Contracts
must appear some when sober debtors or the contracted or
acknowledged in it or it is said every day some by
account and debtors
Contracts.

A contract is an agreement upon sufficient consideration to do or not to do a particular thing. 1 B. & C. 3, 134.

A written contract not under seal is in law considered as a par
not contract; but in Equity, it is considered as a specialty. 2 T.R. 183.

Both in Law and in Equity it is essential to the validity of a contract, that there be a consideration, or that the contract be
such that no proof can be admitted to show that there was no

A man cannot be compelled either at law or equity to fulfill a contract entered into without consideration, unless the nature of the contract include all the inquiry respecting the consideration.

The quantum of consideration is not however considered regarded: The if the thing specified as the consideration have no value as a such the contract will be void—5 T.R. 273; 2 P. & R. 47, 138.

But it is not easy to discover how a pepper corn which is a sufficient consideration is more valuable than a rush.

The relation of landlord and Tenant is a sufficient consideration to support a promise.

It is a common opinion, that a written contract under
hand and seal acknowledging a consideration, but a written contract in itself considered no more binding without consid—
Remarks.

for the consideration is only to give effect to the contract, it is not to furnish evidence to greater that they may the sum nor does it furnish greater evidence that she has paid a cent of it - confirmation proroged from sealing what is the instrument itself, & that length of it is now

said
Contracts

Or rather than a partial contract would be: for if from the face of the writing it appears that there was no consideration it is void. Is it void? May not nominal damages be recovered?

But if it does not appear from the face of the writing that there was no consideration, the contract if reduced to a special story will be binding as to the parties. And proof being inadmissible to prove the want of consideration in a special contract unless the rights of third persons are affected by the contract.

The consideration of a contract express in a deed is conclusive as to the existence, kind, and substance of the consideration between the parties; but it is only prima facie evidence as to the quantum.

An voluntary single bills or covenants only nominal damages are recoverable, the consideration being temporary. To the restitution, i.e., the loss or, in other words, the

If a consideration be acknowledged and it does not appear from the face of the writing, whether it is sufficient or not, the parties cannot go into an inquiry respecting it, but third persons interested may, and the valuable consideration should appear upon the face of the writing, yet third persons may prove that there is no consideration.

More: Are even nominal damages given if it appear from the face of the consent that there was no considera
Remarks.

0 The parties, estoppe.
Contracts

...And can want of consideration be proved, if the conveyance purely acknowledges a consideration -

If the consideration of the contract be illegal it may be enquired into as between the parties themselves.

An undue advantage taken of a minor situation being unconscionable voids a contract in Equity the not at Law.

Equity will relieve against fraud or imposition practiced upon persons of weak minds: as also where parental influence is used to induce a child to enter into a contract.

But if the parties to a contract were upon equal footing, and no imposition or undue influence was practiced, equity will not interfere, the one may have obtained the advantage in the bargain - Courts of Law will in cases where there is no actual contract, will upon the idea of an implied contract compel the payment of money which is justly due.

Principles of policy indeed prevent Courts in some few instances, from lending their aid; but when no such considerations mitigate against private justice, the court will in all cases compel a debtor to pay over money, which in good conscience he cannot retain, and to which the party in good conscience is entitled.

A contract merged in a security revives when the security is avoided if Justice requires its revival.
Contracts

A partial contract is not merged by being reduced to writing but if a bond or other security which moves the consideration out of sight, and enquiring, be given, the partial contract is merged, and a written contract expressing the consideration may be merged in the same manner, in case or to a debt which is to occur in future, as an annuity payable in installments when a bond is given to secure it the bond acknowledges a present debt.

A person cannot by performing part of an entire contract entitle himself to recover the whole.

Persons by law disabled to contract.

It is a general rule that all persons who have not the physical or moral power to contract, or who have not the exercise of their power are by law disabled to contract from making a valid contract. An assent it is said is necessary to the binding force of every contract and an assent in consideration of law involves the free and deliberate use of those powers therefore the absence of either of these powers in either party to the contract renders that party incapable of binding himself by such contract or agreement.

The observations according to Mr. Powell apply.
all cases of express contracts. But when the contract is implied, an assent is not of course necessary. It is a common opinion among lawyers that the binding force of such contracts depends upon an implied assent, but it is apprehended that this opinion is untrue; and the true ground on which such contracts are imposed is, not that there is an implied assent but that it is just right, that they should be performed

Here are some cases in which an implied assent is apparent, but there are others in which it cannot be implied. Thus where a husband turns his wife out of doors and forbids all persons to trust her on his account, he is bound by her contracts for necessaries; and this it is said is on the ground of implied contract; yet plainly no assent can be implied for the term assent denotes "the acquiescence of the mind to something proposed or affirmed" and in this case there is an express refusal.

There are several descriptions of persons who fall under the general rule, first laid down

I. Idiots, lunatics and persons of unsound memory are incapable of assenting. These contracts therefore are not merely voidable but void; and they may always plead non est factum. This rule is evidently a just one but there seems now to be a current of opinion, that a lunatic he cannot take ad:

Contracts
Remarks

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Rev. 13, 12. 20, 21.
47: 12

[Blank page]

Rev. 13: 4, 14, 15. 10: 10, 14.
Contracts

wantage of his lucency & to avoid his contracts. This opinion is
as old as the same books, yet the only reason assigned in support
of it, was, that no man shall be allowed to testify himself.
But the heir at law of such lunatic & it was admitted might
avoid the contracts of his ancestor--Courts seem to have
held that it was incumbent for a man to testify himself, but
that his child or whoever his heir was might do it with per
quity. Webster in his Law gives it for granted that
was not always the law and Blackstone in his Comment.
 ridicules the opinion by his mode of considering it. The
opinion however is supported by many modern authorities.

Pitard indeed assigns an additional reason in support of this rule he maintains, that if a man were allowed to testify himself it would open a door for fraud.

This argument however carries no more force when urged against a man's testifying himself, than against every mode of avoiding the contracts of Lunatics, since in what wise manner they are avoided the same dangers of fraud exist. But it is settled that the contracts of Lunatics may be avoided in two ways:

Whereas a man is found to be a lunatic, the
King or his legal guardian may avoid all contracts made.
Contracts

Suspicious persons after he becomes a lunatic.

A suit may be brought forward by the Attorney General in Chancery with whom the lunatic may be joined in order to avoid all contracts made after the lunacy commenced. On application to the Chancellor commissioners are appointed to examine whether a person is a lunatic. And if he be found such a person, a writ of habeas corpus will issue for all creditors to show reason why his contracts should not be set aside.

Now what possible objection exists against the lunatics avoiding his contracts at law, which does not lie against the Attorney General avoiding it in the lunatics name in a court of Chancery?

II. The second class of persons disabled from contracting are drunk men; their contracts are with certain qualifications voidable. There has been no decision upon this point in a court of law.

The general rule adopted in the Court of Chancery is this: If one induces or in any way causes another to be intoxicated and then takes advantage of his situation so as to overreach him in a bargain, the bargain is voidable in chancery.

But if a person find another drunk and take advantage of his situation, to make an unfair contract
Remarks.

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[Note: Due to the condition and legibility of the document, the text has been omitted.]
with him: there is no decided case that warrants the interference of Chancery to avoid contracts—yet an undue advantage is taken of an other's situation in this case, it would seem that upon principles adopted by Chancery in other cases, the contract might be avoided.

If however in the case above, the contract be not unreasonable Chancery will not interfere the the drunkenness of one of the parties was caused or induced by the other—there is at least one case of this kind.

The general reason why all contracts entered into by drunken persons may not be set aside is founded upon policy since such a rule would lead to dangerous consequences in a country where the opportunities for intoxication are frequent.

If money be taken from a drunken man without any consideration an action of debt cannot be to recover it. This act done whenever it lies is convenient with relief in Chancery.

The cases of contracts made by persons of weak minds, the degree of weakness that will warrant the intervention of Chancery is matter referred to the discretion of the Chancellor. Indeed Courts of Chancery deny that they ever set aside contracts on the ground of weakness in one of the parties they being we are told no judges of the weakness of intellect. They assign grant for the reason of their interference.
Remarks

[Handwritten text not legible]
Contracts

But the fraud in one party is evidently a weakness in the other, and the former cannot be supposed from the case decided, without first supposing the latter.

If unfair advantage be taken of a person, whose mind is weakened by sickness, chancery will grant relief.

IV. The contracts of Tune courts, and Infants have been considered under other heads.

Of the binding force of Contracts as to the parties and others.

Some persons may by their contracts bind not only themselves, their heirs, executors, but others also; as for example Heads of corporations, Secretary of a town, agents, attorneys, &c. Agents authorize them to bind their employers only when specially authorized. Secretaries have a power general to prosecute.

Heirs, executors, and administrators are bound by covenants of their ancestors, &c. if they have assets.

An heir may be compelled in chancery to carry into effect, the agreements of his ancestor.

A joint tenant may also be compelled to execute an agreement or covenant made by his deceased.
Remarks:

[Handwritten text not legible]
Contracts

fellow tenant to convey. Chancery considering the joint estate or secured, from the time, at which the covenant to convey was made—

A husband is in many cases bound by the contract of his wife—

A subsequent mortgagee is preferred to a prior mortgagee; if the latter acquainted with the subsequent mortgage does not give information that the same property is mortgaged to himself—

If a prior lessor urges a second to take a lease of the lands leased to himself from the lessor, the second is preferred—

If a settlement is made of intailed lands as a jointure in loco of dower and the person entitled to the remainder in tail knowing of the transaction, does not give notice of his claim his right shall be postponed to the jointure—

If a person holding a bill of exchange fails to give notice to the drawer when it is discharged he shall lose his claim—

If a grantee of lands expressly informs the grantee that he shall not have ingress or egress to his grantor's land, the law will notwithstanding give the grantee—
Contracts

The right of ingress is if it be necessary.

A grant to a lunatic is good. So a bona fide grant to one who knows nothing of the grant, is valid, if afterwards annulled by the grantee.

If a party contracting is ignorant of his rights, such ignorance will sometimes invalidate the contract.

But a compromise of a dubious title is binding notwithstanding ignorance in both, either of the parties. Ignorance of the law it is said will not exonerate a party from the obligation of his contract.

But this rule does not appear to be strictly true. For in the dispute of two brothers respecting the right of inheritance referred to the school master and afterwards settled between them, by agreement, the only ground on which the agreement was set aside was the ignorance of one respecting a rule of law.

On the same ground was an orphan relieved against her own election of a less sum than she might by law claim.

Contracts capable of being affirmed or avoided.

Avoidable contracts may be ratified by matter of fact, or a subsequent promise; but avoidable contracts...
Contracts

A contract obtained by duress may be affirmed after the duress; yet if it be affirmed under ignorance of the law as to its binding force, equity will relieve against it.

A promise made by one of whose critical and unfortunate situation advantage is taken, to procure the contract, is not binding.

A promise to pay a note by promisee when it is not due, is not binding, if the promisee is ignorant of his legal right to refuse payment. In case as to this rule—

Ignorance of the law appears to be the only ground for setting aside contracts in these cases, but no definite rule can be established for determining in what cases ignorance of law shall have this effect.

Ignorance of fact, fraudulently imposed, is always reason sufficient for setting aside a contract.

If a misrepresentation be made respecting the true state of the property, from ignorance, and not from fraud, the rule respecting the contract, which the misrepresentation has affected is this. "If the contract would not otherwise have been made, it may be wholly set aside; but if the contract would have been made, the misrepresentation had been made, it must stand."
Contracts

In some instances the intention of the parties or to the nature of their consent will be inferred from circumstances, as from the price, and the like—Thus, if a man sell a horse for a good price, the contract will be void unless the horse was sound.

But in the case of a bill of exchange, Lord Kenyon was of opinion that if the holder sent it to market without endorsing his name upon it, neither monotony of the laws of Eng. would compel him to refund the money for which he had sold it, if he did not know at the time, that it was a good bill.

It is a general rule of law, that in express contracts, if the thing stipulated for is not delivered; it need not be performed; if the contract is the rule of damages, in an action at law for non-performance.

Any contract naturally impossible to be performed (except a bond with an impossible condition of which hereafter) is void, and money paid to induce a performance of it, may be recovered back in an action of Ind. Currupto. But if the impossibility of performance arises merely from the impracticable circumstances of the party undertaking, an action lies to recover damages for non-performance.

But in some cases where it is impossible
Contracts

for the party stipulating to fulfill his engagement; or when
this want of science acquaintance in science be ignorant of the value of what he promises to perform, as in
the case of lands, causes, courts of law have made the
value of the article sold, the rule of damages. The propri-
ety of such a decision may be doubted; for by establishing
such a rule, damages, the courts evidently make a con-
tract which the parties never intended or contemplated.

Besides, or fraud, or undue advantage is very apparent in
case of this kind, it would seem that the contract must
not be established at all.

It is generally true that a promise to do one of
two things, in the alternative leaves the promisor at lib-
erty to elect which he will perform, unless contrary ins-
otution appears.

A bond, with a condition which is idle, few
alone, impossible or illegal, is good, and the condition
is void; but in this case, the condition is incorporated
with the bond, the whole is void.

If a condition be partly impossible by the act
of God, or of the law, it ought to be so far performed as
possible.

In law, if the penalty of a bond appear to be...
Remarks

(a) Assessed damages in cases where the damager are previously
agreed upon by the parties; as for instance A to plough to B both
plough and meadow ground upon the con-
edition that if B ploughs any of the meadow he
shall pay to A 10\ö in this instance the court will
not assess more than the 10\ö because it is the exac-
t damager assessed between them — But had B given
to A (in the room of the 10\ö) a bond of a £ 1000 this
would have been in the nature of a penalty and
the court would have assessed it down to what
were they should have thought the real dam-
age were sustained by A—
Contracts

in the nature of assed damages courts will not change the bond, otherwise they will: courts of law are in Eu[, empowred to change by statute.

In cases of bonds for money, it is done, on payment of principle and interest, or bringing into Court principle, interest, and costs.

If an impossible precedent condition be annexed to the grant of an estate, the estate can never vest.

But if there be an impossible subsequent condition on performance of which the grant is to be defeated, the estate vest absolutely.

If the act of a stranger be by the terms of a contract necessary to the performance of a contract condition precedent, and he wrongfully refuse to act, the party bound to performance is not to suffer.

One party's preventing the performance of a condition is equivalent to a performance by the other.

Thus the Deft. preventing the performance of a condition precedent to the Pltf.'s right of action, is equivalent to performance by the Pltf.

A contract in order to be binding, must be not only naturally possible, but morally so, that is, must be lawful.

A promise which the party making has no power
Remarks.

1 Cor. 12:26, 29.
1 Tim. 1:12.
1 Tim. 4:13.
1 Tim. 6:20.
1 Tim. 6:21.
1 Tim. 6:22.
2 Tim. 2:19.
2 Tim. 2:24.
2 Tim. 4:7.
2 Tim. 4:8.
2 Tim. 4:9.
2 Tim. 4:10.
2 Tim. 4:11.
2 Tim. 4:12.
2 Tim. 4:13.
2 Tim. 4:14.
2 Tim. 4:15.
2 Tim. 4:16.
2 Tim. 4:17.
2 Tim. 4:18.
2 Tim. 4:19.
2 Tim. 4:20.
2 Tim. 4:21.
2 Tim. 4:22.
2 Tim. 4:23.
2 Tim. 4:24.
2 Tim. 4:25.
2 Tim. 4:26.
2 Tim. 4:27.
2 Tim. 4:28.
2 Tim. 4:29.
2 Tim. 4:30.
2 Tim. 4:31.
2 Tim. 4:32.
2 Tim. 4:33.
2 Tim. 4:34.
2 Tim. 4:35.
2 Tim. 4:36.
2 Tim. 4:37.
2 Tim. 4:38.
2 Tim. 4:39.
2 Tim. 4:40.
2 Tim. 4:41.
2 Tim. 4:42.
2 Tim. 4:43.
2 Tim. 4:44.
2 Tim. 4:45.
2 Tim. 4:46.
2 Tim. 4:47.
2 Tim. 4:48.
2 Tim. 4:49.
2 Tim. 4:50.
2 Tim. 4:51.
2 Tim. 4:52.
2 Tim. 4:53.
2 Tim. 4:54.
2 Tim. 4:55.
Contracts.

to make, either in fact, or law, is void.

A contract may be unlawful, as being unlawful in itself, or because prohibited.

It may be made prohibited, as being first opposed to some statute, secondly contrary to the welfare of the community, or thirdly contrary to some maxim of law.

A security given, or a promise made, in consequence of a transaction, is illegal, by positive law, is not of course void; as if one of two partners, on a loss sustained by both, in an illegal undertaking, pays the whole, and makes a security from the other for the payment of part.

An engagement to do an unlawful act, or to pay or indemnify one another for doing it, is void.

A contract made to induce an omission of duty, is void as being unlawful.

A contract tending to encourage any unlawful act, or omission, is illegal, and void. This rule operates even against strangers, if they collude with and assist the native in violating the laws.

