case the owner has it optional to deliver or not and retain his deposit. In the former, it is otherwise; indeed finding is not a strict bailement. The finder might clearly to use ordinary care or not take the thing, and here the opinion of Powell seems to be correct.

Indeed in the case of Cro. Ely. the decision seems to the merely that trover would not lie, and it was not right, for trover lies only for negligence or actual wrong, and not negligence.

A finder of goods have no lien upon them at law, for his trouble he but is liable in troverse or ne-
Bailment.

Said to deliver them up, this his expenses he not tendered.

The case of salvage is different. 2 B. Bl. 244. 22 Rep. 376.

A question has been stated respecting the finding of
goods which has never been decided by the English courts.
If A. finds B's goods and C. claims them and sues A. to
recover them from B. for refusing to deliver the goods, and recovers. B.
then sues A. and knows his property can be recovered?
It is believed that on principle he cannot. For it is
a rule of law that when a man is compelled to pay
some of money by process of law to a wrong person
he cannot be compelled to pay it over again, that if he
had paid it voluntarily he might.

If the Pawnee having tendered and recovered in
Bailment yet the Pawnee may have his action to recover
over what is due; but the court first make a demand.

If perishable goods be pledged and decay yet the
Pawnee may rescove his money, for the duty continues
over the pledge being only a security of the debt and
not of the payment.

So to while the pledge remains unimpaired in the
Pawnee's hands he may for his debt and rescove
himself there was an agreement to the contrary that is
that he should rely solely on the pledge.
Bailment

If the money be paid by the day the debtor has a right to the property, pledged but if not the property is to be forfeited in the possession. But the possession has a right of redemption in equity; even tho' the agreement be that the property, if not redeemed by the day should vest absolutely in and be sold.

If the pawn be lost thru' the previous fault that in mind the omission or ordinary case of the pawnor, the debt it seems was extinguished. But this does not seem to be a very reasonable rule, since the pawnor is liable to the pawnor for the $ value of the thing pawned. It is said however that if the pawnor were dilatory in keeping the thing pawned, and it is lost it shall not be an extinguishment of the debt.

A factor cannot seize the goods of his principal so as to give the pawnor any lien or against the principal. He cannot thus transfer the lien which he himself has on the same or amount, for a lien is a personal right and not transferable.

But as to the factor of what is due him too, over his against the pawnor - There must I presume be a demand on the pawnor tho' this is not mentioned.
Bailment.

After the day of payment, the pawnor may decide to sell the property, it being absolutely in his name, but according to law. If the pawnor may in equity, and perhaps at law reconcile the surplus, of the thing was sold for more money than it was pawned for.

According to law, the pawnor may before the day of payment assign the pledge. But a case into, you see to it, the other way and you. Butler says a lien is a personal trust and cannot be transferred.

It is also laid down that it cannot be alienated which planely implies that the pawnor cannot assign the pawn, since it was never supposed that he could sell.

And it is a rule that a pledge cannot be perfected by the pawnor, but a man in capable of perfection what he can convey in his own right.

A pawn may also be considered as the nature of a personal trust. The owner may be willing to entrust his goods to one and not to another. If the pawnor might assign at pleanne, the pawnor would be in danger of a loss, for the assignee might be a knave a bigger. This is different from the case of land being mortgaged.
Bailment.

which cannot be surrendered.

Again, a pawn cannot be taken in Deed for the pawn's debt, neither can it be attached for his debt.

This last authority is the same which convinces me to the point, that a moveable is assignable. The principle in this case is the same as in the last.

The case in Yorke does not militate against our reasoning for the Bill was brought in that case after its right was forfeited in law.

On the whole it may fairly be inferred that a pledge cannot be assigned.

The pawnor may forfeit his right in the pledge, as belongs to him, but the King cannot have it without paying the same due to the pawnor.

Anciently it was decided, essential to a pawn that it should be delivered at the time the money was lent or the debt accrued, otherwise it was considered not as a pledge giving a special property in the holder, but merely as a license to excuse trespass. The law is now otherwise.

Therefore, if A. deliver goods to B. as a security for a debt already due from A. to B. C. becomes owner with a qualified property, so that A. cannot recover.
Bailment.

It seems that the rule in the case supposed is founded on an agreement between A. & B. that the delivery should be to B. unless the mere B's agent. But if A. deliver goods to B. as a naked donation to B. the delivery it seems seems may be revoked before B. obtains the actual possession for the delivery was without compensation.

And it is held that a naked gift without some act of delivery will not transfer any interest so that an action will lie against the donee after demand. Suppose if he take them.

It was formerly doubted if no day of payment was fixed, whether payment or tender would revert the property unless it were made during joint lives of the parties. But it was held that the pawnee might redeem at any time during his own life even after the pawnor's death.

And if the pawnor before his death deliver the goods pledged to John Slater without consideration tendered, tender is to be to the pawnor's estate, and not to John Slater. If after such tender John Slater refuses...
Bailment.

to reddelive the ir liable in trover.

But if in the last case the paourer having the
paurnor had delivered to John Stites on a consideration.
the 1st question to whom tender must be made is the
same as whether paurns are assignable. Before the
day of payment according to some authorities it must
be made to the paurnor’s Esq, and according to them
not.

But there being no time fixed in which the pa
paurn must be redeemed, that is tender must be made
if at all during the life of the paurner and his Esq, or
not do it for the condition is personal as to the paurnor.

It is questionable whether this rule would
be adopted here. There ought to be at law some limi-
tation, and this the paurner may sue for his debt dur-
ing his life, yet the paurnor may be worth nothing.