A mere wagering contract, affecting the peace of third persons, tending to introduce indecent evidence, or operating against sound policy, is, in Eng., where wagering contracts are sustainable, void.
Contracts.

But generally wagers are sustainable at common law.

At common law gambling is not illegal. A wager respecting the mode of playing an unlawful or illegal game is void.

But it is not every idle wager void.

A contract to procure a trade is void: the contract not to procure a trade, in any particular place, if made upon reasonable consideration is good.

Marriage bonds, the good at law, are void in equity, as being incestuously corrupt. 3 Edw. 6. 14 Edw. 3. 25 Edw.

In case of a contract with an heir apparent for an estate in expectancy, if there be great inequality in the terms of the contract, and the money was expended by the heir in dissipation, equity will grant relief. But otherwise no relief can be obtained unless perhaps where the inequality is so great as to afford evidence of fraud.

If an unlawful contract, which was not binding, be actually performed, no relief can be had either at law or in equity provided that both parties are equally guilty.

An infant may however recover by indictment, after age, money which he has lost at gambling; yet he is clearly party to the contract.

And if one party has been induced by necessity to pay money upon an illegal contract, it may be recovered back in
Contracts

an action of Indeb. Aplt. Ind. Aplt. however now her for money which the holder in good conscience cannot retain.

If a man has received money as hire for the perform-
ance of an unlawful contract, he may recover it
back, if brought before the act committed, but not afterward.

Contracts made to defraud third persons are illegal
and void. 11 Will. 3, c. 10, 456.

An illegal transaction by one of two partners gives
as to the other, that is, he is affected by it, he not being
or consenting to it.

By a state of law contracts for money were at first
are void. By an other state, the security for money but at
the time and place of payment void.

If one personne security be made the consid-
ervation of one other, the tatter is void.

If one of two contracts is unperfect and the two are both
blended together in one security: and that security is after-
wards as avoided, it has been a question whether the good
contract survives. On principle it would seem that the
good contract would survive, for such security which
avoided is considered as void to all intents and purposes
abinitio. It cannot come be given in evidence.

It would be absurd to accede to such a security.
contract respecting lands  executed according to the  
lot lost of the place where the lot  
contract to have the same effect that the day does where  
a new or the council day of the same securer as  
the of absent - otherwise it not to be performed clear  
but where it is to be performed - by for the  
leg lost where the said is clear - to prejudice the  
lot of time or the promise - contract to do  
that which is made good between have had  
not than where to be done leg lost of the place where  
to be done yourselves - if new in the  
how or otherwise - the proof to answer in every  
how yet remedy time of lived time for a brief proof - in  
with - the undoubtful damages where  
down the leg lost of the place persuade
 Contracts

so great efficacy as to merge and annulitate a contract, which was originally valid.

A bond obtained by duress as a security for a contract of a lower nature, does not avoid the principle contract, but if one part of an entire is void, the whole is void also.

 Lex Loci.

It is a general rule that when a contract is entered into in a foreign country, courts will support it agreeably to the laws of the country where it was made.

But if a contract be made to be performed at home, and is contrary to the laws of those existing courts will not support it. So if the contract be to do a thing unlawful in the country where it was made, the court will not carry it into execution, tho' it be agreeable to the laws of the country where it was made.

If judgment be had the interest of the country where it was rendered is to be allowed on the judgment in case of delay.

It is a general rule that a person is tried & punished for a crime in the state where the crime is committed. But if any person has received a private injury in consequence of commitall the commission of a crime.
Contracts

he may have an action to recover damages against the person injuring,
in any state, the action being transient, and if double damages are
given in the state where the injury is sustained, that will be the
rule of damages in the state where the action is brought.

If a person is guilty of a transaction, which is treason in
the state where committed, be prosecuted in a state where it
would not be so considered, yet the law of the state where the
act was done will govern; if a contract is made in one state
to be performed in another the place of performance will
govern.

lands must be conveyed according to the laws
of the state where the lands lie.

Usury

Usury is an unlawful contract upon a loan of money,
to receive the same with exorbitant interest.

By the Eng. stat. of any such contract by which more
than five per cent are received for the loan of money, is
void for the loan of money is absolutely void, and in addition
to the loss of more than five per cent its true value is perfidiously
squeezed, so as to recover it the true value is forfeited and may
be recovered in an action popular.
Contracts

An illegal receiving, subjects to the penalties of the state, an illegal reservation makes the contract void, but an illegal reservation does not incur the penalties of the state, nor does an illegal receiving affect the contract.

If upon the loan of a contract for the sum of $100, $5 be reserved at the time, and an obligation for $100 with legal interest, too much is reserved, and the contract is void. A contract good at first cannot be made unvoid by matter extrinsic.

Courts of equity in considering unnuance contracts, aside from the rules of positive law, expunge only the excess over legal interest, and allow the lender to recover in the same manner as if the contract had been originally legal. This rule obtains when the obligor brings a bill to have the security delivered up, and not when the obligor is the creditor.

A good agreement to take more than legal interest made at the same time of the execution of the bond, re-in-ving in the bond, only legal interest, avoids the bond.

A separate note given to secure unnuance interest is not only void itself, but renders the principal contract void.

Any shift or contrivance, by which more than legal interest is reserved, makes void the contract.
Remarks

1. 200 lb. 200 lbs.
2. 2 lb. 2 lb.
3. 11 lb. 11 lb.
4. 1 lb. 1 lb.

2. 200 lb. 200 lbs.
3. 67% crude
4. 13% crude

3. 50% R.
   Show: 329
Contracts

When the object in view between the parties is a sale only, no excess of price nor any sum taken for bad faith will render the transaction uncertain.

But if the sale be colourable only, and the real object be a loan, exorbitance in price, or an exorbitant sum advanced for bad faith, will render the contract uncertain, as if there had been a direct lending in the first instance.

To make a contract uncertain, it is necessary that it be corrupt, for no mistake of whatever kind will render it uncertain. And whenever there has been a mistake which means the appearance of error, the plaintiff in his replication to a plea of error may set forth circumstances to prove that there was no intention to take more than lawful interest.

If in an action on a uncertain contract, the plaintiff fails in the manner in which he charges the error, the defendant must prevail.

In suit, error may be given in evidence under the general issue; in the case of specialty, it must be pleaded.

The superior courts of this state have established a rule for the computation of interest. See Kirby's Keys.

The federal court have adopted the former part of this rule of the superior court in all cases.
The earning of interest is a mode different from that establisht by the courts of law, with no intent to evade the stat, does not constitute usury. And it is now settled that the receiving of money for interest before the end of the year is not usurious, tho' some what more than the legal interest is in this way retained.

When according to the term of the contract there is an actual and bona fide interest, risk or hazard of the principal, a reservation of more than legal interest is not usurious; as in the case of reeninies for lives etc. On the ground of the actual risk of the principal, the lending of a cow to be returned in 3 years with another cow is not usurious.

But there must be an actual lending, and a real risk run on the contract is usurious.

The hazard in these cases must be the real, and not merely colourable, the in many cases it may not be easy to distinguish the fiction from the reality.

Any attempt to evade the stat. by ingenuity orificie, de will being a person within it.

An increase of interest, in the nature of a penalty, for not paying the principal at the time appointed, is not considered usurious.
Contracts

It is however curious, if merely colourable to evade the
stat: the obligor having it in his power to avoid the additional
interest by punctuality in the payment, why the rule was made
it not curious, yet unlawful interest is recoverable.

Money must be pleaded in an action on a promissory
but not in the case of a simple contract.

If a contract be made, and to be performed in a for-
ign country, in which the contract is made, their laws respec-
ting interest are allowable.

It is presumed that if a contract were made in one
country, and the security for it made in another, the interest
of the country in which the contract was made, might be rec-
cognized in the security. Hence, if the original contract was
intended to be performed in this case in the latter country

If both parties for the purpose of evading the stat:
should go into a foreign state, and there execute a contract
for the loan of money; such a contract would be presumed
to be governed by the laws of that state, where the parties
lived.

There is also an analogy between this case, and that
of a marriage celeberated in a foreign country, between per-
sons who go there to evade the laws of their own country.

Compound interest is not considered extensive.
but from principles of policy, courts will not allow more than simple interest to be recovered upon a contract creating compound interest. But if compound interest be actually paid, or if a separate interest security be taken, making principal of the compound interest which has accrued, courts consider payment or security as legal.

But when the lender (profiting by the enhanced situation of the borrower) takes compound interest, as condition of forbearance, courts of chancery will grant relief.

If a sum not greater than compound interest between than simple interest be recovered, not as interest, but for the forbearance of the contract, is erroneous.

If one erroneous contract be made, the consideration of another, the latter is void; but a corrupt agreement to which the party was not privy shall not inure him; thus when one note was taken in satisfaction of two others, one of which was erroneous, it was adjudged by the superior court of this state, that as the 2d., was not privy, the last note in his hands was good, as the original note was purged by the subsequent transaction. How do this decision decide consistent with the established principles of law?

It is an established rule of law that interest on
Contracts

Liquidated sums, not expressly reserved, are payable from the time of payment.

If no time of payment be fixed, it accrues from the date of the recital.

A loan of stock, or of money produced by the sale of stock, on an agreement, that the borrower shall replace the stock, or pay the money with such interest as the stock would have produced, is noturious, tho' the interest exceed the legal rate, and tho' the money was to be repaid on a day not subsequent to that on which the stock was to be replaced.

A plea of usury must set forth the principal sum loaned, and the sum reserved for interest.

During a consent agreement for more than lawful interest, that the Pf. received more than lawful interest is not sufficient.

A special verdict finding an agreement to pay more than lawful interest, but not finding that it was consented to, does not enable the court to give judgment for the Def't.

Contracts void on account of Frauds.

Fraud in the execution of a contract renders it absolutely void.
Remarks

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Bib. 391, 392, 474, 460, 362
2 Pet. 4, 7,
Rom. 4, 34.
450
And non-off, and non ent factum may be pleaded to such a contract. But if the fraud be in the consideration the contract unless it be for money only and the fraud is not in good at law, nor is it strictly speaking void in Equity, the then will in some cases of this kind reliefe against the fraud as hereafter mentioned; but the contracts of this description are good at law, yet the party injured may obtain legal redress by an action for damages. The reason assigned for this is, when between fraud in the execution and fraud in the consideration, is that in the consideration for an case, the party imposed upon does not in contemplation of law assent to the contract, but that in the latter he does. But it seems to me that the assent is virtually wanted in both cases. The real ground of distinction I apprehend to be this, that when the fraud is confined to the consideration, it would be impossible in many cases to determine from the terms of the contract whether fraud had been practiced or not. But if the fraud in the execution the line of distinction is obvious.

Courts of law have lately shown a disposition to set aside contracts for fraud in the consideration. When there is a particular fraud in the consideration of a contract, and the legal remedy will not be effected, or if the party who has practiced the fraud is unable to respond the damages recoverable at law, Equity will grant relief; not
Remarks

[Several paragraphs of text discussing various points, possibly historical or theoretical in nature.]

[Further paragraphs continue, each exploring different aspects of the discussion.]
indeed by annulling the contract, but usually by offsetting the
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indeed by annulling the contract, but usually by offsetting the
damages, which might be recovered at law against the contract,
and by striking such a ball balance as justice requires; or in
other words, by annulling the contract on condition of the ob-
siger's paying what is justly due. But the party applying
for remedy in cases of this kind must show the insufficiency
of the legal remedy.

If a contract be set aside for fraud in the execution,
the party who has practiced the fraud, may sue upon the
bona fide contract, originally agreed upon between the par-
ties, and recover at law, yet equity would not in this case de-
serve a specific execution of the contract in his favor, beca
he has not acted in honest part than the whole transac-
tion.

When there is fraud in the execution of the contract,
the party imposed upon not having paid, cannot at law re-
cover damages for the fraud, for before damages are sus-
tained by payment, he cannot have suffered. But by
filling a bill in chancery, he may compel the party to suc-
renders the obligation.

It is a general rule that equity cannot relieve,
when an adequate remedy can be had at law. By an adequate
remedy is meant, one which will effectually answer the
Remarks

[Handwritten text]

Ecc. ix. 474.

2 Sam. 594.

Eph. 239.
demands of justice, and if such remedy is not afforded by law, it cannot be obtained without great expense and uncertainty, chancery will interfere and grant relief.

When on a contract last mentioned of the kind last mentioned, one has paid money, he may in disaffirmance of the contract recover what he had advanced, in an action "for money had and received," or in an action for damages in disaffirmance of the contract.

But if the property parted with in this case, be any other than money, the latter remedy only can be obtained for an action "for money had and received" his for the recovery of the property, but money itself—

of a total fraud in the consideration shown a land in Co.

**Actions of Fraud**

An action of fraud lies as soon as the fraud or the falsity of the covenant is discovered.

This action lies in all cases of fraud. 16 Cr. 1295. 191. 201.

12 Com. 166

I. It lies upon a warranty, when one falsely warrants property sold or being his own, or as being good in its kind—

II. It lies on the false affirmation, when the property signifies that it possesses qualities which it does not—
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III. When the vendor of property conceals private property defects known to him:

In the first and last case, the action lies on the express warranty.

In case of an express warranty, it is not necessary to entitle the vendee to damages, to show that the vendor knew the warranty to be false, it is sufficient that the warranty prove false.

If a warranty prove false at the time of making it, the vendee may support an action without either returning the property, or giving the vendor notice of the soundness of it.

When there is an express warranty, after will lie:

That an action may be sustained on the warranty, it is necessary that the warranty be made at the time of the sale, or if it be made at a different time, that in every case at a time previous to the sale, an action of fraud will lie on the false affirmation.

There is not the action for false affirmation found on tort, and the action for false warranty on contract.

In an action for false affirmation, notice it is said, must be stated.

An action of warranty will lie when the vendor warranty qualities which it is apparent to every one that the property does not possess.
Remarks

(a) It is now settled that damages may be recovered.

1787, p. 490.
11, Nov. 17, 17—

£629,632.
Bills 526, 247.

1718, p. 570.

821, p. 747.
P. 143—

1762, p. 107,870.

Earles 90.
Bills 57, 57.
60 — Earles 54.
Contracts

If the purchaser of unassayed property, which was not wanted, sell it, after the vendor has refused to sell it, take it back, still the former may sue on the warranty.

Any imposition appearing to be an express fraud, will lay a foundation for an action of fraud, even tho' the vendor said nothing to deceive the vendee. Concealing defects amounts to a warranty.

If an express warranty amounts to be accompanied with an agreement by the vendor, to take back the goods, if on trial they are found defective, the buyer must return the goods as soon as he has discovered the defect, in order to maintain the action his action on the warranty.

If one purchase property of no value at all, the vendor not knowing the defect, but being entirely honest in making the contract, it is doubtful whether any action for damages can be maintained by the vendee; an action for fraud certainly cannot.

Whenever one sells property to another, the law raises an implied warranty on the part of the vendor, that the property is his.

When one buyer on this implied warranty, property which the vendor did not own, the vendee in bringing his
action for damages must according to some according to some authorities, state science, in the vendor, and in others he need not. Shaw. 63.

According to an authority in case, false affirmation of qualities, which the solicitor sold do not possess, is no ground for an action for damages, but this authority seems to be overruled.

An affirmation is a warranty in law, if it was so intended.

A mere opinion given by the vendor respecting the property sold, lays no foundation for an action of fraud.

As if A. says, one person is worth a £100. But if he should say, I rented my farm for five pounds last year to Mr. Blake, when in truth it cost was but £2. and this induced the vendor to purchase, an action of fraud will lie, for in the latter case the vendor evidently affirms that his property possesses qualities that it does not.

It has been adjudged that a false affirmation of qualities in property sold, this made by a person not interested in the contract, is a sufficient ground for an action of fraud.

It is laid down as a rule of law, that unreasonable blame alone in a contract, is not sufficient to warrant the interpr.
Remarks

(2) Answer - It is now decided that negotiable securities are valid by assignment, except where the statute says or prescribes that they shall be void to all intents and purposes.

Luk. 4:4.
1 Thes. 4:6.
1 Pet. 2:2.
Rom. 14:8.
1 Thes. 1:10.
Rom. 12:8.

1 Pet. 4:9.
Rom. 5:2.

1 Thes. 1:10.
1 Thes. 1:14.

Contracts

An undue advantage taken of his situation, undoubtedly founds a claim for relief in Chancery.

Contracts operating as frauds, or impositions, on third persons, are totally void, even as to the contracting parties themselves. Salk. 156.

Fraudulent contracts not affecting third persons, may be ratified by a subsequent agreement; for if the party originally deemed willing acquainted with his rights, and when under necessity to confirm a disadvantageous contract, it must be charged to his own folly.

Marriage brokage bonds, and fraudulent bonds in general, gain no validity by assignment. Law, now in the laws respecting negotiable securities.

Contracts for the expectancy of young heirs, are considered in Chancery as intrinsically corrupt; thus it was formerly the practice to inquire into the fairness of the contract.

Yet such contracts may be ratified, notwithstanding they may be rated, by the heir, after he comes into possession of the estate, and if at the time of making the ratification he understood...
Contracts

his rights, and no advantage was taken of his situation, he will be bound.