It is supposed by some that equity would relieve only
of the paurnor if it were clearly shown to have been the interest that
redemption should be lost in case of the paurnor’s death.
This seems to be reasonable for when a day is fixed
and passed there is an equity of redemption.

If a day be fixed for payment the paurnor’s in-
forcement is not from forfeited by his death; the Esq may
V. Sociatio Operis mercium Vindarum -

Bailment of the fifth kind is a delivery of goods to be carried or some other act to be done about them for reward by the bailor. This includes a delivery to a private carrier or other private person who is to do some act and also a delivery to one who exercises a public employment, in his public professional character, or a common carrier, even snake or.

If a delivery of goods to a private carrier is to any person not executing public business, this includes a delivery to one in a private professional character or to a tailor or other mechanic or to a bailiff factotum or as well as to a special carrier.

But a delivery of silver to the silversmith to work into plate is not a bailment of this kind. It is no bailment but a Mutuum and the property vests in the person to whom it is delivered.

Here the bailment being reciprocally here.
Bailment.

official the Bailee is on principle bound only to ordinary care
and liable only for ordinary neglect and so stands the law.
Both says expressly if he use ordinary care he shall not be
answerable.

If goods be delivered to such private person as an
existing farmer for the purpose of departing cattle for
nine to a private person to carry to be & the Bailee be
negot be it according to the general rule exercised the
the force being irresistible.

In case of more theft merely, if the property be
locked up with reasonable care, the Bailee of this to
mind is exercised. This rule paperhead in general as to
Bailment are improved advantageously; but is denied
by Jones as to favour where according to his own prin-
ceiples the same means are used as in the last present cap.

If the thing bailed be distrained by the landlord
of the Bailee for rent, and be sold as it may be, the
Bailee is liable for this at least ordinary neglect.
This rule is common to every Bailee who
receives pay or compensation any way of any kind,
for keeping and carriers or doing as a carrier he and
formerly purpose where the contract is reciprocally
advantageous.
Bailment.

And the depository would also be liable if he should remove his own goods to expose the Bailor or if he should in any other way unfairly expose them.

But if the depository should even act honestly it is believed that he would be liable to the Bailor in this case in an action of Indeb. At. If silver be delivered to a silver smith to work into an ornament he is not a Bailor of this kind according to Jones, the contract is not a bailment but a warrant the property vests absolutely in him. And according to Jones if it be lost he bear the loss at all events he may therefore use it for any other purpose and restore an equal quantity of the same quality. The reason of this seems to be, that the form of the property is to be scattered it cannot be identified and therefore it cannot be specifically restored in legal contemplation. This case is something like that of manufacturing grain into flour grapes into wine &c.

When the Bailment is to a person to do some act of skill in his professional character here the law implies a twofold character and contract not only to redeliver the thing but to do the work itself.
Bailment

fully, as when the delivery is to the tailor or other mercantile.

But if the act to be done be for the use of the Bailee's professional business, the law implies some agreement on his part that the work shall be done skillfully, and therefore he cannot be made liable for not using skill without an express agreement.

Ordinary care does not oblige the Bailee to ensure the thing against fire.

If goods of this kind be lost or destroyed while the work or act to be done, remains unfinished, by a neglect of a degree of care which the law requires of him; it seems he is not entitled to wages for the work which he has done, for the Bailee receives no benefit for the work he has done.

24. Of a delivery to a person exercising a public employment in his professional character, that is in the way of his professional business or common carrier which are first.

I. Class of them. Common Carriers.

A common Carrier is any person who makes
it his business to carry the goods of another for his hire, as a common waggoneer a common Porter or common Hapman when paid for carrying goods.

It seems formerly to have been doubted whether any other than a carrier by land, fell under the description of Common Carriers. The law on the subject of Common Carriers was first extended to common Hapman & Geo. 3 to masters of ships, the 25 Car 2.

So the owners of ships are common carriers and the action may be brought against them in the nature of an action against common carriers or against the master.

But according to Stat. 7 Geo. 2, the owners are liable to the value of the ship only and freight, where the loss is occasioned by the mismanagement of the master or mariners.

If a common carrier having conveniences to carry and being offered his hire refuses to carry, he is liable in an action on the case.

Notwithstanding the last rule a common carrier may make a special, that in a conditional acceptance that he will not be answerable and no money be unless he has notice, and is paid in proportion to the amount.
The bailment of a common carrier in case of a common carrier being reciprocally beneficial, he would, were there nothing to impede the application of the general rule, be liable for ordinary negligence only.

And this seems to have been the rule so late as the reign of King Edw., when it was held that a common carrier was not liable in case of robbery, unless his own rashness or imprudence gave occasion for it.

But it was settled in the reign of Eliz. that robbery was no excuse.

And the rule now is that he is liable for losses occasioned in any way except by the act of God and by the king's enemies, or the act of the Bailor.

The true ground of this rule is not the reward or ascented by Ed. I. but public policy, which works an exception to the general principle that carriers should combine with no others to the infinite injury of commerce.

A carrier is not liable to this extent unless expressly so made, because if the carrier gratuitously be
Bailment.

does not act as a common carrier.

A common carrier is in the nature of an insurer at all events except the acts of God and by the act of God is meant by Lord Mansfield "such an act as could not happen by the intervention of man or tempests, &c."

Fire occasioned any other way than by lightning is not considered as the act of God.