If however at the time of ratifying the contract, the
the heir did not act freely, or were ignorant of his rights, and
he is not bound by his ratification.

A contract made by mistake is void, and if money has
been paid upon such contract, it may be recovered as having
paid without consideration.

Contracts obtained by Duress

All contracts or securities obtained by duress may
be pleaded avoided by pleading the duress specially.

Duress is of two kinds, Duress by imprisonment.

Duress per missa.

A contract entered into by a man unlawfully im-
prisoned, may be avoided.

But if a man be by due course of law arrested, and
imprisoned for mesne processes, which was apparently groundless
and given a bond to prosecute a discharge from prison: it was
that such a bond the injunctory obtained, and voidable,
in chancery is not voidable at law, on the ground of duress,
for the process of imprisonment, strictly speaking void
legal.
Contracts.

Threat to destroy property or commit a battery, not amounting to manslaughter, do not constitute duress so as to avoid a contract. This rule is questioned.

It has been considered as a rule that duress to render a contract voidable must be imposed upon the person himself who enters into the contract.

But duress imposed on a wife may render a contract void, entered into by the husband, by being specially pleaded, and vice versa. The reason which Beale assigns in support of this rule, is, that husband and wife being but one person, of course when the wife is imprisoned or otherwise put under duress, the husband is also personally imprisoned.

In some cases, duress imposed on a son and daughter, or other near relatives, has been adjudged sufficient to avoid a contract.

But as to this point, authorities are contradictory.

Duress must be pleaded specially in order to avoid a contract, and cannot be given under the general issue of non est factum, this under non est, it may.

In cases of undue influence, this not amounting to duress, Chancery will rescind the contract, but if otherwise if the contract be reasonable and the influence such only as arose from due reverence and necessity.
Contracts.

The ratification of contracts obtained by duress, must in order to be binding have been made freely and without any undue influence—practice.

Contracts required to be written.

The common distinction between special and simple contracts, is explained under another head.

There is also a distinction between written and unenacted contracts, introduced in certain cases by the statute of Frauds and Wrongs, enacted 29 Geo. 3., 31 Geo. 3.,

Under the statute of Frauds and Wrongs, the following contracts or agreements will not support an action or suit in Law or Equity, unless the contract be or agreement be in writing, or a copy of or memorandum thereof, in writing, signed by the party to be charged, or by some other person, by him therein to legally authorized.

1. A promise by an Administrator or executor to answer out of the given estate for any debt or duty of his testator, or intestate; that is, such a promise not in writing does not bind him in his private capacities.
Remarks

Promises by one to answer for the debt of another.
Contracts

III. Promises upon condition of marriage consideration of mar-
riage.

IV. Sales of lands, tenements, hereditaments, or any contracts
for the sale of any interest in or concerning them.

V. Contracts not to be performed in one year from the time
of making them. *

* There is a clause in the stat. relating to contracts for the
sale of goods be of the value of £10, which is not matter material
in this country.

By the Eng. stat. all parol sales or leases of lands, ten-
ements, or hereditaments, or of any interest in them, it was for
merly held by operated or leases of estates at will only except
over for a term exceeding not exceeding 24 years, reserving at
least two thirds of the improved value, but it has been lately
determined that such leases unsure or tenancies from
year to year.

By the stat. 2 George 2. an action of Ind. Cplt. lies on
a parol demise.

The action object of the stat. was to prevent persons
from proving agreements of the above description, by parol
evidence, it being supposed that there was danger of fraud
and perjury in doing it.
Remarks
Contracts

Qualifications of the foregoing rules.

IV. Promises by Ex. and Admin.

If the Ex. or Adm. have assets sufficient to answer for the debt or duties of his testator or intestate, his past promise shall bind him.

Assets constitute a consideration advantageous to himself, so as to transfer the duty to him personally.

But proof of sufficiency of assets will not raise an implied promise to charge the Ex. personally, tho' a contrary opinion was advanced by Lt. Kenyon.

The Adm.'s submitting a claim against him to arbitration, was once held to authorize the admission of sufficient assets. But this opinion is now properly overruled, for the Adm. may be dismissive of ascertaining the existence or amount of the claim, without knowing whether he has assets.

But if on such submission the arbitrator said that the Adm. shall pay a certain sum he cannot afterwards deny assets to that amount against the other; indeed the award is equivalent to a finding of assets to that amount.

The same rules hold as to Ex. It was once held that the payment of interest was an admission of
Contracts.

... by the Ex. to the amount of the principal; or rather that the issue proband is thrown on the Executor.

But this was plainly unreasonable, for if that be not asserted it would be hard because the Ex. had paid a part out of his own pocket, he should therefore be liable to pay the whole; it has been overruled by later authorities.

The the promise by the Ex. to be in writing, he is not bound unless some sufficient consideration be proved. The promise is a simple contract only. The object of the statute is not to make the Ex. liable at all unless when the promise is in writing, but only in those cases in which before the statute he would be bound on a plain promise.

III. Promises by one to answer for the debt of another.

Under this clause to the statute of the statute, this general distinction is to be taken.

If the promise made for the benefit of another be original, it is binding, tho' by fraud; but if it be ostensible, it is not binding.

A promise is said to be original, first, when the third person, for whose benefit it is made, is not liable at all to the promisee, so that there is not debt; no debt be on his part...
And secondly, when his liability is extinguished on the promise being made, such a promise is out of the statute.

But when the promise is merely in order to procure a continuing liability on the part of such third person, or to procure recredit for him, that is, when the promise is intended to furnish an additional remedy, it is collateral and with the statute.

The above distinction is supported by the current of authority. Thus if A say to a merchant, deliver goods to T. Bara and charge them to me" or "deliver them on my account" or "deliver them, I shall pay you." The promise, the promise is original; for T. Bara is not liable at all, and the original contract is liable at all. He is debtor. But if A say "deliver goods to B. T. & if he do not pay you, I will" it is collateral, since the instant is that the charge should lie in the first instance against the receiver.

So when it was said "supply my mother-in-law with bread, and I will see you paid," the promise was held to be collateral. Because of the intent was in the last case, that the receiver should be liable in the first place.

Sir. Mansfield, one held that such a promise before the delivery of the property was original, there being then no liability on third persons. But this opinion is overruled.
Remarks

2 Tm. 6:6-8
2 Tim. 101-102

1 Sam. 2:7-8
13, 6 Adj.
2 Cor. 6:12, 14
10:4, 16:6-6:10
1 Sam. 4-5

2 Lk. 10:9-10
or 8-9

Jer. 18:8-9

John 1:20:4
10:2-9:4
Contracts

If one had said "If you don't know JB you know me, and I will see you paid" the promise was holden to be collateral, JB being first to be charged.

A promise by me, that in consideration of your letting a house to JB, he shall redeem him, is collateral. This in undertaking to answer for the default of an other to procure him credit.

And it may be laid down as a general rule, that a promise that a third person shall do an act, for not doing which, he would be liable is collateral.

A promise in consideration that the promise will extinguish a debt against a third person, is original, it not being in aid of a continuing liability in the third person, or to obtain credit for him, as in one said, mine, Th. Thrones bond and I will see you paid.

So in Williams vs. Stark, when the landlord came to distrain for rent, the debt to whom they had been assigned, promised to pay the rent, if the P.l. would not distrain, the promise was held good, and the tenant. JB. remained liable.

The P.l. had a lien which he gave up in favor of the dependent on his promise to pay.

A promise to pay a written sum in consideration in consideration of the P.l., withdrawing a suit against JB for amount and interest, was holden original. Here no debt was
due from J. B., and it did not appear that there was any debt in him.

But a promise to pay in consideration of the promisor's staying a year, brought against J. B. for debt, is collateral, for the debt still subsisted against J. B., and no lien is taken away. Yet if this promise had been in consideration of the promisor's withdrawing it is a question whether it would be good or not, since a de facto disburden the Ffooter from bringing an other suit, so that J. B.'s liability is extinguished.

A promise to pay J. B.'s debt if the Ffooter would cease J. B. taken on mere process is collateral. Suppose for the debt continues; and J. B. may be arrested against yet J. B. should in this case escape so that the sheriff could not seize him, the promise would be binding.

Yet this rule would not hold. Suppose, if J. B. had been taken on final process, and then released, for in this case releasing would discharge the debt.

Some have supposed when there was a new consideration, a promise to answer for the debt be of an other issue. Lord Mansfield once held this opinion, but afterwards acknowledged it to be erroneous, and certainly it is not law, for as the original promise continued as another cause of action, the promise is collateral. Mr. Reeve maintains that if such promises be out of the statute, almost every part from
Contracts

rise to answer for the debt one be of another, would be established; & that the provisions of that part of the statute would be abolished.

A written promise to pay the debt of another, if he do not is discharged by the promisee granting forbearance to the debtor, for by this act the promisee makes a new contract with the debtor, and of course takes the risk upon himself—

When according to the above rule the promises must be binding only when they are written; it is not necessary in declaring, to swear, that it was in writing it is sufficient if it appear in evidence—

This rule holds as to all contracts contemplated by the statute.

But if the promise be pleaded in bar of another action, it must be shown or averred to be in writing, for in order to be an effectual bar, it must appear to be such a contract as will support an action—

A partial contract to pay the debt of another, and also to do some other thing is void ex initio, because if one part of an entire contract be void, the whole is also void—

III. agarments in consideration of marriage.

This clause of the statute relates not to promisee to many;
Remarks

1. Feb. 1793
2. Jan. 1794
3. Feb. 1794
4. Mar. 1794
5. Apr. 1794
6. May 1794
7. June 1794
8. July 1794
9. Aug. 1794
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there are good tho' by fact tho' by fact. It relates only to agreements in consideration of marriage, that is, such as are in contemplation of marriage, by way of marriage settlements, or family provision. There to bind must be written.

There are no exceptions to this rule, except in cases of part payment, performance, of which hereafter.

It was formerly doubted whether a parol agreement ever would not be good, if it should stipulate that it should or should not be stipulated to be reduced to writing, but with stipulation it seems makes no difference, at least does not take the case out of the statute.

A letter signed by one party is a writing within the statute. 1 Bouc. 504. 1 Rob. 262, 2 — 322.

But it must appear that the other party accepted the terms, contained in the letter and acted in contemplation of them, in proceeding to marry, otherwise they are not binding. Thus, when the party to whom the letter was sent, was ignorant of the promise in it, at the time of the marriage, performance was not deemed.

So when A. wrote a letter to his daughter containing a promise of a settlement on her intended husband, which was not shown to the latter.

In these cases there is no agreement, the minds
of the parties have never met.

A letter also in order to be a sufficient agreement, must
furnish distinctly the terms of the agreement; or it must at
least refer refer to some written agreement or instrument in
which the terms are set forth.

IV. Contracts for the sale of lands &c.

It was formerly doubted as under the last head, wheth-
ner a oral contract would not bind if it were part of the
agreement that it should be written.

But it is now settled that this makes no difference.

B. Ch. 49. C. Brow. Ch. 135.

It was once decided in Connecticut, that a oral
agreement, by the grantor at the time of the granting to pay
for a deficiency in the supposed contract, was within the
statute — but a contrary decision has since been had and
renewed in the supreme supreme court of Errors.

The nature of such agreements are good under the
statute if they are provable consistently with the spirit of
the act and the rules of evidence.

There is no inherent validity in a oral con-
tract the difficulty lies in the proof. The statute merely
introduces a new rule of evidence to prevent fraud and
Remarks

P. 60.
P. 60.

241, 292, 156.
221, 481.
Re. 26.
201.
374.
2 Ath. 100.
185, 2-10-2.
1st. 660.
2 Prov. 596.
Ams. 296.

P. 208.
3 Ath. 3.
2 Ath. 156.
2 Prov. 562.

It is a rule of construction, that statutes like these against frauds are to be liberally expounded, that they may be expounded when they act upon the offense by setting aside the transaction.

Where there is no danger of fraud, a jury in enforcing the agreement, the case is not within the spirit of the act; therefore on filing a bill for a specific performance, if the Deft. in his answer confesses the agreement, it is binding, for there is no danger of fraud in acting on such proof.

It is a question as to the example just, whether the Deft. to be admitted the agreement, if he insists on the statute by plea, the agreement can be enforced.

In Atheire it is laid down that Chancery would decree it, tho' the Deft. had insisted on not performing it.

In the case in the 2 Ath. the Deft. did insist on the statute by pleading; yet he having confessed the plea in his answer, the plea was overruled and the agreement decreed.

In Blackstone's Rep. the rule is laid down generally that an agreement confessed is out of the statute. A contrary decision has been had at law, i.e. it has been decided, that if the Deft. having confessed the agreement
Contracts.

By answer in Chancery, insists one the statute is not liable on the agreement. The reason refers to those in Chancery, notwithstanding there are weighty opinions to the contrary; for this is altogether a question of construction, about which the same rule prevails both in Chancery and at law. So in Deane v. Dean, the plea of the statute was not allowed, the agreement was confessed, or rather not denied; but this decision was on the special circumstances of the case. The agreement was incomplete; only general heads, by way of illustration or instructions to an attorney.

It remains therefore question, if insisting on the statute prevent a remedy for the agreement when confessed the rule itself, that confession on the answer, takes the agreement out of the statute. These questions, because no agreement can be enforced under it, unless the Deft. is willing it should be.

It is also an unsettled question, whether a Deft. in Chancery on a bill for specific performance of a past agreement for the sale of lands to be bound, either to confess or deny it in his answer.

This question was decided by Sir John Mansfield in the affair of a motion—that is he was obliged to do one or the other.

Lord Winne was of the same opinion and held that the only effect of the statute is to prove of the agreement was to prevent the Deft. from proving by other evidence or that if
Remarks

2 Th. 3:6
1 Th. 1:7
1 Cor. 1:10
1 Pet. 2:9
2 Pet. 1:5
2 Pt. 2:4
3 Pet. 2:11
1 Pet. 3:16
Contracts

the Deft. denies it, the Plt. cannot prove it by parol.

Sd. Loughborough is of a different opinion, because compelling the Deft. to answer a parole agreement, lays him under a

limitation to commit perjury-

If he is bound to confess, or deny, it seems to follow

that his confession takes the agreement out of the stat. and

that insisting on the stat. will not avail him-

It has been held by that a party to a parole agreement

for the sale of land, if he denies the agreement by answering

shall be bound by it, if a previous confession out of Court can

be proved-

Upon the above principle, that there is no
danger of fraud, or perjury, a parole contract for the pur-
purchase of lands at a vendor's sale, before a master, in Chancery

under the order of the court, is binding,

Since the sale is a judicial one, and is proved by

the entry of the master in Chancery under the order of the court

And hence, in contemptation of law, there can be no danger of fraud, or

perjury, since full evidence is given to the law by the hands to the

affairs of the court officers of Court-

Again according to the authorities, a parole contract re-
specting an interest in lands, if inspissate from circumstantial

facts, in proving which there is no danger of fraud or perjury is-
Remarks.

Prev. Mr. 646
o Wood. 467.7
Ten. 346.5 Abt
1. 7 Pl. 576
1.okeo. 2.4
474. 1926
17. 3 33
1. 7-11-579
1. Vart. 105.

$6,16,600.

1. $6,600.
1. Prov. 394
49 20. 1961
17. 172

1. Tax. 172
1. Prov. 396 44
$1. 50. 500.

$80. 44
29 15
16 263
2. 11-393
619. 9
7.83 c. Abt.
100. 13 Ayr. 74.
binding. Thus, if there be a sale of lands by absolute deed, but the vendor at the execution gives obligations to the vendee, to the exact amount of the consideration remaining in possession, pays the taxes, does not account for the rents and profits, and pays interest. From these facts, a trust is implied for the vendee, that is, he is considered as mortgagee by virtue of an implied agreement.

This seems to be a reasonable exception to the general rule, for the mode of proof is not inconsistent with the spirit of the statute, that is, it does not invite perjury.

Other exceptions to the statute are admitted on the ground that an act made to prevent fraud, ought not to receive such a construction as would protect and encourage it.

So when a party by not performing a past agreement, will procure a greater fraud on the other, than would result from the mere breach of the agreement itself, he is generally held to it in Chancery.

Therefore a past agreement, performed by one party, performed on the other side, at the request, or consent of the other, will bind the latter. Thus A. lease to B. for 20 years, and B. enters under the lease, and begins to build, or incur expense in improvements, the contract will be enforced in Chancery. Otherwise B. would take advantage of his own fraud.
Remarks.

1 Porr. 304. 5.
2 Porr. 520.
3 Porr. 2. 10 Porr.
8, 22. 16 Porr.
64. 1 Porr. 145.

1 Porr. 145.
Porr. 500.
2 Porr. 300.
Contracts

In such case the agreement has been enforced, that the time of it have not been precisely settled by the parties.

Delivering possession of land, in pursuance of a past agreement, is a sufficient part performance.

And taking possession under the agreement, it seems is decided, sufficient notice to a subsequent purchaser, and the past agreement will hold against him.

So the payment of money under a past agreement, has been held in a part performance, or to take the agreement out of the statute.