A rat gnawing a whole third of a ship is no excuse so that the carrier may be liable for what may be called an inevitable accident.

The letting the rat gnaw &c. is said by Jones to be ordinary neglect.

Inevitable may accident may perhaps be defined to be that against which human prudence (that is any human prudence) could not guard the act of God will always then be inevitable accident of necessity, that this is not true a case for inevitable accident may happen by the act of man or in conflagrations.

A common carrier is not excused by the act of robbers, for they are not enemies within the rule; but privates fall within the rule.
Bailment

If a tempest make it necessary to throw the goods of the Bailer overboard, the carrier is excused for the necessity of doing it as imposed by the act of God; but in this case the Master, freighters, and passengers must average the loss according to the law merchant.

In case of a box of jewelry being thrown overboard, the master was held not excused, for the loss was slight and of course no necessity for doing it.

But if a common carrier voluntarily stop the goods to damage from the act of God to the act of God shall not excuse him, as if a common carrier had voluntarily put to sea in very stormy weather so that a loss was probable.

A common carrier is excused if the loss is occasioned by the act of Bailer; or if in the consequence of a pipe of wine it burst from being in a state of fermentation.

So if the wagon be full and the owner forces the goods upon him it is his own folly and he must bear the loss if any happens.

In order to charge the carrier, the goods must have been lost while in his possession or
under his sole or immediate care; thus if the owner send his
own servant in a boy or vessel to take care of the goods
and he takes charge of them, the carrier is not liable
for the loss; that is therefore not liable as a common
carrier for they are not considered as in the carrier's
possession.

It is otherwise when they are delivered to the
carrier, but a passenger is requested to take charge
of them—

It seems that a common carrier who ignorant
of the contents of a boy, is liable for its con-
{tents in case of a loss unless he discharge himself
by a special, that is a qualified acceptance. Twice
as to the principle of this rule—

So to according to two decisions decided an-
otherwise, tho’ the carrier is misinformed of the con-
tents by the owner he is liable unless he accepts
specially; thus where the box contained a large
sum of money and the carrier was told by the
owner that it contained either tea, the carrier be-
ing robbed was held liable. So to when a box con-
tained £100 was said by the owner to contain books
and tobacco was lost—the carrier was held liable
because there was no special acceptance. But Blackstone says less damage might have been given.

Both of these decisions were approved of by Lord Mansfield and the rest of the Court of King's Bench by whom it was held that fraud ought to excuse.

They are also repudiated by Lord Lavina and by Sir John Jones, who consider the two cases before as wrong.

For the purpose of making a special acceptance it is not necessary that there be a personal communication between them by the owner and carrier. An advertisement in the public papers may be sufficient, that is the jury may infer from it that the owner had knowledge of the terms. It is a general rule that under a general acceptance except in cases of fraud, a carrier is liable for what he carries. But if he accept specially he is liable only as he understands to carry, that is he is liable only for as much as his warrant extends to, or to anything over he acts, indeed not as the carrier. Thus when a bag containing £400 in money was delivered to a common carrier who was told by the owner that there was but £200 and was paid for no more, which bag
war afterwards lost, the carrier was held liable for but £200.

This decision was approved of by Lord Mansfield. But Mr. Gould thinks as the case might be, he ought not to be liable to any amount, in case of such deficit.

The master of a stage coach who received hire for passengers only and not for baggage is not liable for the loss of the latter. It would be otherwise however if he had carried the goods for hire.

But common carriers are liable without any express promise by the owner to pay the hire since the former may recover on a quantum meruit.

The carrier is liable to the goods are lost at the time when he arrives.

He is clearly liable in this case if the custom or course of business is for the carrier to deliver the goods to the consignee. And he seems to be liable of course till the delivery to the consignee unles the established principle custom is not to deliver them to the consignee.

When the custom is not to deliver to the consignee, but to keep to the is not liable as common
war afterwards lost, the carrier was held liable for but £2.00.

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When the custom is not to deliver to the consignee, but to keep the is not liable as common
carrie after they are disposed of, that is deposited according to custom, but they are as liable as common carriers for the rates and charges.

When an action is brought against shipowners as common carriers they must all be joined for the action arises quasi ex contractio and non ex tituto. This rule requires the owners to have done no wrong.

The owners are liable because the master is their servant and because they receive the freight.

The nonjoinder of all is pleadedable in a bailment only.

At Com. Law, a post master being an officer appointed by law, was considered as a common carrier for letters but it is now otherwise by Stat. 18 Car. 2.

But the Post Master will be liable for his own neglect, not for those of subordinate officers.

The case in Wilson was against a depository post master, for his own actual default.

Even carriers are said to be liable on the custom of the realm, and the common mode of delivery is declaring in to count upon the custom and write it.

But this never answers for the custom being general in no other than the com. law. 3 Mod. 22.
Bailment.

When property is stolen from a common carrier or otherwise lost, or injured so as to subject him, he being guilty of actual misfeasance, the remedy against him is by special action on the case and not trover.

If he be guilty of misfeasance by breaking a box and destroying goods he found there. But he is not liable in trover even for actual negligence.

II. class of kind—Tonn Kepers.

A delivery of goods to an Inn Kepers seems to fall most property under the second general head of the 5th kind of bailment. A bailment of this description being a delivery of goods to a person exercising a public employment in his public professional character, to be carried or some other act to be done about them for a reward.

Esq. classes under the head of commissariat a lending gratia; but there is not the least resemblance between the two cases. Lending gratia is to a private person for his use and his sole benefit.