This rule has been questioned, but finally settled by Sir Hardwicke.

Two or three cases have, however, been objected to the suit, when a past agreement for a purchase, and a lease, which money was paid an earnest. But these cases do not effect the rule, for here the money paid was not in part performance of the agreement, or subsequent to the agreement, but was a mere solemnity, in making the contract, a form in stipu-

In this case, damages may be recovered above for non-performance.

It has been questioned also whether the receipt of the money in part performance may be proved by partial.
Contracts

If not, the rule itself that the payment of money is sufficient for payment in idle: for if the payment cannot be evidenced, without a writing counting on the agreement, the contract will no longer rest on pari
dice.

In one case decided by Lord Hardwicke, the payment was proved by pari
dice.

And Powell who treats the rule as questionable, maintains that pari
dice, proof of the payment of money may be admitted, because the payment is merely a collateral fact.

A pari
dice agreement in pari
dice performance, will be declared against the title of the party, in whose favor the pari
dice performance was.

But the act claimed to have been done in pari
dice performance, must to take the agreement out of the statute, as in the opinion of the court, would not have been done but with a view to perform the agreement, otherwise it affords presumptive evidence of the agreement.

Marriage is not of itself considered as pari
dice performance of a pari
dice contract, in consideration of marriage, for by the terms of such contracts, they are not to have effect unless the marriage takes place.

To consider marriage then as a pari
dice performance, would take every case out of the statute and leave the contract
Remarks.

The sale of Timber bery good by prorat.
The sale of Sand gruad Slow Day as one good by prorat. The princiiple is that whatever is sold with a clause to remove is good by prorat.

a sale of an house standing on said if to be removed is good — a case of great gravity.

1 Prov. 178, 238.
2 Prov. 209, 218.
3 Prov. 319, 218.

1 Prov. 304.
2 Num. 294.

2 Act. 203.
2 — 289.
1 Prov. 138.
1 P. 1. 840 —

1 Egu. 20.
1 Prov. 294.

1 Egu. 572 —
376, 2 Act. 208.
3 — 3 89 —

1 Num. 297.
2 Num. 290.
1 Prov. 294.
Contracts

...as at Law.

But it is said a fraud contract in consideration of means, by third persons as a part of one of the parties, is taken out of the statute. By marriage, it being with his consent, otherwise a fraud would be practiced on the parties.

So when the wife was allowed by the husband during coverture, to receive the interest of a certain sum of money which the husband, before marriage, agreed to settle to the wife's separate use, the agreement was held being binding on the ground of part performance.

Scuttling down timber in pursuance of a marriage agreement, was held to be sufficient part performance.

Upon the same principle to prevent fraud, from a written contract respecting an interest in lands, any other subject may be contradicted, by proving the fraud agreement, if there was found in the execution of the instrument.

The same may be done, in case of a mistake in case of the execution, 1 Rob. 429, 6 T. R. 671, 1 Torn. 145, 149.

Thus, if A. agree to settle £1000 on B, and by mistake £100 is inserted, the fraud contract may be proved, for the mind of the parties never met in executing the written agreement.

So a written agreement respecting an interest in lands, by part, may be controlled one to rebut an equity. An equity is a right
Logan

Legislative power may grant or hold reciprocal in the action of debt after legislative leaves by reason contains the agreement or other known for not limiting upon less or more every than a lease held still then comes the state of George 10 per case of such lease is actual occupation. The session may see in an every and the next year so as prevent the principle.
Contracts

merely equitable.

To rebut, means to oppose, to contest, and this rule, that it be a rule of evidence, is peculiar to equity; for a court of law knows nothing of a mere equitable right.

By stat. 11 Geo. III Ind. Aplt. for use and occupation in on a part use; and the agreement as to the rent, may be given in evidence to ascertain the damages.

At Comm. Law Aplt. would not lie for rent the debt would.

But in order to sustain the action of Aplt. the Defendant had to submit with the consent of the Aplt., if the possession have been tortious or abusive, the idea of a promise is excluded.

VI. Contracts not to be pleased within one year from the making.

Under this clause of the statute, a promise by party to pay a certain sum of money or do a certain act, two years hence is void.

It has been held, that this clause of the statute, does not extend to any agreements concerning lands or tenements; because I suppose the preceding clause has made all the provisions intended to be made as to contracts of this kind.
Remarks

1 Pm. 276.
1 Kcr. 155.

Salv. 280.
A. A. P. 540.
Stm. 116.
Bsa. 1278.
St. Py. 816.
317. 047. 8 Salv.

Bud. K. P. 740.
Bsa. 1278.

St. Py. 317.
Bsa. 1281.

Bud. a K. 81.
1281.
I conclude then that a valid agreement of this kind confined to partly executed is binding.

When the performance is to take place on a contingent event, which may or may not happen within a year, the agreement is not within the statute and not binding.

Thus a promise to pay a sum of money on the return of a ship or on the marriage is binding by Parol.

So a promise to leave a sum of money to the promisee is binding by will; for in the eye of the law the death of the promisee is such a contingent event as may happen within a year.

And to make the contract binding, there is need of the contingency's really happening within a year for the contract to be good or not ab initio.

This clause then extends only to contracts whose terms require to be performed within a year.

Rules applying to all or several of the different contracts contemplated by the statute.

The construction of this statute is the same both in equity and law, the remedy or relief may be different. These rules apply to the construction of all statutes, for the intention of the Legislature governs both in Equity and at Law, and the construction of
Contracts

is much the discovery of that intention—

A question may arise respecting the import of the word "note or memorandum" used in the Stat. Suppose that any writing which is intended to furnish evidence of the contract is a note or memorandum within the Stat. For evidently no particular form of words is necessary; for a letter written by one party is a sufficient "note or memorandum."

But such a letter must sufficiently or rather distinctly express the terms of the agreement; otherwise it is not binding. This rule holds in every case of a writing whether a letter or note. It must also appear that the other party accepted the terms and acted upon the offer, otherwise there is no agreement.

So an advertisement written and printed by one of the parties and containing the terms is a sufficient note or memorandum.

The Stat. also requires that the note be signed by the party to be bound. A question then arises as to what is a sufficient signing.

The general rule is, that not only a subscription in the usual form, but the name of the party to be bound, written in any part of the instrument, if intended to give an authenticity to it, is a sufficient signing; provided there be an acceptance by the other party, or a counteroffer, or a promise to agree with the other party. Thus if the agreement be in this manner: I agree to sell to him blank...
But where the name written in the body of the instrument is sufficient—

It seems formerly to have been supposed that some parties making attestation with his own hand in the draught of the agreement, was a sufficient signing but this opinion is now overruled—

And where marriage articles witness that the mother of one of the parties had agreed to advance £100 as a portion she were signed by her as a witness she was held to be bound the not a party: For the signing was intended to give authenticity to the articles—

Again the statute requires that the note be...
Remarks

Romae 86.25
940.125.20

I. Romae 847.
Eq. 2.3.10.
26.2. China.
164.

R. R. 280.
M. 16. 579.
Summ. 1781.
5 7. 10. 15.

R. R. 280.
M. 16. 600.
Summ. 1901.

75. 16. 20.
Contracts.

be signed by the party to be bound, or some other person by him himself
legally authorized. The question then arises, who must sign it? It is sufficient if the party against whom the suit is brought have signed it; the other party have not, if he has had evidence in his power of the signature of the other.

Thus if A. drew an agreement and procured B. to sign it, that he does not himself B. is bound.

In the last case A. is also bound, for procuring B. to sign made B.'s subscription a signing authorized by B. and a signing procured by one party, is equivalent to a signing by his agent.

So also, in an auctioneer's subscribing the name of the highest bidder, to the conditions of the sale is a sufficient signing for both parties: For in this act, subscribing his name, he acts as agent for both parties.

It has indeed been doubted whether sales by public auction are contemplated by the statute at all, the sale being public, so that there can be no danger of fraud and perjury.

If part of an entire contract is within the statute, the whole is: for an entire contract cannot be severed since each part is in consideration of some other part, and since therefore, if courts enforce one part only they would virtually make a new contract.
Remarks

1 Pm. 4:13.
1 Pm. 4:16. Cro. 21. 884. 81 c. mod. 44

2 Bro. Pm. 116. 1 Pm. 4:18. 421

2 P. Win. 92.
1 Pm. 2:18. 248. 2 T. Ro. 64. 6 Pm. 44. Cro. 8. 579. Cro. 32. 817

5 Pm. 2:18. 2 7. 1 Pm. 444. 1, 8. Mod. 57.
2 Pm. 31. Ne. 67.
Contracts made void by the act of the parties.

Before a right of recovery is had, or is attached, the parties may void their contracts by mutually expressing their defects in presence of witnesses.

But after a right of recovery has attached, the contract cannot be rescinded by a mere agreement. There must be replevin, acquittance, or discharge.

Any want of contract on one or both sides, may be enforced from a long continued neglect to claim the benefit of it.

A right to a penalty of a bond may be waived by accepting that for which the penalty was a security.

If a wife suffer her separate property to be used in her husband's family and neglects to charge it, she cannot afterwards claim a compensation for it.

A contract of a lesser may be merged in one of a higher nature, but one contract cannot be merged in one of a higher degree in an equal degree.

When the right of obligation arising out of a contract unite in one person, the contract is annulled.

"Contracts may be annulled by ex post facto law of full performance. To a contract be rendered..."
Remarks:

Sus. 13. Sta.
407. 4 Bl.
177. Ro. 181—

Puru. 2. 36.
2 Bl.—

Puru. 2. 39.
2 Bl.

177. 3. 595. 6.
Nov. 128. Cro.
42. 33. 48—
Contracts

 zwarte impracticable by a legislative act, past performance
if practicable, and required by the obligor, will be enforced by

equity

If the purchaser pay the consideration and the vendor
refuse to deliver the property according to the contract, the
former may recover back his money by Ind. Ast., thus dis-
affirming the contract.

Contracts Executed and Executed

Contracts executory convey no present interest, but the
parties mutually trust each other.

Thus if each one agree to sell, the contract is execut-
ory and a chose in action only is conveyed.

Contracts executed are those by which the parties
mutually transfer their rights to each other and effect
a change of property, either immediately or on the happen-
ing of some event, which does not depend on either of
the parties and in this case a chose in possession is con-
voyed.

A contract containing words of present contract,
but provided providing that a lease, that a lease—
shall be executed in future is merely an agreement.
Contracts

for a lease not a lease itself tho' it contain a stipulation that the lessee
shall take immediate possession.

The maxim that to any contract there must be a consi-
deration applies in its full extent, only to executory contracts. A
gift delivered is good it seems.

An executory contract under seal, is good it is said with
out a consideration can be shown, nominal damages only can
be recovered on such a contract. And if a consideration be
acknowledged still if the want of consideration can be shown
from the tenure of the contract itself or by otherwise
written documents, nominal damages only can be recovered.

A deed of land for which there is apparently no
consideration, formerly exempt to the use of the grantor but
this rule of law goes upon the presumption that in cases of
this kind, no conveyance was intended.

This rule has not been adhered to in Eng since
the stat of frauds, as parish agreements, which the rule
presume respecting lands are made void by stat. But if there
was declared to be to a third person it was good without
a consideration. If A. in consideration of £1000, received
from grant an estate to B. and in writing declare the use
to C. such declaration of the use is good and was former
good by prior.
A grant merely operative voluntary in operative and binding if the deed be delivered

A deed of land delivered is merely considered a contract for a debt executed. And a consideration not being necessary to support an executed contract; the part of the delivery is the only thing requisite to the validity of such a deed. Whether there was or was not a consideration is an enquiry totally in material.

A penal bond for the payment of money, if actually delivered is good without a consideration; such a bond being in contemplation of law, the same as payment of money. Therefore a contract executed is binding even if it appear upon the face of a bond that there was no consideration. The delivery and not the consideration being in this as in all executed contracts, the only material enquiry.

A single bill was not formerly considered as contract executed but a mere promise under real the consideration of which might be enquired into.

A release is also a contract executed. A penal bond has always acknowledgment of present indebtedness a single bill formerly did not, this it now does.

If a contract executory be under seal, the con
Remarks.

1 Prov. 341.
1 Thess. 306.
233—

[Handwritten notes and text continue on the page]
Consideration cannot be enquired into except by written documents. A sealed instrument according to English principles carries with it too strong evidence of a consideration to be rebutted by proof. But if it appear from the face of the instrument or from written proof that the executory contract was made without consideration, nothing more than nominal damages can be recovered can be recovered on the contract than under seal.

Thus, an agreement under seal to execute a release if made without without a release consideration will subject to nominal damages only this a release actually made without consideration is valid.

The words "value received" are not essential in a sealed instrument.

The quantum of consideration is totally immaterial, if it have any value.

A consideration to be sufficient to support a contract must be an existing consideration.

According to some old authorities a promise in consideration of something past is always valid practice, and in some cases the old rule is retained; but when the act done before and past, was beneficial to the promisee, a subsequent promise in consideration of that.
Contracts

It is now binding

Apt. and not debt lies in those cases. It is said by Judge Blackstone, that a promise founded on a prior moral obligation is binding. This proposition the rule in fact is not so in its full extent; for if a firm court should contract a debt, and after her coverture should promise to pay it, her promise this clearly founded on a prior moral obligation would not bind her.

The rule with regard to promises founded on prior contract appears to be, that if the original contract out of which the moral obligation arises, and on which the subsequent promise is founded, was in itself utterly void and such as created no liability, a remuneration of liability the subsequent promise did not bind will not bind the promisee, but if even there was a cause for a suit the subsequent promise is binding.

A voluntary contract creates no legal obligation, but it is sufficient to support a subsequent promise. (Plow 824)

An action may be brought by one on a promise made by another. If the promise were for the benefit of the A/(A)/(A) A case of this kind has been decided in the Superior Court of Cal., where there was no relation between the Pte. and the Promisee.
It has been held that the right of him (for whom the promise was made) to recover is not being the promise itself, but the promise itself extends only to promise (promissory). Therefore, if a bond be given to A, for the use of B, the action on the bond must be brought in the name of A.

Forbearance of a suit against the Debtor is a good consideration on which to found a promise. But the forbearance must be total or for a time certain or as it is said, for a reasonable time, of which the court will judge.

Of the consideration necessary to support a contract:

A contract has already been defined to be an agreement upon sufficient consideration, to do or not to do a particular thing. According to this definition, a consideration is the essence of every contract.

A consideration is the material cause of a contract, that on account of which each party is induced to give his assent.

Considerations are of two kinds — Good and Valuable.

I. A good consideration is such as that of kindness or natural affection between mere relations.

Such a consideration in contracts is a good consideration, where the contract is executed or between the parties. As
Remarks

When the contract is by seal and contains no recital or other assurance, the consent of the parties is expressed in writing at length, there appears no defect the same as is made on any other writing when the contract is sealable at length, and if the consent of the parties of one or both parties in writing is made to the same extent, you cannot show the want of one or less than the want of the nature of consideration, it is merely a substance of detail at length of seal or consideration so fixed, which is more.

The case of intimation, i.e. requiring to be seen, the writing or the recitation must be done in the voluntary way of a consideration, but an intimation may be given in a corresponding notice, without consideration, or to the person.

In the absence of these long considerations, it is not sufficient to prove the advantage to prevent or the advantage to prove - the case of sealed

note -

2 Pet. 3:14
2 Pet.
Contracts

in a grant by deed, from the father to his son. But as against creditors of the
Grantor and bona fide purchasers it is generally deemed void.

And an executory contract on such consideration, may be
enforced in Chancery in many ways.

II. A valuable consideration consists of something valuable
of money, goods, labour, marriage &c.

Contracts on a valuable consideration may be made in
either of four ways.

1. By stipulating there: butt does, as in case of houses, or bonds &
promises, or, on a contract expressed or implied to pay.

2. The second species is faciatur, or where labour or new
service is to be performed on both sides; or forbearance on one side
and some act on the other or mutual forbearance.

3. The third species is faciatur done, or where an act is to
be performed for reward.

4. The fourth species is, dont faciatur, which is the counter
part of the last, or the last inverted, or in the case of granting to give
something, or of giving something for an act to be done.

Contracts are to be divided into two kinds, Special
contracts and Simple contracts.

I. A special contract is one which is entered into or evidenced
by specialty; that is, by deed or writing sealed.
Contracts.

II. A simple contract is a contract by parole or on writing but not sealed. A contract not sealed and a sealed contract being upon the same footing in point of solemnity.

In law, a seal is not absolutely necessary to constitute a specialty.

It is clear that an executory contract by parole is not binding without a consideration, such a contract is clandestine. Thus a promise to give me £100 for labour without a reward is not binding.

But it is said by Sir William Blackstone that a contract in writing is good without consideration at law.

The proposition Powell considers as not defensible—

In the case put by Blackstone of a promissory note on actual consideration is necessary and must be proved as between the original parties. After the note is negotiated the promise cannot upon the want of consideration because a third person becomes the holder, and the law merchant governs otherwise a fraud might be practiced on third persons. Reducing a contract to writing thereto, does not supersede the necessity of a consideration.

And I conceive in strictness that in strictness and in judgment of law, a consideration is necessary to the validity of a sealed instrument or specialty; this first the Fifth and
not prove a consideration, and secondly the Deft. cannot aver the
want of it, from the solemnity of the instrument a considera-
tion is implied. If the Deft. might disprove the want contra-
dict the deed which cannot be.

If a want of consideration appears upon the face of the
specialty it appears it is void.

The reason then is that on principle a consideration
is necessary to the validity of a specialty: but that is binding
unless the want of a consideration appears on the instrument
or some other instrument of equal solemnity which is of
the contract.

It is laid down by Powell that on voluntary con-
tracts under real only nominal damages will be given at
Law. The want of a consideration in the case stated I appre-
chend is not supposed to supposed to appear on the instrument.

His meaning then probably is that on this sort of enquiry, the want of
consideration may be proved to mitigate damages and not to
affect the right of action.

The rule that a consideration is necessary to every con-
tract applies in its full extent to executory contracts only. A contract
executed by delivery of the subject is good without a consideration
as between the parties, as a gift.

A consideration sufficient to support a contract may
Remarks.

[Handwritten text, partially readable, discussing various topics with references to other pages and sections.]
Contracts

The promise arises from something advantageous to the promisee, or in consideration of selling my house to E. star to pay the promisor to pay hereafter.

And in most cases of contracts, the consideration arises in this way.

The quantum of consideration is wholly immaterial; for the law does not regard proportions: it is sufficient if there be any consideration, as a present consideration.

Idle and insignificant considerations are not termed considerations, as if I engage to pay a sum of money for a horse at will.

But anything however trifling, to be done by him in which favor the promise is made is a sufficient consideration. Thus if A. hires to B. B. assigns to C. such rent becomes due and C. promises to pay it if A. will give him the house. Shewing the lease gives A. a right of action against C. on the promise. And it has been held

in the Court of King's Bench in a late case, that the mere assertion of landlord and tenant was a sufficient consideration for a promise by the latter. Thus a declaration stating the Deft. to be tenant and that in consideration there of be promised to buy...
Remarks

Suppose a post confidant of beneficent do.

The consideration must be a legal duty - the case of prior moral obligation with the except of a capacity to promise - of protest for any of the

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A consideration arises from something disadvantageous to him in whose favor the promise is made. Where A having a lease against B, delivers it up to be cancelled on B promising to pay the contents.

It is a general rule that a contract is not supported by consideration altogether past and executed. Thus if in consideration that one has bailed my servant out of prison or discharged me of a trespass or built me a house grate, promise to pay be the promise is not binding: for here there was no subsequent consideration to benefit or advantage arising from the promise to either party.

But the part of the promise or consideration be past, yet if a part be subsequent, the contract may be good. Thus if a lessee in consideration that the lessee, had accepted and paid the rent, promised to save the tenancy, to the lessee, the promise is good tho the acceptance be past, yet the lessee was to continue in possession and pay the rent.

So a consideration contract, on a consideration executed is good if there was a previous legal duty on the promise; or where one in consideration of a previous indebtedness promised to pay in consideration of the debt, having married his child.
The wife of a stranger may recover on action of
the real property.
Contracts

It is of the utmost importance that the promise be in writing, and that it be in the form of a document.

A consideration must support a contract; if it be at the request of the promisor, for the promisor's promise to pay, by the promisor, for the promisor's promise of his natural child.

So a consideration must support a contract; if the consideration be at the request of the promisor, for the promisor's promise to pay in consideration that James Gould, my servant, had at my request yielded my servant.

A mere stranger to a contract must support a contract upon it in his own favor; for he does nothing favorable to the promisor or disadvantageous to himself, being a stranger to the consideration. As where A in consideration that B will acquit him of a trespass promises to pay £100.

A consideration moving from one will support a contract in favor of a new promise. As where a promise was made to A in consideration that he would perform a promise to his daughter.

Thus forbearance of a suit is the consideration there are two requisites: 1st. The forbearance must be either general or total or for a certain period and 2nd. It must be of an
Contracts

A promise to pay a debt, therefore, in consideration that the P'tee would abstain from suing so long as time being limited, and forbearance not being expressed to be statute is not good, and the court can't judge what is a reasonable time.

A promise by a mother to pay a debt due from her son who was dead, if the P'tee would forbear to sue her was held not to be obligatory, for there was no consideration to support it. The mother was not liable and of course forbearance was no favour to her and no disadvantage to the P'tee.

So, if one be asserted on void process and an other in consideration of his release, promise to pay the tatter is not bound for here is no consideration.

So a promise by A. to pay B.'s debt if the creditor will forbear to sue B. for 6 months is not good at Law. So, for he might sue B. immediately and therefore the forbearance was no prejudice to the creditor.

But a promise in consideration of forbearing suit is good, if there be a reasonable ground for the suit.

Thus where an infant bought silk and velvet and died. The Ex'ee in consideration of forbearance promised to pay the promise was good at Law. So, here was colour for a suit his being Ex'ee.
Remarks

(a) In case where C. agrees to give 6 shillings on the first 1st of August, 1804, for work which is to be done on the finding of the same year—here B. can sue for his 6 shillings before the time comes to do it.

irrumpent the amount of this consideration
in whose favor the promise of the confide
necation is enough to make the promise invalid
performance where the offering is to be done
and that must be accounted for. He has been
done out though the labor should be done first or if it appears
that something could be done first and if it appears
that money is to be paid first before the time of doing anything, then the money may be paid
for before doing it.

If so much more severe—immediate payment
in claiming equity never seems without
having done an offering to do.
Contracts.

When a promise is in consideration of performance, & the original cause of action is not to be inquired into, it is acknowledged by the promisee.

When that which is stipulated on one side is in consideration of the performance on the other, the considerations are termed mutual: as where Degree to pay £2 for doing a certain act; &c. the doing is in a consideration precedent to his right to the payment: if he see done for the price, he must own performance.

So where performance on both sides is to be concurrent, neither can compel the other to perform, till he has performed his part or offered to perform: as where A promises to deliver B, a load of wheat on such a day for such a price.

If the agreement be that one shall do an act for doing which the other pays; the doing is a condition precedent; but if according to the terms the money is to be paid on a day, which is to arrive before the act can be done; the doing is not a condition precedent and an action lies for the money before the act is performed; here indeed the payment of is a condition precedent. (1)

But if the day appointed for payment, be to arrive after the time fixed to go to do the act, the performance of the act—
Remarks

1. Prov. 257, 267.
2. Est. 117.
3. 214. 2B06. 283.
4. Lev. 249.
6. And 102.

1. Dan. 2333.
2. 2Cor. 134.
3. Rom. 12445.
4. Eph. 35.

Salk. 112.
18. 663. 34.
And. 403.
1. Thes. 282.
19. 2Th. 250.
4. 1Co. 144.
Waller. 792.

Doug. 665.
17. 1Co. 645.
6-n-570.
7-n-180-

Doug. 655.
3. 1Co. 144.
1. Thes. 282.
2. 1Co. 144.
3-n-41.
Cont. 56.
4. 1Co. 144.
is a condition precedent and must be sued in an action for
the money.

But where the promises are mutual, i.e., where the prom-
ises on each side, is the consideration of that on the other, the perform-
ance of the promise of the party on whom the condition is not a condition precedent, if either side may sue
without causing performance on his part.

The rule does not obtain in equity for here the party
must aver performance or readiness to perform this the concur-
rent is an express mutual. Otherwise equity will not inter-
vene.

If the agreement be in this form, "I promise to pay $100
in 6 months, you transferring stock" and a concurrent, the promises
are not mutual and neither can compel performance till
he has performed.

The question whether promises are mutual depends on
what is to be determined by the meaning of the parties, to be
collected by the spirit of the agreement, and the nature of
the contract, that is from the order process in which their
intention directs, requires their performance.

When the promises are mutual, it is no bar
to an action that the party has not performed his part,
each may have a cause of action against the other at the
same time.
Remarks.

...and that prayer, shall lead to a well...

...delivering him of sin and all his works to deliver to it the undoubted assumption of a family compromising of such a weight...

...among the one promise is a consideration in a manner resembling, and resuming a matter of the kind without the end to be done. The chief promise or covenant promise of all covenants must be made...
Contracts

The English courts have leaned if late against construing
promises so as to render them independent as such a construction
has a tendency to multiply suits.

Mutual promises must both be binding on neither
will and both must be made at the same time, otherwise they are
more sound facts.

The mere act of intending property to one other or his
undertaking to do something respecting it, is a sufficient con-
sideration, as in case of a delivery of money to be delivered one
to another.

The preservation of the honour and peace of a family
has been held a sufficient consideration in China. An agreement
between the pre-lime father, son, and natural
child, to prevent family disputes.

So a compromise of a doubtful right, was held to
be a sufficient consideration in China, so the setting the bounds
of lands.

It is not necessary in contracts, that the considera-
tion be expressed in direct terms; it is sufficient if one or
be collected from the whole agreement taken together.

But if an express consideration appear upon the
face of the contract, the better opinion is, that no other can be
a valid implied. For it is a maxim that nothing can be implied when
Remarks

*P. 145.
9-11-270-
3576, 456.
it is expressed.

At law fraud in the consideration of the contract, does not in general vitiate the contract, tho' fraud in the execution does. The reason of this distinction is, that earnest money is wanted in the second case but not in the first.

But recovery will relieve against contracts for fraud in the consideration. At law the party must resort to his special action for the fraud committed against him.

In one case however the Court of B. R. seems to have considered fraud in the consideration of a contract a good defence. But the circumstances of the case were peculiar, perhaps other points in it influenced the decision.

Of Consideration in Contracts again considered.

Every executory contract a consideration is necessary to give it validity; therefore it is that a promise to do an act for an other, or to build him a house or to give him a sum of money, is not binding and can never be enforced either at law or equity; but if the contract has been executory, that is to say, if the gift has been made and the possession of the property parted with by the
Remarks

[Text not clearly visible due to image quality]
Contracts

donor. Property so given is liable to the creditors of the donor, for
any man must be just before he is countejet; but this does
not affect the right of the donee against the donor. This doctrine
is nowhere universally admitted to be sound, so far as it respects
personal property; but it is said if a man conveys land to an
other without any consideration in such conveyance shall come to the use of the grantor.

There does not seem to be any reason why a man should
have greater benefit from real property when he partakes with it not
starily than from personal. The reason why we find such a posi-
position in our books I apprehend to be this — During the civil
wars in Eng. between the Houses of Lancaster and York, the
real property of the leading characters in the nation was quite
greatly exposed to confiscation for rebellion or the contem-
ing parties alternately prevailed; they would therefore con-
vey their real property to object persons (who would not prob-
able take an active part in the commotions which then
adjudicated the country; and if they did would not be no-
ticed) to their own use or that of some friend whom they
wished to provide for in case of death for it was an es-
established principle that an use was subject to for-
spite, and the grantee to use had only the legal tithe
and the grantor was entitled to the beneficial interest,
Remarks

[Handwritten text not legible]
Contracts

for should the grantee attempt to prevent the grantor from enjoying the estate so granted a court of chancery would compel the grantee to suffer the grantor to improve the estate as his own. During this period it happened that if a man granted his estate to another for no consideration the presumption was that it was granted to his own use, but in that case there can be no doubt, but that the deed happened passed the legal title to the grantee, and the use by the courts of chancery, adapting the idea of the presumption attended to vested in the grantor — If this be a just mode of considering the subject it is apparent that this doctrine grew out of the state of society in Eng. and cannot be applicable to any other country under different circumstances — But it became an established rule and of course when the statute of uses was enacted giving to the certain free use the legal title, such conveyances had not any the least operation: for if it might be said that it transferred the legal title to the grantee, the statute immediately transferred it back again to the grantor — It seems to me that in this country no presumption can arise of any intention in the grantor, that he should be entitled to the use or upon general principles I entertain no doubt, but that a grant of land without any consideration good or value —
Remarks

...
Contracts

...able attended with the delivery of the deed, or much more in the land in the grantee, as a gift of a house attended with a delivery of the property of the house in the donor. I consider it therefore as a sound principle that in contracts executed no consideration is necessary to vest a title to property granted, and it is an universally true that a consideration is necessary to give validity to an executory contract.

At this a consideration is necessary to an executory contract, if the contract is in writing and acknowledges that it was made upon a valuable consideration, and proof is admissible to show that it was not, but this does not proceed upon the ground that a consideration is not necessary where the contract is in writing, but proof cannot be admitted to contradict what is alleged in a written agreement; for if the consideration which is acknowledged to be valuable in a writing, standing should be detailed at the time, in the instrument itself, or any other collateral instrument, counting upon such contract, and when detailed it should appear to be no consideration in the eye of the law. I apprehend, such contract would have no more validity than a fraud contract, without consideration: for in this case the want of a consideration is not shown by fraud testimony but by...
written documents of as high a nature and validity as the contract itself.

If the written contract should not acknowledge any consideration, then indeed it may be averred in the declaration that there was one and this averment may be supported by parol proof; for at this you cannot introduce parol proof to construe a written instrument agreement, yet you may introduce it when it stands well with the agreement and serve to give it effect.

Here we must notice a difference between mere written agreement and one that is sealed. It now becomes a specialty, and at this there is no consideration expressed in the agreement, there is no necessity to aver any to give it validity, for from the act of sealing it is presumed that there was a consideration, and of course if there is a covenant to do any collateral act the Pst. must recover on the contract, where there has been a failure of performance, whether any consideration is acknowledged or not, but as it is consistent with the rules of law that the quantum of the consideration due to should be enquired into, and there appears to be no other than what is implied from the act of sealing in such case only nominal damages will be recovered, and a Court of equity will never decree a
Remarks

...
specific performance of such a contract.

If the contract is to pay a sum of money as in a bond or covenant, here the action must be on the bond or covenant; and in this action the whole sum must be recovered if anything, and is not governed by the rules that operate where the action sounds in damages, where the time is at liberty to give less or more damages according to the equity of the case.

In such cases it is plain there can be no use in the enquiry as to the quantum of consideration, for if there is any consideration the whole sum must be recovered, and it is certain from the very fact that there is a consideration.

Notwithstanding these observations I should suppose that the contract being sealed would not in every case give validity to a specialty; suppose for instance that the covenant detailed at length the consideration on the bond in the condition discovered the consideration, and it was one which the law considers as none; here, although the law presumes a consideration from the act of sealing yet in such case this presumption is completely rebutted by the instrument itself showing what that consideration is. N. B. In Con. we consider notes of hand as specialties.
The manner of closing a Contract

When the terms of a contract are mutually accepted; as if a. says "I will take $20 for my horse" either party may stop by tendering on his part.

But if in this case no tender be made, no delivery be given, no earnest accepted, and the parties separate, both are at liberty to refuse performance; but if a day of payment be fixed within a year the party is charged and neither is afterwards at liberty to retract.

Query. In the vendor in the last case obliged to deliver the horse on the day fixed without receiving payment?

A promise made in consideration of an act to be done is not binding till the act is done or perhaps till the promisee has offered to do the act, and has been prevented by the promisor. And in a suit on the promise, performance or at least an offer of performance must be averred.

But whereas one promise is in consideration of another, performance to need not be averred by either party. In case of conditional promises; as if A. agree to make a deed to B. on the 10 of May B. paying $100 to A. on the same day and making such a deed the contract is incoate only.
Contracts

But either party may on the day fixed the not afterwards close it by performing on his part. If neither party perform his part at the day the contract is at an end. And if on promises of this kind suits are brought, by either party performance must be avoided.

Actions founded on Contract

1. Account

This is an action founded upon an express or implied contract that one who has received property of another to account for, will render his account for it. If he does not render it, this action lies.

It lies at Law, save only against guardians in roving laws, and receivers and joint tenants they being receivers for each other.

By the statute of 11 & 12 this action is extended in favour of one joint tenant and tenant in common against the other as bailiff.

At Law, save the action lays only between the original parties themselves, and not for or against their contract being founded on such priority of condition, or that on party of
Remarks

[Handwritten text with sections and references marked]

Co. C. 1793.

Co. D. 1793.

1 Dec. 1793.
was supposed concurrent of the other's disbursements &c. But to this rule there is an exception in favor of joint merchants not against them.

By the stat. West. 2. that in 1 Ed. 1, 25 Ed. 3, and 21 Ed. 3, this action was extended generally to &c. the &c. of &c. and to Ad. &c. Stat. 4 Ann. extended it against &c. of &c. &c. and wards bailiffs and receivers and to and against the &c. of &c. of joint tenants and tenants in common.

The distinction between bailiffs and receivers is this. A bailiff is one who has received the property of any kind of another to improve for the owner and account to who is entitled to an allowance, or wages or wages for his reasonable expenses or charges.

A bailiff must account for profits which he has made and for those which he might have made by reasonable industry.

A receiver is one who has received money to the use of another to render an account and who has no allowance for his trouble.

Generally a receiver has no allowance and is not bound to account for the profits, but to this there is one exception as between joint merchants, for here the defendant has allowance and account for the profits.
A Bailli cannot be charged because if he were he would lose his allowance.