Dallak in his First Codex treats it under the last head that is a delivery to the Bailor to carry on to some
Bailment.

...about them gratis.

But first this delivery is always to a person as a private character, that is an innkeeper, he is not a public character, and 2 1/2. In cases of houses, the host can reasonably not gratis, nor in the case of mercantile goods, for in the latter case, his care is rewarded, by another and a gainful contract by which he is bound to entertain the owner.

The definition will apply to an innkeeper for this: the innkeeper he not paid in money, yet the guest attends at the inn not solely for his own necessity, but also that his goods may be safe. Indeed the price paid for a mug of beer may be considered as extending to the inn in part storage for it.

The general rule as to innkeepers is considered under another head; tithe. Under this head I shall lay down a general rule or two, as to their liability for the goods of guests when lost or injured.

Any person who makes it his business to entertain, and provide necessaries for travellers, and for their horses, for a reward, is a common innkeeper.

The bailment being reciprocally beneficial,
Bailment

An Inn Keeper would according to the general rule be liable for ordinary neglect only. But the policy of the law has extended the principle somewhat farther. It seems however not so far as the general liability of common carriers. There does not policy require the same responsibility or of a common carrier?

An Inn Keeper is clearly liable for any losses occasioned by his servants in any way, for he is bound at all events to provide honest servants.

So if the goods be stolen by any stranger, the host is according to the general rule at all events liable.

There is an exception to this rule, the last rule, when the goods are stolen by the servant or companion of the guest, or by any one whom he desires to have lodge with him.

To conclude he is liable for common robbery on the same principle of policy, Robbery perpetuated by such a force or in common presumption he might have resisted.

In Powidan indeed it was said that if the Inn be broken and the goods taken by the King’s enemies the host is excused which seems to imply that any other human force would not excuse; but I do not find so rigorous a rule laid down by any other authority.
Bailment -

Just write it as a note that a force truly irresistible does excuse; and Pollock in assigning the reason of the host being excused in the case he puts says "for in a case of such violence cannot be resisted," I conclude therefore that Force's rule is now.

I do not find any rule subjecting the host to inevitable accident such as fire &c. as in the case of common carriers. I conclude therefore that he is not liable. By the Roman law he was liable in all cases, except where the loss happened thro' inevitable accident.

It is holde not in case than an Innkeeper is not liable, unless there is some default on his part or on the part of some of his servants. This point is denied by Justice Bullen who says that it is not necessary to prove negligence. This contradiction is perhaps more by verbal - other idea perhaps is, that whenever the law makes him liable, from whatever cause, he is guilty of a default, from the very nature of his implied condition in undertaking the business.

He is liable as Innkeeper for such goods only as are supra hospitium, but the hospitium includes statutes. It is otherwise when goods are removed out of the Inn by the direction of the guest. It makes a difference.
Bailment

With respect to the liability of the innkeeper, in case a horse is stolen while in his possession whether he was put there by the guest's order or whether the host did it of his own accord.

VI. Mandatum

Mandatum is a delivery of goods for the Bailee to carry or to do some other about them gratuitously. It is called in English mandate, and sometimes acting by commission. The word commission in its present ordinary acceptation, denotes a bailment to one who receives a reward.

Mandatum differs from a bailement of the 5th kind in this, that in this case the act is done gratuitously, but in bailment of the 5th kind for a reward; the distinction between this and deposit is that one lies in custody, the other in feoffance.

This contract is for the benefit of the Bailor only, therefore according to the general principle the Bailor is liable for gross neglect only, that is a violation of good faith. And so clearly is the general rule established by the authorities, gross neglect is regarded
Bailment.

by the books or evidence of deceit or breach of good faith.

But when there is an engagement of the Bailee to use all necessary care and skill, or any other given degree, and a loss happens by his omitting to use it, he is liable, and such an engagement to use all necessary skill and care may be implied in some cases.

Such an undertaking may it is said subject him for his own gross neglect; but according to the case in Henry Blackstone, or rather in the argument of the court when the engagement is, to do an act skillfully or when a general undertaking implies that the act shall be done skillfully, the omission of the necessary skill was gross negligence.

So according to that it is a deceit a fraud. According to this mode of considering this point, an express engagement to exercise all necessary care and skill or such an engagement implied from he does not work an exception to the general rule.

But according to the case in New York, such an engagement is not implied unless the act to be done is in the way of the Bailee's profession or occupation.

So Jones makes a distinction between the duty of the Bailee, when it lies in possession or custody only.
In the former case greater diligence is required, than in the latter, the implied engagement being to use a degree of diligence proportionate to the performance of the undertaking.

The proposition in B. 13. 1. above cited seems contrary to the passage here quoted. But according to the definitions of the degree of diligence, the agreement expressed or implied to use necessary care will be equal at least to ordinary care, and make him liable for loss than gross neglect and therefore it does work an exception to the general rule.

This seems to me the proper mode of considering it.

When there is no agreement expressed or implied to use skill or more care than the bailee takes of his own goods, the bailee is liable for gross neglect only. Thus when a merchant engages to enter his goods with his own quater at the custom house, but entering them with his own they are seized because the entire shipment of a wrong denomination with his own goods, he is not liable.

It would be otherwise if a tactor engages to make a garment quater, for then the undertaking implies that all
when the

Jones 84.6
3y.

Jones 84.6
3y.

the phrase 'proof' which is the difference

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necessary skill and care shall be used in the making.

In the case of Cogg v. Barnard, Powell Justice
intimates that the special duty to carry safely was what
subjected the defendant.