This action being founded on priority of contract, his entire case of title, except in favor of the king and infants.

In declaring against a Bailli or Receiver, the Rft. states that he delivered such property to the Deft. as Bailli or, and that the Deft. refused to render his reasonable account for the damage or, and demands of the Deft., his reasonable account together with his damages aforesaid and his costs or.

In case of partnership and Writs of joint-bills, the Rft. states that the Deft. has received money more than his part.

It is said that an action of account lies not where the sum is certain, as if one delivers $100 to A. to trade with the person shall not have account for the $100 but for the profits - Resin - Does not this action against lie against the sheriff who has received a certain sum.

Should not this rule lie, for a sum certain one cannot be charged at Bailli.

Where one receiver money to the use of another to render an account, an action it seems will lie, for an account of the money received.

If money has been received of A. by C. to deliver to B., act.
Contracts.

Account ties by 13. Where the Pst. must declare of whom the money was received.

So if money be delivered to be redelivered on a certain event.

At the time if I deliver money to A. to deliver to B for my use, and A delivers it, I cannot have account against B.

For he is not prior to the use.

If the value of goods works or refuses to deliver them to account will not lie, but Power or deliver will. for he does not receive them to improve of or account for.

So it does not lie against a dicreeper for the profit for the action is founded on contract. Except in the case of an infant, he may consider a dicreeper and treat him as a guardian.

If A., Bailiff to make a deputy A. cannot have this action against the deputy for want of privity, but the bailiff may.

This an infant may be an end and liable for torts yet if made Bailiff he is not liable to account for he cannot contract and is supposed incapable of accounting.

In an action of account, if the Pst. prevails there are two judgments first that the Pst. do account. after which auditors are appointed before whom the accounting
Contracts

The auditors then make their report and final judgment
is rendered upon it as on a verdict.

Before auditors the parties are of common right enti-
ated to testify.

If the Deft. refuse to go before auditors, to produce his
accounts, the auditors must award to the Pltf. the whole of his
demand.

If auditors find a balance in favor of the Deft. they
may award it, and judgment pass for him to recover damages.
This is the case in chancery only.

If he who receives property of another to account, makes
an express promise to account, this action is a special Deft.
with the

But in this case it is said by both, the Pltf. shall not
transfer into the particulars of the account, but confine him
self to the damages which he has sustained by the Deft.
accounting.

Does not this law imply a promise? and is not this
a good ground of Deft.

If one by his deed acknowledges that he has receiv-
ed property to account, the Pltf. has his option to bring an
action of account, or on the deed.
If one find property of an other account his against him for the action is founded on privity of contract, trust, confidence etc.

As to what the Deft may plead in this, there is much contradiction.

It is competent for the Deft. to plead anything to the action which shows that he is not bound to account. It is a good plea therefore that he never was Bailiff. In this is the general plea.

To a release of all actions, is a good plea in bar.

To an award of arbitrators that the Deft. should be acquitted, is a good plea in bar.

Plea that the Deft. paid the money received the money to deliver to D. and that he has delivered it is a good plea.

But plea that the Deft. has made payment of the money is not good for he was bound to account.

So a plea that the Deft. has made and given him a receipt for the money received is not good for a receipt is but evidence of payment which admits former liability, and does not affect the Pllt.'s right to account of account.

So that the Deft. has fully accounted is a good plea in bar. On this plea, the Deft. cannot go into the account but must prove the fact.

It is a general rule that if the Deft. shows that he
Contracts

has one been liable to account no plea in bar of the action is good excep
cept "fully accounted" and a release or something equivalent to it; or an award of a release, or in discharge of other things must be
pleaded before auditors

"Fully accounted" "release" be must be pleaded specially.

Before the auditors, parties may plead and join for
in favour fact, the issue is then to be carried back into court and
their tried.

Whatever can be pleaded in bar to this action, must be so
pleaded, and not before auditors because it will avoid trouble
and charge to the parties.

And nothing can be pleaded before auditors contrary to
what has been pleaded in court and found.

Therefore "never kiss" the "release" "fully accounted"
"an award in discharge" are not good before auditors.

It is a good discharge for the debt, or it is some
times called, good accounting to show anything which could not
be pleaded in bar to the action but which discovered that he
ought to be eventually liable.

That the property in his hands was lost at sea in a tempest; or that they were cast over board before auditors,

So if the goods were taken by robbers without his
1 Dec. 21
2 Dec. 100

Comm. 74
19 Dec. 1787

U.S. 10

3 Dec. 081.484
449

2 Jan 172.210

Comm. 60.16.16
550
fault, or taken by an enemy.

Even was not the plea that the goods were taken by enemies in strange, a plea in favor to the action?

That the property was perishable & in danger of perishing and that he sold it on credit, without a special commission to this effect, was a good plea.

The debt, accounting, is allowed all losses occasioned by inevitable accidents by open enemies or by selling without his fault.

When the report is returned to the court, final judgment is rendered for the sum awarded.

In Eng. the action of account is not much in use. The common remedy is in Chancery for in courts of law the Plaintiff is not entitled to a discovery of books, papers, &c.; nor to the Deft's oath.

II. Debt

The legal acceptation of the word 'Debt' is a sum of money due, by a certain express contract, as by a bond for a determined sum, note, special bargain &c.

So for a same capable of being ascertained, any action of debt lies in some cases on contract, in.
Debt on simple contract was denoted in Eng. by reason of the wage of law, which is the debt meaning that he owes nothing and conveys to a meaning that they believe him.

Wage of law is equivalent to a verdict for the defendant.

The whole sum demanded must be recovered if the court is not to now observed, 24 O. 773, 290.

In some cases, "Debt" here not on express simple

as against an Exon. Adt. for a taker and might have waged his law but an Exon. Adt. cannot.

If one expressly promises to pay a sum certain for property to his own use or for service rendered to him himself debts here. Otherwise in some cases, if he promises for another on: Act. if it promises. As if a promise made to B to pay the debt of another due to him in consequence of his relinquishing in favor of the promise a lien on the debtor's property. "Debt" in this case will not be the proper remedy is apparent.
The real ground why we shall
courts does not lie.
Contracts

If a person promises to pay for goods when the person for whose use they were delivered is not liable. It seems that debt will lie—Sumne. 12 Ky. 342 or 343.

So debt does not lie against a bill of exchange, he is rather in the nature of a surety or guarantee. The drawer is the debtor and liable in debt.

Downt his in some cases on implied contracts and some times where there is nothing like a bargain or contract or other commercial transaction, from which to imply a contract, as on a penal statute when the penalty is certain, there being no specific mode of receiving the penalty prescribed.

This is the common practice in Eng.

To debt on a penal statute not guilty is a good plea.

Not guilty is not a good plea to debt on specialty.

The debt rises not to recover damages yet after damages are recovered lies on the judgment, for the demand by the judgment is made certain.

So upon an award of arbitrators to pay a sum certain.

When the debt in judgment is in custody on the execution debt on judgment does not lie. A being impeached he is discharged with the debt, consequent for failing in execution in satisfaction in law.

Generally execution cannot issue in Eng after a year.
R8 mawen why anachur das, bi on
dae unwonent fowgnaun.
and a day, and in this case the Plaintiff's only remedy was by debt on Judgment by original writ, after such a term, payment was presumed.

The state of Ver. 2. gave a sure facies in this case to show cause why execution should not issue, and now after a year and a day the Plaintiff cannot issue execution without a sure facies except where execution has been stayed by a writ of quo warrant or some other cause.

It has been said that in Eng debt on Judgment will not lie within a year and a day.

Indeed. It is said in Bacon, that debt on Judgment will lie to provide the debt for not paying the money recovered by the judgment, without putting the Plaintiff to the trouble and expense of levying the execution and thus completing payment.

It seems therefore that the action will lie before a year and a day.

An erroneous judgment will support this action, for such judgment is valuable alike in valid to all intents and purposes till reversed.

By the constitution of the U.S. full confidence is to be given in each state, to a judgment rendered in one other.

If therefore an action is brought in one state on a judgment rendered in an other, no enquiry can be had into the original cause of action.
Contracts

A judgment rendered in a foreign country is, both in Eng. and the U. S., prima facie evidence of a debt, but in an action on such judgment, enquiries may be had into the original merits.

Formerly it was held, that debt would not be on a foreign judgment.

The debt, in declaring need not show the original causes of consideration.

To debt on such judgment, "null and void," is a void plea, yet declaring on the record does not vitiate the declaration.

"In debt, A. B. is concerned with debt on foreign judgment," Torq. 45. 6.

It is said, where Ind. A. B., debt also will lie, this is not always the case, as where money is paid by mistake, obtained by fraud, by breach of trust, by sale of property converted by a stranger. The rule is to be understood. In, to receive in general of express contracts, and those implied from transactions in the nature of contracts, as for example sale of goods without express promise. A foreign judgment is not altogether like one of those cases but seems to be so considered.

If judgment has been obtained by fraud it is a mere nullity, Croll, 314; Will, 47. 3 - 11 - 241. 1st. 72. 846. Story, 529. 199,

For money secured by bond or single will debt in the ordinary case.
Contracts.

If a bond is given conditionally for the performance of a collateral act, there is sometimes there is a remedy in chancery, it being viewed as an agreement to do the act. But the only common law remedy is the action of debt for the penalty.

A bond to payable generally that is, at time of payment being fixed, is payable on the day of the date.

On a contract to pay a sum certain debt, his—

If there is a covenant with a penalty, the obliger has his election to sue for the damages in covenant broken or in debt for the penalty unless it appears that the obligee to have his election to go to the act or pay the penalty. In such a case on non-performance of the act, the action lies for the penalty only.

Debt lies against an officer who has collected money on an execution, on a refusal or neglect to pay it over for levying it under a contract in law.

This runs an exception to the general rule that lies not on bond contract to implied, but by levy of the judgment debt is considered as transferred to the sheriff.

But debt will not lie for collateral stock taken and sold for want of purchaser—

But if the should collect collateral return and estimate in his return, at a sum sufficient to pay the debt to
Contracts

and should neglect to call them it would seem that debt lies against them him. For his own default shows that the debt is a matter ought to be recovered.

In debt on prior contracts the state of limitations, no residence may be given in evidence under the law.

III. Debonum

The action of Debonum lies for the recovery of a "specific chattel" in nature of a "bell in Chancery." The judgment is for a certain sum of "things detained" conditionally, viz. that if it cannot be had, the debt shall pay the value and damages of detention.

It lies to recover anything which can be identified, not for money, even the wool in a lease.

It lies for a piece of gold of gold of such a value as 20$, but it does not lie for 20$ in money.

It lies in those cases only in which the debt obtained possession lawfully as by delivery or finding.

The action of Debonum seems to be on contract and may be joined with debt in one declaration.

Saves lies in all cases where debt lies as a matter of foreclosed debt, but this rule does not hold a case for known lies when the taking in tortios.
When an express, after missus a person

1. when in an express, after missus a person

2. when at common law, under

3. when not of concurrent having the

4. when is the only remedy

5. when is of concurrent to be brought

6. when, by express and by declaratory, as

7. when all concurrent and declaratory are not

8. as when the only remedy
Contracts

The reason why distress does not lie where the taking in execution

comes to be, is that originally that a distress taking was considered as de-

serting the owner of his property. And in distress the Act. must have
the property of the thing demanded. This action was devised by
means of the wager of Law. Though has taken place of it, under
the equity of the state of West. II.

Assumpsit

Act. is an action grounded on simple contract where the

vex is recovered for a breach of any promise contract under

stating.

The action of Act. is derived from the statute of West. II.

Of Act. there are two kinds 1st. Express, and 2d. Implied as
they are frequently called 1st. Special Act. 2d. A general Indeb. Act.

The power of these lies on express agreements, promises and engage-
ments, which may be either written or spoken.

The amount of recovery in this action is the agreement
which is all the value of aspeic distress.

The latter is founded on a debt for moral obligation
which is a promise by implication of law.

But it also lies in cases where it is impossible to

prove a promise, or where a husband has forbidden any one.
Contracts

to supply his wife, whom he has turned out of doors, with anything on his
account. When one acts on notice of his money in these cases: Ind. Art. 111.

It may then be laid down as a rule that, in such a case, the
is bound in justice and good conscience to pay money to another
the fiction of Ind. Art. 111. to obtain it back again unless where
justice or nation policy forbids a recovery; as in cases of debt
on which the statute of limitations has run or in gambling debts.

The damages in this action are not something by the
agreement, for usually there is no agreement, but the action
such as in equity and good conscience ought to be recovered.

When a contract is detailed at length whether it be by
pract: written without rest or written and sealed, the action
for breach may be brought on the promise: And if in contracts
of this kind a debt is created by the agreement, a special Art. Ind.
Art. in the action of Debt two concurrent actions and the Fpt.
may have either or this election.

Upon a breach of contract, neither debt nor Ind. Art.
Art.: a special Art. has for a recovery of damages: the dam-
ager being uncertain. But if the damage for non-performance
are assessed by the parties to the contract Ind. Art. slip his.
In the latter case, the Fpt. the promise may at his election be


The text on the page is not legible due to the quality of the image. It appears to be a page from a handwritten document, possibly containing text in English. Without clearer visibility, it is not possible to transcribe the content accurately.
Ind. Ass't for the penalty agreed upon, or a special Ass't for damage to be assessed by a jury if it appears that the penalty was in the nature of a security for performance, to make the promise stronger.

But if it appear that the promisor was to have it in his discretion to perform the promise or to pay the penalty, it is to be

A breach of trust by which one has been deprived of a sum of money is a ground of Ass't.

Ind. Ass't in some cases where a special agreement does not. As for the price of goods sold on a quantum meruit when no express agreement was made: Also for services done on a quantum meruit no price having been fixed by the parties. And it is not necessary for the Ass't to declare the price sum due.

So for money loaned or for money paid to the defendant at his request express or implied, or expended for that which it was his duty to do. Ind. Ass't. s/lia.

The not if the money was paid or expended against the will of the Ass't. In those cases s/lia. s/lia. Even

Not withstanding the general position that Ind. Ass't. s/lia. in those cases only, in which Ass't. s/lia. There are some cases where Ind. Ass't. in the only action excluding both s/lia. and special Ass't. so for money paid by fraud, for money paid by mistake, and where it lies in dissimulatio of the ori-
strict.

In the first case an action of fraud is in one sense common, but an action of fraud is in appearance of the contract.

Money paid by a mistake under a rule of court cannot be recovered back.

This action will lie on an advertisement offering a reward. 3 Bl. 451, 9 B. & C. 86. 7 T. & R. 110. 4 M. & K. 129.

It lies on an intrinsic consideration. It is not abs.

solutely to an action stated to that it be signed.

An Ind. Aft. will not lie for money had and received, for a payment made in express contract, still open.

For while it is open, damages only will be recovered, and those on the special promise—stipulation, if the contract is at an end.

If a horse be taken by a wrong doer, the owner may bring

a suit for the horse, or if he is sold and not otherwise Ind. Aft.

for the price actually received or perhaps agreed for, not.

on the case may be the actual value. Will it be if the horse

was stolen? this depends on the doctrine of merger.

An action of Ind. Aft. will not lie, for money had and received to enforce an unreasonableness claim.

For money obtained by oppression fraud, imposition &c.

Ind. Aft. 83—Doug. 451, 9 B. & C. 86. 7 T. & R. 485. 5 D. & C.

For money paid on an illegal contract, consideration
when the sinner hearkeneth little
through compunction with earnestly implores

neither guided on a correct authority — mangled
on a judgment making using reformation
both, when not
of the Dft. is not part of the privity as in case of personal injury.

It seems now settled, that he is entitled to refund at all events—

Money paid for property to which the vendor had title may be recovered back in an action of Ind. Aft. or an action might be brought on the case, on the implied warranty—

For money paid under a void authority, and in some cases for money paid in pursuance of a judgment of Court Ind. Aft. Etc. But in the last case Ind. Aft. lies not on the ground that the judgment was inequitable. But but by reason of some circumstances attending the judgment or some subsequent event rendering it inequitable for the Dft. to retain the money—

The case in Burnover, Moore v. Fairland has been given

If a debtor at Beaufort deliver money to D.S. to convey to his creditor at Savannah, & D.S. does not deliver it, can the creditor maintain Ind. Aft. Against D.S.? equitable—

It is laid down as a general rule that the Dft. cannot sue in one kind of action, when he has a remedy of a higher nature. When the object in both would be the same, this rule holds, the lower being merged in the higher higher remedy. But when the object is different the Dft. may assert to either remedy—
Contracts

If money has been paid on a contract written or unwritten for an act to be done, Ind. Apt. Nfr for money paid in discharge of the contract, or an action of damages in affirmance of the contract, for want of it is not liable in Ind. Aft.

In this case the consideration fails—the rule in the first branch does not hold, when the express contract is still open.

A contract must be disaffirmed if at all in toto.

If a greater sum is demanded than it was pledged for and paid, the surplus may be recovered by Ind. Aft.

While money paid by mistake is in the hands of an agent Ind. Aft. may be brought him, but not after it is paid over to his principal.

Can the action can be brought against a known agent?