Jones contends that the nature of the bail-
ment implied the same thing. This however is doubted
at the opinion of Powell seems to be correct; Besides Jones
himself says that a bailment to carry goods does not
imply an agreement by the mandatory to use all neces-
sary care and that he is liable for gross neglect on
ly. But I can see no distinction between doing and
carrying.

The engagement then implied extends however it
seems only to the preservation or damage of the act stipu-
lated. It does not provide against acts or accidents
not connected with the performance of the act. Thus
in the case of the tenant who works, greater the implic-
ated condition does not guard against robbery & — so
far as it relates to such accidents there is no implied
agreement to use all necessary care, and the Bailee is
liable for gross neglect only. So I apprehend, is the deci-
sion in the case of Cogg v. Barnard, for the engage-
ment was to carry the goods safely. Yet says Justice
A great question has been made whether the
Governor's letter was or not, or a
statement of the kind or the grounds
of that. I shall give the whole of the
of those which the mandatory
agreed to take in your interest.

After this, the evidence—

We were engaged that one should
receive and were on contract to
pay the one due to the other the day
before the other man's square in the before
instead of a square that might in the face
of that perhaps with these which is 1800
or much more than enough in the several
the document in all an indication
was the effectiveness of an act.

To see—

For the Governor's letter the

Of the Governor's letter the

Such was the experience that the

Jones, 96.
2d May, 91.
Jones, 62.

Id. 910.

911. 912. 913.

Id. 910.

910. 911.

Id. 909.
910. 911.


8. 7. 12.

9. 11. 19.

12. 9.

12. 9.

12. 9.

12. 9.

12. 9.
Bailment.

Powell, if a drunken man had prized the cork the Bailee would not have been liable.

But the Bailee may bind himself to be answerable for casualties.

Yet this promise to carry safely does not make him answerable for losses occasioned by the act of God.

And I apprehend that it does not subject him to any loss happening without some degree of neglect.

The mandatory cannot even by a special agreement exempt himself from liability for fraud, such an agreement being contra bonos mores.

This it seems from the language of some of the books, that when any degree of care is expressed either expressly or impliedly stipulated in the omission of it is gross neglect, yet the authorities are equally clear that on delivery of the thing the engagement binds as a contract, tho' not before delivery.

In the case of building the house gratis to God, it holds that the delivery and entering on the trust is a good consideration (Ple. 4, 128, CoL J. 667).

When special damages have been sustained by a party not taking the goods according to agreement, an action lies according to Jones 6, 207.
Bailment.

promise in gratuitous, but this is fronted by a recent decision.

If however the promise was made with a precedent intent the action would lie.

... says the ground of action in the above action is the special damage; this is undoubtedly if the action lies.

But special damage is not necessary since the thing has been delivered. For if the goods be actually delivered to a carrier to convey and the failure to carry an action lies for the failure on the agreement, then no special damage be sustained apart from it lies if there be special damage.

So if the injury or loss be by omitting the decree of care promised. It is said in Holt that the negligence and not the act is the cause of action, but the rule is otherwise laid down by Lord Holt. If the mandatory be not liable on the promise, how can lie the promise extend his liability? Without a promise the would not be liable in this case. The promise is therefore the cause of action.

Further rules are to follow applying to different sorts of kinds of Bailment.
1. Law 26.38
2. Prov. 24.4
3. Ps. 17.3, 36.
4. Es. 36.33
5. Lam. 5.21

7. 1 Cor. 16.2
8. 2 Cor. 3:6
9. 2 Cor. 3:7
10. Rom. 8:28
11. 1 Pet. 2:26
12. Is. 4:4
As to the Bailee's right to detain

A lien properly so called property so exists in the Bailee's favor I apprehend only in the fourth and fifth cases kinds of Bailment. It being I conceive a direct claim to an incumbrance upon some special property of another by way of a security for debt.

In the fourth kind of Bailment namely by pawnning a lien is created by the delivery itself without anything of post facto, and the pawnee has a right to possess retain until the debt is paid.

Most bailors of the fifth kind, that is where there is a delivery of goods to the Bailee to compute for a reward, have a lien upon the goods by a condition in law, till they are paid, but some have not.

A con. carrie has of course a lien upon the goods, that is a right to detain till paid, tho' the contrary is asserted by Powell Justice.

So it was said by Holt that if goods were stolen and delivered by the thief to a con. carrier he may retain them even against the owner till paid.

An then carrier has also a right to detain the goods
Bailment

of his goods paid for the expenses occasioned by the horse.

So the horse is left at the inn by a stranger, he may detain it, as in the last case of common carriers and for the same reason. 3 Decr. 155. 46. 67. 2 Bell 95. Pope 128.

So he may detain the person of his guest.

A horse cannot be retained for the entertainment of the owner.

The innkeeper's lien is lost by letting the horse go out of his possession.

So the tenant or other mechanic has a lien, the condition is stipulated in behalf of trade and commerce for the tenant is not bound to receive the cattle.

But when a tenant is in the habit of treating an employer, he ought not to detain for he gives a personal trust to the bailor.

An aggrieved farmer cannot detain the cattle for his pay because he is not obliged to receive them and the interest of trade and commerce does not require that he should have a lien.

But when there is a special agreement on which the bailor relieves he cannot detain. And it has been held that a special agreement to pay a run
Bailment.

certain without more. would entitle the right of detention as the

case of the common factor frequently mentioned in the books.