Burnt by fire

A mere acknowledgement of the existence of a debt if the accompanied with a refusal to pay has no foundation for an action of Ind. Aft.

A bare acknowledgment is never evidence of the existence of a promise. If money has actually been received by the party and accounted for, money had and received stated generally is good.

In special cases, proof of a promise differing this...
A consideration must exist in order to establish a recovery of damages of the party man who failed, 10-447, damages of an illegal demand for the want of a proper vendue. Under these circumstances, you may show it in some ways by pleading it on the plea of

The contract is specified by a notice. The word of consideration may be a written or oral word, but the illegality may be shown by either.

The terms of the contract shall consist either in a written or oral word of the promise or something shall be agreed to which shows that the promise is not binding or that something has taken place since the making of the promise that there is no consideration of recovery. If you deny the existence of the promise - your plea is non-obstante on the 18th of the eleventh you may if you please, plead non assumpsit and as the promise is shown you may give in every the facts and make the evidence on which this is admissible.

The nature of the impossibility
Contracts.

Slight from the parties stated will not support the declaration.

The rules which govern cases of contract are principally of more equity, and any equitable defense is good.

An act, on an innocent, composed, consent, a special promise by the debtor may be proved.

Action for money had and received is for money only.

Does it not lie for bank bills?

This to an action of apt of maltaka cowa with the contract.

I. Insanity may be pleaded a given in evidence under the general issue. It is a general rule that in actions of apse, anything which goes to defeat the right of recovery in the apt. may be given in evidence under the general issue.

II. Covertness.

III. Infancy. An action brought in court not recovering, running with the land against the heir of the deceased, infancy alone is in the.

IV. Possibility of performance appearing on the face of the declaration is a good defense on demurrer. But if the impossibility does not thus appear it must be specially pleaded.
Insolvency a defence against confiscation of every description except when against the
of covenant with or covenant running with the
land. The insolvency may be held a titre
of the plica or a person under of age to pay
a full settlement the action is the 1st promise for
the real word but payable only by a resale
action of necessity they shall not be speeded
in the same observance. In the case of a tart
insolvency it no defence in the case of a Common
insolvency not coming up
Considerations for insolvency no generally of course
notwithstanding objection even broad and as to have no title nothing but remand
proprietor and found that other concerned
she in bond bearing by the assignment
and value of money that the can work
gal the concern it the remand
even in the case of the contract
ordering and properly an instalment

the cop of imperfect title alleged com
except if disclosed in the declarator
denies the proper defence of the
behind a special or note may be
plead specially
Contracts

V. That the contract is idle and nugatory, or is illegal or good pledge to this action. A copy less, especially less giving as other contracts.

VI. Damages may be pleaded in bar or given in evidence under the general issue.

VII. The want of consideration is that the consideration is part of the act to be covered under a specialty, other than a contract executed as a bond, be given in evidence under the general issue. But if it appears upon the face of the declaration damages in good plea.

This is in case of executory contracts. Is there a good defence on between the immediate parties, in case of a specialty?

The meaning of the plea of non est is not that the Deft. never paid, but that there is no duty binding upon him at the time of pleading.

Formerly "not guilty" was held a good plea in Deft. as a general issue, but now it is not.

At this suit debat is not a proper general issue yet it is used by verdict for the Deft.

Of. Prosto of matters arising subsequent to the contract.

I. The Stat. of Limitations.

By the Stat. of James I called the Stat. of Limitations
Contracts.

It is enacted that no simple contract shall be binding in law after six years standing.

But the remedy only is taken away, the debt continues.

3 Bee 1574

It is a question litigated whether a contract upon which the statute of limitations has run can be renewed by a subsequent promise of performance or to lay a foundation for an action; or whether the suit should be brought upon the new promise. The decisions upon this question have been various. But according to the latter adjudged cases the action may be brought on the original contract.

We presume in cases of this kind the subsequent promise is of greater merit as a waiver of the advantage which the Deft. might take of the statute - but that the Deft. is at liberty to ground his claim upon the subsequent promise if he pleases.

Various opinions are entertained as to the ground on which a debt is taken out of the stat. of Limitations. Some eminent lawyers are of opinion that the debt is taken out of the stat. on the ground of indubitressness. But this cannot be the case: for the one acknowledges a debt but refuses to pay it, the debt is not receivable.

Gill 106 137.

But if there had been a bare acknowledgement with a refusal the debt would have been taken out of the stat.
Contracts

The acknowledge ment of a debt is evidence of a subsequent promise. 5 Mod. 426; 412; 110. Chit. 470.

It is the opinion of others that it was the opinion of others, that it was the intention of the Legislature to have all debts on the presumption that they were paid.

If this were true, no advertisement to discharge his debt, by a debtor, or desire giving property for the payment of his debt, would revive a debt once barred which is the case.

The true ground for the denial supposed is that of waiver and for what amounts to a waiver. 1 D. R. 828; 116. 2 9 1 0.

A contract is waived by the act of one of two joint debtors, payment of part or a promise by one, or acknowledgment.

The statute of limitations begins to operate on simple contracts from the time at which the time right of recovery expires.

There is a provision in the statute of limitations that the same in favor of persons, in favor of persons,anus, persons, beyond read.

But the statute supposed that the rights of the persons thus excepted, would not be affected; would not be affected by the statute if there were no provision.

But notwithstanding the provision if the statute began to run upon the statute a contract it cannot be taken out of the statute in favor of the persons excepted in the provision.

If one of several joint creditors is within the
The statute does not operate when the contract is one implied to exist. Page 345.

A declaration countering on a promise to it is testamentary. Page 362.

Which the statute has done, is not supported by proof of a subsequent notice to promise to the P'to himself. Page 310.
Contracts

Before, the statute attains to the others as abroad.

There is some contradiction in the authorities as to the question whether the statute affects an Ind. Deft. or not. The rule however appears to be this: If the Ind. Deft. is founded upon contract, the statute extends to it; otherwise it does not.

If the Ind. Deft. be for a penalty imposed by the by-laws of a corporation it is not affected by the statute.

The statute does not affect a running account where the demands are mutual and creditors and debtors have been in the habit within the time limited—6 Ev. No. 159-169.

A title to lands cannot be acquired by any length of quiet possession if such possession was founded on mistake of the parties in making partition.

II. Accord & Satisfaction

Accord and satisfaction agreed upon between the party injuring and the party injured which when performed is a bar to all actions. in this account.

Accord and Satisfaction cannot be pleaded in bar of a bond when the right of recovery grows out of the bond itself independently of any collateral matter, but it is a good defence against an action brought to recover damages as a compensation for
Contracts

According to this rule it would seem that accord and satisfaction is a good plea to all other than single bonds, that is, bonds without consideration.

It is said that the debt may be paid accord and satisfaction of the money due on the bond itself.

Accord is made before a right of recovery has attached, and it may be pleaded in bar of an action grown out of the bond itself. A title to land cannot be affected by accord and satisfaction.

The accord of satisfaction must appear to be full and ample, or at least the contrary must not appear. Therefore a payment of a less sum of the same species of property, in satisfaction of a greater sum, is satisfaction which can bar an action unless the time, place or other circumstances are alleged in favor of the creditor.

Any compensation of which the value is not self evident less than the sum due, may be a full and ample satisfaction, if given and received as such. But when the thing which is due and that which is given in satisfaction for it, are of the same species, the difference in value if any will always be in distinctly certain or evident. Where they are different, liability in value is not regarded.

An equity of redemption, or any other more equitable claim as it is of no value in contemplation of law, cannot be considered


Contracts

the consideration of an be of a legal claim.

II. The satisfaction must be valuable. Courts will not make inquiries into the value of the articles given in satisfaction.

III. The satisfaction must be certain for if it is left to an uncertain by the parties so that it will not amount to a binding contract by and between the parties it is not good even after acceptance.

IV. The whole satisfaction must certainly be received actually if received in order to bar an action. Tender of the thing agreed on as a satisfaction would not bar an action.

Great inconveniences may arise from this rule, when the second is void.

When the second is reformed to to be in the nature of mutual promises, it has been adjudged to be binding with court acceptance.

An accord to give a perform any thing at a future time, is no bar to an action before that day arrives for if the day the creditor might, if he chose refuse the satisfaction.

If part of the accord has been executed and the creditor tendered and refused, it is no bar.

In a plea of accord, it is necessary to state that the satisfaction stipulated and received was given and received.
Contracts

Awards

An award is the decisions of persons appointed by the parties injuring and injurious, arbitrators of a dispute concerning personal chattels chattels or personal wrongs.

A mere award is not a ground of action.

Upon this principle, an award can never pass at the hands of a deed is to be delivered and no such to arbitrators to be given up to the prevailing party, not title would vest by delivery, since either of seizure is indispensable necessary to convey lands and this cannot be given by arbitrators.

But arbitrators can award the conveyance land and if the party against whom the award is made does not convey, his arbitration bond will be forfeited.

If the old duty, that is the right of recovery on contract in one of the parties is superseded by the award and a new one created, it is generally the case, that no action can be brought on the original contract, or tort.

Yet in some of this kind, the old cause of action is not in any instance, so completely extinguished as to be incapable of being renewed. For when a mere duty is created by an award if no obligations have been given to abide by it so that the parties have
nothing on which to rely, except the award itself; most may be had to the original cause of action unless the award be performed at the day appointed.

But if the award itself create no right of recovery, it set in its making a conveyance where the same may be had to the original cause of action.

If bonds are given to abide by the award, more or less can be had to the original contract or cause of action.

With regard to bonds submitted to arbitration: the same rules are adopted, or are mentioned already under the head of awards.

According to Eng. principles no evidence can be admitted to prove payment of a bond, unless the evidence is of as high a nature as the bond itself or award; therefore would be nugatory.

Arbitrators have all the judicial powers of a court of law and of a court of Chancery and in some particulars more than both; they give damages or award a special performance of a contract.

The court of Chancery does not except in very special circumstances a case where decree brings a specific restoration of personal property chattels, yet it is not uncommon for arbitrators to decree such restitution: And the award acts the prop.
The second item made of bone has
excellent color. The second is gold in color.
Contracts

If a submission is made to an action of debt or for a sum of money, and the said submission is not for a sum of money, but for the performance of the promise, or the performance of the award, the award is an action of assumpsit for a sum of money, and the submission is an action of assumpsit for a sum of money. If the submission is for a sum of money, and the award is for a sum of money, the submission is an action of assumpsit for a sum of money, and the award is an action of assumpsit for a sum of money.

If two persons have distinct interests in a submission, and the submission is for a sum of money, the award is for a sum of money, and the submission is for a sum of money, the award is for a sum of money.

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If two persons have distinct interests in a submission, and the submission is for a sum of money, the award is for a sum of money, and the submission is for a sum of money, the award is for a sum of money.
II. Bonds may be given to abide the award in which case an action lies on the bond for non-performance.

If the time limited in the bond for making the award be enlarged by past and the award be made after the time first limited, but within the enlarged time, no action for non-performance lies on the bond.

The oblige in an arbitration bond is completely discharged of all obligation by tender and refusal.

III. The submission may be by a written agreement in which case an action may be maintained on the covenant; and if a sum certain be awarded on an action of debt, lies to recover it.

IV. The parties may by statute, §310, 65, 3 make their submission a rule of court.

In this case an attachment may issue for contempt against the party refusing to abide by the award or an action may be had on the award.

A past submission cannot be made a rule of court.

If an agreement enlonging the term of making an award does not contain a consent that it shall be made a rule of court, non performance of the award made after the time first limited will not subject to an attachment.

The principles of the Civil Laws have been good
Contracts

really intervenes with the old Com. Law respecting execution. Set that
this title of the law has undergone an almost entire change -
Thus, the ancient and modern authorities are extremely
contradictory.

When a subscription is by paper, the subscription may be
with or without a consideration. In all the cases if a sum of money
was awarded, it must always be recovered.

If a collateral act was awarded, anciently, there was no con-

consideration to enforce it. Afterwards it was established, that if there was
a promise with a consideration to abide, the award respecting a

collateral act might be enforced; but if there was no con-

consideration for the promise, the award could not be enfor-

secd.

At a later period the rule was that if there was a
promise to abide, without consideration, the award as to
collateral acts might be enforced. But now if there is no

consideration to abide, the award

may be enforced.

The law is the same where the subscription if the
writing is under seal, seal, it is a covenant, and the mode
is some what better.

Where bonds are given, the subscription itself may
be either written or passed.
Contracts

Bonds are sometimes given to an arbitrator in his own name—

They may also be given by third persons—

Respecting agreements between merchants or entering into

to submit to arbitration—De Be—

A testator cannot obligate a legatee to submit to arbitration

He can a third person in any case begin other under such restraint

Persons submitting their claims to arbitration may

retain the power of the, within such limits as they please, as to

award according to law &c

But when the submission is general and unqualified,

the arbitrators have the extensive powers before mentioned—

Some period of time must be fixed within which the

award must be made—

The Revocation of a Submission—

A submission to arbitration is revocable at any time before the award is performed—In re. If the party

Invoking knows what the award is? A suit at law cannot be with

drawn after Judgment is known.

Suppose the submission to be by rule of court, can it

be revoked?

... If the submission is by fraud the revocation may be
Subscription is in nature of a yearly payment.
3 years should cost
3 times more than one subject all must reach
& its

Kyd. 13, 1842.
281

Kyd. 17.
17 Dec. 1843.
8. 13. 37

Kyd. 24.
1 Dec.
Contracts

If the submission is by writing, the revocation must also be by writing.

We believe the law on a written submission may be revoked. By paid-

The party revoking forfeits his lands if anyone gives and the whole penalty is forfeited, but the land will be esteemed.

In cases of a partial submission and a partial revocation, there being no bond given, nothing could be required according to the old English law.

But in some cases it has been determined that an action on the case will lie to recover damages for the breach of promise.

Refusal to abide by an award, under a submission made by rule of court is a contempt of court and punishable with.

If a contract of any kind is made with an agreement that if any controversy happen respecting it, that it should be referred to arbitrators. There is no bar to either to the parties suing at law or equity. 14, 16, 506.

A submission is pleaded in bar to a suit brought on the original cause of action, before the day fixed for making.
Contracts.

Persons capable of submitting to Arbitrataint.

Those persons who cannot contract are incapable of submitting to arbitration.

Formerly, one bound for an infant, whom submitted to arbitration might avoid his bond. But the bond is now good.

The submission of one is now good but it is now good.

But if the E is obtained by the award here or jquery accept a sum more than he would have obtained on the former a lost in the latter case at law, he shall be answerable for the deficiency in one case and for the surplusage in the other.

If the E is to submit to arbitraint and the award is that the payer is certain, he cannot afterwards avoid the event of apathy.

An Eq. Stat. enable the assignee of a bankrupt with the consent of a majority of the creditors present at a meeting legally called to submit in arbitraint.

The submission of one partner in trade does not bind the other.

If a number of persons agree to submit to an E only A & B, conductors of the line were, the submission of the two binds all.
alleged subterfuge and that only
know of by rule of court
husband entreged in dissipation,
the property of the world. Cost. $4.67
of land amount $2,668
67 2 63.

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67 2 63.

67 2 63.

67 2 63.
Contracts

If a submission is made for another, the principal must as in other cases answer for the acts of his agent.

Formerly, all actions in which the party was savings his own, died with the party himself. But section 550. Be are now liable to a debt on an award, made on a panel submission by his executor or intestate.

The bond is not arbitratable, yet a bond to abide by an award to be made respecting a bond, is permitted by reason of compliance.

If in case of a submission of a bond to act with the submission is by panel, yet an action on the cap for non-compliance.

When a right of action arises from some injury done by fault subsequent coupled with the bond, the controversy may be settled by arbitration.

Who may be Arbitrators.

All persons except lunatics, idiots, persons of unsane memory, infants, and persons attainted of high treason or felony may be arbitrators.

Neglect infants and insane convicts be arbitrators.

Persons interested in the controversy or even a party himself.
maybe an arbitrator if appointed—

An umpire is one who is appointed to make an award provided the arbitrators cannot agree or neglect to act—

A single Arbitrator is called an umpire. formerly if the power given to the arbitrators and the umpire was so expressed as to import a jurisdiction in both at the same time, the whole proceed ing were void, whatever the apparent intention of the parties might be—

Or if the appointment of the umpire was referred to the arbitrators and the appointment was made a moment before the other authority expired—the consequence was the same—

But now if the arbitrators are vested with the power of appointing an umpire they may choose, during the period fixed for their award, if the period in which the umpire is to decide is the same or not. So that the power of arbitrators to choose an umpire where such power is given continues till the expiration of the time in which the umpire is to make his award—

If a person named umpire refuses to act they may appoint another—

The arbitrators cannot decide part only of a controversy submitted and permit the umpire to decide the rest unless the parties so direct.

In case of a submission to three persons an award
Contracts

by two of them, a majority is not good unless the parties especially agree that the decision of the majority is good for the law considers them vested with a joint authority.

And even if the parties empower a majority to make an award, still if all are not permitted present, a majority cannot act unless those who were not present wilfully absent themselves.