So a factor has a lien upon the goods of his principal in his actual possession; but he cannot possess them so
he may sell them. Bl. Rep. 1, 184.

The factor's lien is lost by giving up possession
to the owner. Bl. 4934. 1 Port 54.

A Bailee of the second and third kind, that a

Bailor or hiree has a right to keep the property, for

the time stipulated even against the will of the Bailee.

As where a horse is hired for a journey; this rather a

special property than a hire.

Rights of strangers how far affected by

Bailment.

If one bail the property of another, the bailee it

is said must deliver the property to the bailor accor-

ding to the terms of the contract for the bailee cannot

judge between the owner and the bailor but ought
to perform his contract.
Bailment

But is doubtful whether the rule means anything more than that the Baiter will be justified in delivering the goods back to the Bailor, that is, will be discharged of the owner's claim by this act.

For it is laid down by Bell that if the Baiter delivers the property to the Bailor, before or pending the action against him, by the owner, this will bar the owner's action.

If indeed the owner does not exhibit sufficient evidence to the Bailor of ownership, the latter ought not to be subjected. But if sufficient he afforded the Baiter would be liable, I apprehend, unless he had discharged himself by delivering to the Bailor set supra. In the case in Lord Raymond where the owner brought his action against a common carrier for goods stolen, it was held that the carrier ought to return for the coming bill.

But if a Baiter in a case of this kind dies and his Est. came into possession of the property, the Est. must deliver over to the owner and not to the Bailor for having given possession by law, he must deliver to him who in law is the owner.

An Est. is not bound to a tertial's personal trust, but may be out of the money.
Bailment.

As to the rights of the Bailee's creditors, who lay on the property as his and of purchasers under him.

By the stat. 19. Eliz. made to avoid fraudulent sales be to defeat creditors, if a purchaser of goods have them in the possession of the vendor, the bill of sale be being absolute, the creditor who levies on them will hold against the purchaser, such sales being in general to secure property and having a tendency to give false credit to the possessor, and hold out false countenance to the world in his favor; here the rule is founded on the original being fraudulent against the creditors of the vendor, so that the original purchaser acquired not title against them.

The law therefore as it stands under this statute does not perhaps fall under the head of bailment strictly speaking.

For when the transaction was in within this statute the vendor or he acquires not title against creditor is not properly speaking (so far as they are interested) to be considered Bailee. This law however having a deep connection with that on bailment ought to be noticed here.
Bailment

But if the want of immediate possession be inconsistent with the deed of sale, or where the deed is conditional it is not of course fraudulent, for by the terms of the deed the vendor can not have possession till the condition is performed, hence the presumption of fraud is not rebutted.

So when the nature of the case is such that immediate actual possession cannot be given; as in the case of the sale of a ship at sea. Indeed the delivery of the bill of the bill of sale is in this case considered as a delivery of the ship.

Doubt if the condition be subsequent as in case of a mortgage of goods, will the mortgagee retaining in possession till the day of payment bring the case within the statute of Frauds?

In the last case the want of immediate actual possession will not make the sale fraudulent, it may doubtless prove fraudulent from other facts indicating fraud if their be any.

The stat. 13 Eliz. ratifies only to creditors, and not to purchasers, and in in affimance of the common law only as to antecedent of creditors.

... But Lord Mansfield says that the common law have attained every end proposed by the statute...
The plan of the deposit of the Aborigines
of New Zealand is on the original building
being from talent - but see the
nature of false trade credit

24.2. 57th
7-4-70

$14,100

Aug. 56th
1 Oct. 66th
18 Dec. 84th, 73th
22 Dec. 85th

Comp. 20
Comp. 23
Comp. 232
Comp. 234
Aug. 81

1 Oct. 80, 83
1 Oct. 86th
2 Dec. 1172

1 Oct. 16th
4 Dec. 24th
10 Dec. 160
Bailment

The notion that false credits is given holds more strongly in favor of such subsequent creditors than prior.

If the want of immediate possession be not consistent with the good deed, it is fraudulent per se, in point of law, and not merely evidence of fraud, but the

By statute of 21 James 1, if a person who becomes bankrupt have in his possession and under his possession goods from another by the latter's consent, they are liable for the bankrupt's debts.

This statute extends as well to goods not originally belonging to the bankrupt but bailed to him or permitted by the owner to be in his possession, as to such as were originally his.

As to goods originally belonging to the bankrupt by him sold, but permitted to remain in his possession, the rule was as strong in favor of his creditor, before the statute was made, as by the Stat. 13. Eliz. and at common law the sale would have been fraudulent against the creditors of the bankrupt.

The rebutting of any presumption of fraud is it was free from all under this statute.

This statute extends as well to mortgagees as to absolute sale, when the vendee is left in possession and his...
Bailment.

When a bankrupt,

if the creditors claim the property precedent to their right of possession, it would not I apprehend be within the statute; for the purchaser does not voluntarily commute the vendor with the property, of which he has the right of possession.

The statute does not extend to ships at sea. 1559. 352. 4. 261, 2, 6.

In many other cases, a manual delivery is not necessary under special circumstances; or delivering a key of a store containing the goods is sufficient.

The goods must be possessed by the bankrupt, or his own goods, and in other words they must be kept in his possession, order, and disposition, or the case is not within the statute.

Therefore a temporary possession for a particular purpose, as title an opportunity offered of receiving the goods to the vendor, is not within the statute.

So the bankrupt must appear in all cases to be the owner, to bring the case within the statute; for if from the nature of the business the presumption of his ownership is excluded, the true owner shall hold as in the case of a factor, goldsmith or who do not deal.
Possession of said property is now in evidence.

In the course of payment, the following notes are encumbered:

1st. B. 60.
2nd. 80.
3rd. 120.
4th. 160.

In the course of payment, the following notes are encumbered:

1st. B. 70.
2nd. 110.
3rd. 150.
4th. 190.
in their own stock. The statute 13 of Eliz. and of 21 James 1 is in favor of creditor and not of purchaser.

The stat. 27, Eliz. is in favor of purchaser. The common law however would have attained all the ends of both of the statutes of Eliz. and the stat. of 21 James 1, so far as it relates to the rights of persons imposed upon by giving false credit

In common cases of bailment when the Bailor was not such a bailor as to bring the statute within the statute of 13 Eliz. or is not in possession or disposition, so as to bring it within the 21 James 1, and when he does not become a bankrupt the general rule is, that the true owner that is that the Bailor may have sworn against the purchaser under the Bailor or any subsequent purchaser, or a creditor who lives on them, as the Bailor, unless the goods are in the market court and so against any person into whose hands they might have fallen however honestly he obtained them.

This rule it seems is founded upon conscience in Eng. It has been several times suggested that the possession of a chattel, ought as against third persons, who trust to it to be considered as ownership evidence of ownership.
Please see page 579.

Sept 30th, 1816.
Oct 2d, 1816.
Oct 4th, 1816.
Oct 6th, 1816.
Oct 8th, 1816.

12th, 1856.
29th, 1857.

17th, Aug, 1874.
22nd, Dec, 1874.
360.

31st, Dec, 1816.
There is an exception to the last rule, when the property bailed is money or bank bills, there is a regular and bona fide transfer by the bailor, this not in the market or court, binds the property.

When the goods are left with the Bailee merely to keep, no purchaser can hold them against the Bailee, for they are not with the order and disposal of the Bailee, therefore cannot be sold without a violation of the terms of the bailment.

Nor will a creditor hold against the Bailee of the possession of the Bailee be so explained as to exclude the presumption of fraud.

The law it seems would stand upon a much more rational foundation if this broad principle were made the general principle of judging by. viz. that when one of two innocent persons must suffer, by the act of a third, he who trusted the third person and enabled him to do the wrong should bear the loss, rather than he who has not trusted him.

If goods be bailed for hire to be used by the Bailee for a certain time; it is a question whether the Bailee's creditors could can take the use of them for the term of bailment in execution.
constructive possession W.C. says means a right of present possession.

A lease of a thing real can be taken in execution.

[Note: Various numerical and textual elements are present but not clearly legible due to handwriting and wear on the page.]

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Bailment

It would seem by a decision of a Judge in T. Rep. that the owner might take it, but it is a personal trust and not transferable by the Bailee.

To what actions Bailees and Bailors are respectively entitled.

It is a general rule that the Bailor having the personal property may have trespass sworn against any person who takes or injures the thing in the Bailor's possession.

But the Bailor had the actual possession as in the case of a bill of sale of goods not delivered, for in personal things properly drawn after a possession in law.

If goods be bailed for hire to be used by the Bailor for a certain time, it is a question whether the Bailor can maintain trespass or trouce against a stranger for taking or injuring them during that time, but it seems that he cannot, for there must be a right of possession to maintain the action.

If goods in the possession of A. are bailed by B. the owner given to C. by prond and a stranger afterwards takes and injures them, while in A's possession. B. cannot have an action against the stranger for X. is not in actual possession, and a prond gift without delivery does not
That the gift being brought by the owner to the house, the agent having an action for delivery of the goods, or delivery to the owner, the owner is a delivery to the house — cases 194.

Exp. D. 14.

And if the house had not the goods or destroyed them, then an action lies.

2. June 955.

Exp. 877.


1. Roll 607.

St. Kp. 861.

F. M. 399.

Sal. M. 199.

St. M. 505.


1. Roll 607.

St. Kp. 861.

F. M. 399.

Exp. 577.

1. Med. 91. 445.

2. Dec. 165.

2. 62.
Bailment.

Transfer the property and therefore cannot give a constructive possession. Thus he is not strictly Bailor.

But slight acts will amount to a delivery, as delivery for instance to the donee's servant in a delivery to himself - Sup. 14, Comp. 244, 295.

If the Bailee give goods to a stranger, the Bailor cannot have trespass against the latter, nor in the first instance trover, for the stranger gains possession lawfully, but if the latter demands the goods if the donee refuses to deliver them, trover will lie for the Bailor.

But if on demand and refusal the Bailor exhibit an evidence of ownership, he may have trover against the stranger tho' the stranger may discharge himself by delivering to the Bailee before or during the action.

So most Bailors and I conceive all may maintain actions of trover to for the full value against a wrongdoer, as a common carrier a special carrier an assistant in bulk. There and all other slaves can bring the act for profit action.

The ground of the Bailor's right to sue as above is said to be his own liability to the Bailor 18 ch. 69.

And therefore it has been doubted whether a depositary can have an action of trover for against a wrongdoer under a general acceptance or an accept.
De Lucretius corn it is said he cannot give. M. Thence
not from
4 to 69. 45. Horace 164-75. 1 Inst. 89.
A special property makes a lawful possession. John 112.
5 v. 262.
396. 4. 8.
Hors. 407.
Stan. 505.
Dep. 575.
B. A. P. 38.
Dep. 575. 7.
Stan. 505.
7 T. R. 396.
F. Bar. 166.
7 T. R. 391.
396. 4.
108. B. Porter 44
Bailment

stance to keep as his own, because he is not liable in these cases for an unjust enrichment if you neglect. 2

But this is questionable, for every Bailee has a special property in the thing bailed, and is not this sufficient to give a right of action against a stranger? His liability to the Bailee I apprehend is not the true ground of his action.

It has been held that a finder has such a property as will enable him to keep the thing against all but the rightful owner; and consequently he may maintain a trespass.

It is laid down by Coke and Buller that special property is sufficient to maintain a trespass, and also if a house be blown down, the lease for life may have been against a stranger who takes away the timber, because of his special property.

So according to a late decision in an uncertificated book, if a tenant having acquired after bankruptcy, may have thrown against a stranger who shall take the goods out of his possession the case does not very nearly resemble that above yet it was. These Holden that a special property or even a lawful possession is sufficient against a wrongdoer.
Bailment

Besides the depository may by possibility be liable, as in the case of gross neglect, this seem sufficient on the principle that the ground of the Bailee's right to sue is his own liability, for no Bailee is liable at all events, and how shall it be determined before hand, in any case that there is an actual liability?

The principle advanced that the Bailee cannot maintain the action unless he is liable, would be equally an objection to any one's right to sue unless the question of actual liability were tried by the Bailee against the wrongdoer, but this would be clearly inexpedient, for the decision clearly would not bind the Bailee.

Also policy requires that the Bailee to keep should have the right, for the Bailee might be at a distance and a special remedy necessary.

Further, if the depositary have a special property, will not the law protect it? This right is of a higher nature than that of a stranger, as against the stranger he may be considered the owner he having a lawful possession which the stranger cannot have.

If a Bailee deliver goods to a stranger the stranger it seems may have an action against any third person, who is:
Bailment.

states his possession, for he is said has a special property and is liable to both the Bailee and Bailor.

An auctioneer may maintain an action on a contract for goods sold against the buyer, tho the goods are known to belong to another. This is a kind of brooke a factor a factor may have such an action.

When the Bailor and Bailee have a right to sue for the full amount, there can be but one recovery, that is for the full value. Therefore a recovery by one in trespass has the other's action.

And it is said in Noll that if both sue he who first recovers shall stay the other.

But Mr. Reeve thinks the commencing of an action for the full value by one, costs the other of his action of the same nature a right of recovery being attached by commencing the suit.

If the Bailor have recovered satisfaction if the wrongdoer he clearly cannot maintain an action against the Bailee for he can have but one satisfaction. So according to Mr. Reeve, if the Bailor commences an action against a wrongdoer the Bailee is discharged, that is the Bailor thus waives his action against the Bailee. I find no authorities in point, but if it be true
as above that the Bailee by commencing his suit against the
wrongdoer such as the Bailee of his action, the rule on princi-
ple must be as laid down. It is analogous also to the case of
singe risk and escape in which if the Pith prevailed as
against the servant the sheriff is discharged—

It is also analogous to other cases of electing one of two
remedies 1 Mod 663.

Thus if Barts be detained, damage present an act-
ion of trespass does not lie for damages done; but the posses-
see of the land had his election as to the two remedies.

So according to Mr. Reeve if the Bailee sue first for
the full value he makes himself liable at all events to the
Bailee. This must undoubtedly be the case if the Bailee by
commencing his action for the full value waits the Bailee
of his.

So the Bailee may have his action an action for his
special damages, who the Bailee has recovered the full
value according to the general rule damnosum rem ingra-
cius gives an action.

If the Bailee himself take the property from the
Bailee; before his special property is determined, the title
can be a special action in the case, against the former
but if its own he cannot have cannot have trespass or tro-
you must state in your declaration the value of the horse or the declaration is bad on
section— and the value of the horse must be stated so or to give a rule of dou-

Buller may be liable via 2 ways viz by an to untroupled epilepsy & untroupled Detain-

killed liable - 5 ways untroupled taking

3. 586
4. 260.

Wicks - 282
3. 400
1. 297.
4. 248.
8. 142.
Geo. 244.
Geo. 981.
Bailment.

...over for these actions are for the full value. Besides if the Bailee's right to have none of the...in any case, it is founded upon his possible liability to the Bailee, the foundation of such an action being against the Bailee, and his special property gives a right to these actions only against strangers. Provided the thing is not the Bailee's he has only the special property entitling him to the custody and use.

It is said in Coke that the Bailee's ownership should mitigate damages. But I apprehend in all cases where damages are merely mitigated when the full value is paid for as by retaking the property before suit - in the case of trans...over, the bailee has originally a right to recover of action to recover the whole, which action cannot be defeated by any subsequent act of the deft. till the damages may be remedied. But the special damages may be greater than the amount of the property, and damages cannot be measured in an action of trover.

If the contrary to the Bailee's order, deliver the goods to an other he is guilty of a conversion, and trover him against him without demand.

Generally the Bailee can maintain no other action against the Bailee than care; a special action on the case or the case for negligence; known for a conversion, or arising at the
The tenant's right against a stronger
when the vendor sells to his creditor.

3 Co. 146.
R. 191.

Co. 174.
5 Co. 128.
6 Co. 258.
6 Co. 249.

9 Co. 146.
R. 191.

R. 191.
Bailment.

Promise to redeliver.

This pass will not generally be because the original possession is not lawful.

But if the bailee destroy the goods the bailment is extinguished and trespass lies - P. 16. 464. 3 Litt. 146. 7 Dec. 236.