The award respecting all the matters referred to arbitrators must be pronounced at once.

Arbitrators cannot revive to themselves any authority to do any future act, or rather to make any future decision after the award is pronounced. It was formerly a question what such a reservation of authority would have, but it is now settled if the subsequent matter of the reservation is within the submission the award is void; but if it is not within the submission the award is void reservation of authority is void and the award is good.

The ordering of an act merely ministerial to be done by the arbitrators themselves or by others under their directions, or that of an other after the award is pronounced, does not vitiate the award, such an order not being considered as a delegation of their authority.

An award that one should pay the costs of the
action, on account of having been submitted, does not include the costs of the actuators.

If actuators award that one party has costs, without defining what costs they would be understood to mean legal, not equitable costs.

Actuators may award costs without any express authority in the submission — v. 170, 345.

The award must be conformable to the submission. There has been much dispute in determining what is within and what is without the submission.

It was formerly held that if A. & B. should submit all suits, or all actions, causes of actions would not be included. So complaints were holder to mean personal things only — 2 mod. 309, 310, 391.

But whatever may be the words of the submission if the parties by consent bring before the actuators and in fact submit to them any controversy for an award respecting them it is good.

If a controversy respecting lands be submitted to actuators, the actuators may award money or anything else in satisfaction of the claim.

This formerly is such cases an award not immediately effecting the lands was void.
Contracts.

So in case of personal disputes, it is now settled, that any real
tangible thing may be awarded in satisfaction. Formerly nothing but
money could be awarded in such cases—

An award that one party shall give a bond to receive the
sum awarded, has been adjudged good, but the arbitrators were un-
powers to award satisfaction merely.

A direction that the parties should set their case to
the award was also held good.

If partners in trade refer all matters in dispute or
arbitrators have of course power to dissolve the partnership.

Their power to dissolve the connection between the
partners cannot the same.

The words “all matters in dispute in the cause be-
tween the parties” comprise only the dispute arising out
of the cause specified.

The words “all matters in dispute between the parties
in the cause” comprise all disputes between the parties. Law is
necessary to avoid the submissions.

It was formerly held, that an award, that one
party shall defray the of expenses of measuring land is good, it
being in fact but part of the satisfy costs.

An award that a bond given subsequent to that of the
submission is good; it being virtually the same as an order that—
any contingent thing should be paid, or given up,
Formerly an award directing a release of all demands,
to the time of the award was adjudged void — on account of
the possibility that some demand might have arisen between the
time of submission and the time of award —

But now such an award is good unless the party
wishing to avoid it, actually shows that some controverted
demand has in fact arisen in that period —

But if such party should have assented signed a
release, in this case not knowing of some private injury which
had really been done to him by the other party between the sub-
mission and award — Wt hence supposed by pleading the whole
matter he might avoid the award —

An award directing anything to be done by or to a
stranger was formerly valid in all cases. But the rule after
awards established was, that if the act awarded to be done
by a stranger appears beneficial to the prevailing party or
if the act directed to be done by a stranger is one of which
the party against whom the award operates can compel
a performance the award in either case is good —

An award that one party shall make a payment
To one person such person as the other shall appoint is good.

An award directing an act to be done to a third—
Contracts.

person in now prima facie evidence that it is beneficial; so that to avoid it, it is necessary for the prevailing party to show that it is of no benefit to him. The unsuccessful party in this case has no cause to complain.

For it is immaterial to him whether he performs the act awarded to the party or to any other person.

As to an award directing an act to be done by third persons, the rule still remains as stated above.

If an award is to be made where there are several persons interested on the respective sides: the arbitrators may award according to the rule laid down between two or more of them [blank].

According to the old rule of law an attorney submit
ing to arbitration, for his principal, bound his prin
cipal only, that he may bind himself now if he causes
himself as obligor.

If an award orders a release of all claims by one who is trustee of a bond, for the use of another, this bond is not included in the award unless it was itself the subject of the controversy.

If the parties submit all controversies to arbitra
cement with an issue good and one controversy only is de
sided, it is notwithstanding a good award, even the oth
were other controversies actually submitted submitted, provided no other was actually brought before the arbitrators.

And award in this case is no bar to actions in those cases which were not decided; and the fact that one only was heard may be proved by pact.

But if in case of such submission more controversies than one were actually brought up before the arbiters and one only decided, the award would be void.

And in cases of this kind the presumption of law is, that there were no more than one cause submitted between the parties.

The presumption arises where all controversies are decided and one only is so decided.

But if the arbiters declare that they will decide on one or more of the disputes only, the award is void.

If no ita quod, an arbitrator it seems may or may not to consider disputes said before time or not.

When certain controversies specifically described are submitted with an ita quod to arbitrament if any of those which were specified in the submission were submitted in the award the award is bad.

If when specific controversies are submitted with an ita quod, other ones decided and none of those
Contracts

which were expressly mentioned are omitted, the award as to that
which were specifically mentioned are omitted in good w
When reference is by rule of Chancery no such dis
sion between cases of its good and others, it retains.
If specific controversies are submitted without
an its good an award deciding a part only of the contro
is so submitted is good.
And thus it would seem even tho' other controvies are actually brought before the arbitrator.
If controversy between A. & B. on one part and
C. on the other are submitted without an its good and
no controversy is brought up before the arbitrator except
one in which B. & C. are only one interested. The award on
this controversy is good: otherwise if there had been an
its good.

Requisites of a good Award.

I. An award must not be against law that is an award di
ecting some unlawful act to be done is il
Contracts

An award giving security for that for which the law allows none was formerly ill.

II. An award must be possible to be performed. For the legal import of the word "possible" see Contracts back. Yet an award that is a promise for a deed or pay a certain sum of money is good that it may be impossible to procure the deed; for the award is in the alternative.

III. An award must be favorable. Therefore an award that one shall serve the other is void, for it is unreasonable, or injurious personal liberty.

IV. An award that would endanger the person performing it, is void.

Upon the strength of this rule an award directing B. to pay money to C. at C's house was formerly void but it is now good.

V. An award must be certain, that an award is now good if no time or place is fixed for performance, the time being in this case according to law a reasonable time, and the place, that in which the successful party is.

The requisite certainty is not reduced to this rule, if an award uncertain in itself is capable of being made certain by execution, it is good. E.g. An award to pay costs. However, if the award is capable of being reduced to a certainty. But if the award...
cannot be made their certain by agreement, it is Del. ill. say on
an award to pay what is reasonable.

VII. An award must be final by this rule is made that
an end must be put to the identical controversy submitted.

VIII. An award must be mutual: formerly an award
was not good unless something beneficial was awarded to both.
At a latter period the rigor of this rule was relaxed and then it
was adjudged that it was not necessary for something to be
awarded to both sides, but it was still required that if something was
awarded to one party, the particular thing for which the award
was made should be formerly specified.

The former part of this rule was of is now wholly in
continued and as to the latter, it is presumed that an award
made on the submission of any controversy is intended as
a satisfaction of that particular injury out of which the con-
troversy arises more.

Formerly when several controversies arose and
were all submitted and an award was made that all con-
troversies were should cease the award was void because
there might be other controversies subsisting. Such an
award in such a case is never good. For the award is
understood to contemplate no other controversy than
those submitted and no other are effected by it not with-

Contracts.

A release to the time of the submission is now a good performance of the award commanding a release to the time of the award. And if in obedience to such an award a relief of all such demands to the time of the award shall actually be given, still the release would operate on those controversies only which subsisted at the time of the submission.

In some cases if part of the award is void the whole is of course void: in others this consequence does not follow.

It is a rule if there is uncertainty in the award or the award and that part which gives satisfaction to one side, but not to the other, in void, the whole award is also void. E.g.

According to the law as if it formerly stood, if A were awarded to pay costs to B, and in consideration of this part of the award B was commanded to pay £100 to A, the whole would be void; because formerly arbitrators could not award the payment of costs and certain this case constituted no satisfaction.

In some cases also when the award is in favor of one side only the voidness of a part vitiates the whole: E.g.

If some arbitrators decide matters not submitted and award an aggregate sum in favor of one party, the whole is ill. For there might have been given more damages given if they
had decided only those controversies which were submitted: if in this case the particular sum awarded for each injury had been kept distinct from the rest the award would be good as to the controversy actually submitted and void as to the others.

A governing rule laid down under this head is this by Mr. Bocaw. If the justness of the case is or may be affected by the award made on the controversy not submitted, or by that part of the award which is void, the whole award is bad.

But if the justness of the case cannot be thus affected the award as to the controversy thus submitted may be good and as to the rest void. As if what is awarded to one party is void and that which is awarded against him is good in this case if the party mentioned can receive the full benefit of what is awarded to him without its being actually performed, the award as against him remains good. Ex. 92-

If the award be that B. make a release to A. that A. in consideration of the release pay B. a certain sum, and the award as to the release is void, still the award as to the sum to be paid by A. is good.

For the award itself is as good a security to A. as a clear
Contracts.

If one party has actually received what was awarded to him, he is bound to perform his part, even tho' that party's award which was in his favor was in itself void.

If one is required by an award to give a bond with securities a bond in his own name only is held to be a sufficient security and he cannot be compelled to do more.

According to an authority in Coke if any part, however small of an award, in favor of one party is good and the rest void, then it is all given as a satisfaction for what is awarded against him, the whole award against him is good — this authority is denied to be law 12 Mod. 537.

The dictum that if the submission be in writing that the award must, is not supported by any authority.

If indeed by the submission the award is required to be in writing it must be written.

How far an award must conform to all the written requisites pointed out in the submission is not far shaper, cable of being accurately defined in every possible case.

The general rule seems to be, that if any formality which adds any solemnity or even the semblance of solemnity to the transaction of the award be required to attend the award the requisition ought to be observed but if the required formality be perfectly nugatory
Contracts

Performance of the Award

If an award be substantially not literally complied with, it is a good performance.

If it be awarded that a release be given by one party and that payment be afterwards made by the other the money awarded is of course excepted out of the release.

If according to the terms of the award there is to be any precedence in the performance, the party directed to perform first must or bringing an action sue performance while it first. If there is no such precedence either may sue without such precedent.

If a person in whose favor the award is made accepts satisfaction different from that awarded, he can not require any other performance.

Formerly payment at a day even previous to that fixed in the award was no bar to an action for nonperformance. It has since been allowed to operate as a good bar.

Formerly a tender of payment after the day fixed by the award was no bar to an action for breach of the award. Such a tender if made before a right of recovery has attached,
Contracts

by the commencement of arrears in a lease.

If it be awarded that a lease to be 15, and that there be
sum on the lease &c per a., and a. fails to pay at the end of the
year, such failure is no breach of the award, for the original dis-
spute is not at an end, and if it does not pay he is guilty of
breach of covenant on the lease, but not for the breach of the
award; the same would be the consequence if a bond were aw-
reed and being not given, were not paid according to the condition.

For the learned reasoning respecting a breach of an award,
that a suit pending and submitting during the term should
ear. Vide Kyd 1788 4th. 33—

The remedy to compel performance of an award.

As to a remedy on a partial agreement Vide ante.

If a suit be commenced for non-performance the Pst.
must state in his declaration, the submission, the controversy
brought, brought before the arbitrators, the award the breach.
If it be made necessary by the submission on the award, request
on his part—

When anything is awarded to one of the parties on demand an
action for non-performance cannot be sustained unless an act
such demand be stated and proved—
Contracts

If the breach is to be held as a part of the award, the decision determined to

If breach is assigned in more than one part and one of which are good and others void and upon issue joined on all, the jury find all for the P'tee and give entire damages the verdict in all and judgment may be awarded. For the presumption is that part of the damages was for breaches of void parts of the award. But if the damages for the respective parts of the several breaches were several and distinct.

The verdict as to the breacher of the good part of the award would stand and be ill as to the rest.

As to the remedy for non-performance when the submission is by bonds.

If tender and refusal it is said in the case of such a bond discharges the obligor's whole duty.

Notwithstanding the rule before laid down, there is an action cited by strangers in which the action was sustained on the award and the submission was by bonds.

If when an action is brought on the arbitration bond the P'tee after oye pleads no award. The P'tee cannot as in other cases reply that there was an award award; so that the dispute becomes a mere matter of fact, and is not to be submitted to the jury. But the P'tee must in this case, set forth
Contracts

in his replication, the whole award and assent arises the breach - but if debt is brought on the award itself, the debt and not set forth more than makes for himself.

He must also state in his replication an observance or his part of every thing required of him by the terms of the submission.

To this the Deft. if he relies on the illegality of the award must demur: for the illegality if any is apparent on the face of the award. If, however, the Deft. intends to deny the fact that there was any award, he will rejoin that there was no such award.

If an award is void in part and good in part, and he against whom the void part is was made would compel performance of the other, he must sue performance on his part notwithstanding the award or against him is void.

Verdict for the Deft. and judgment for Deft. see Hyde, 253.

In most cases when an award is set forth by Deft. of breach assigned the assignment of the breach ought to be in a good part of the award only. But if the award is against the Deft. in the alternative of which one part is good and the other part is ill: the Deft. must assign for breach that neither part has been performed.

It is said in the common place books that in a suit on satisfaction bonds only one breach can be assigned.
Contracts

in the replication. It lies in actions on covenants. The same rule applies in all cases of a suit on a bond given as a security for a performance of any thing.

But it must be taken advantage by special decree.

As a single breach occasions a forfeiture of the bond, the assignment of one appears in general to be sufficient. But there can be no substantiate reason why the Deft. may not assign more than one. Indeed from some expressions in Willan there is reason to doubt whether the rigor of this rule is now enforced.

This rule is now relaxed in some cases by Stat. 83 G. 12.

If the Deft. after having given up the bond, pleads performance or any collateral matter in bar, he of course admits the justness and legality of the award; it is therefore altogether unnecessary in this case for the Deft. to set forth the award.

If the Deft. denies the existence of a legal award he cannot afterwards plead performance or any collateral act or matter in bar, nor to plead this would be a departure.

If the Deft. after oyer states the award and relieves the answer. By answer that there was no other award, this is considered as a traverse of the validity of the award.

If the award be bad in part and good in part the Deft. having stated it as it is may plead performance of the good with

contradicting the ill part.
Contracts

Tender and refusal of the thing awarded are as good a bar as the thing awarded had it been accepted; but in pleading the debt, must show that he is still ready to perform.

If the deft. after due notice of the award particularly and pleads performance, the debt may be set up and the whole award, and pleading that he ought not to be bound, with court that there was no other award than that stated by the deft.

If the time limited for making the award is by agreement enlarged after the bonds are given, neither party is liable to a forfeitures for noncompliance with the award, if made after the time limited originally limited in the bond.

Chancery will enforce the performance of an award for a collateral thing where the submission was by a rule of that court and in case of an award for money if the award was made under a rule of that or any other court an attachment will issue for noncompliance. In other cases the parties are left to their remedies remedial Law.

If by an agreement subsequent to the award, a party agrees to perform what the award requires of him. Chancery will decree a specific performance, on the ground not of the award, but on the ground of the agreement. Chancery will in this case as in all others refuse to compel a party to disclose a fact which would subject him to a penalty.
Contracts

Why a court of equity should make this distinction between a penalty and damages it is not easy to discover.

The manner of setting aside Awards.

In Eng. a Court of Law never set aside an award on account of any extrinsic causes, circumstances, or corruption, partiality, etc., the reference was by rule of court applied to.

Will courts of law set aside awards for extrinsic causes unless the submission was made by rule of Court?

If therefore a reference to arbitrators was not by the rule of court, the award founded on the reference cannot be set aside for anything extrinsic except in Chancery.

A mistake in law or in fact not appearing upon the face of the award is not of itself sufficient to induce a Court of Law to annul an award: And that Court will not go into an enquiry on or assume made of such a mistake.

But if the mistake appear upon the face of the award itself he will vacate it, unless the mistake be on a doubtful point of Law.

Corruption or partiality of the arbitrators is always a ground for Chancery to interfere and set aside awards. If anything appears which renders a rational suspicion of partiality against the tribunal of the arbitrators, he will vacate an award. So far misbehaviour of the arbitrators
Contracts

Assent is always a ground for Chan. to interfere and set aside awards.
So if anything appears which renders a rational supposition of partiality
apparent, Chan. will vacate an award. So for misbehavior of the
arbitrators. So at law where the submission is by rule of court. Dun.
33, 36.

If an important fact is concealed from the arbitrators
by either of the parties, and the arbitrators or one of them will not
reveal, that a knowledge of the fact concealed would have altered his or their opinion: Chan. will vacate the award on the
assumption of fraud—

But if the arbitrators, in the case, should reveal that
the knowledge of the fact would have had no effect upon
the award: Chan. will not vacate it.

When an award is made under a rule of court, if
the arbitrators were ignorant of some important fact which
could not be brought forward: The court will on motion
recommit the award of the arbitrators for reconsideration.
Contracts

fixed for performance: but if one party by neglecting what was enjoined upon him, treated the award as a unity, the other might do the same and sue upon the original cause of action. There if bonds are given.

Formerly when a collateral thing was awarded as bond duty was created; it might become necessary, if the award was not complied with, to resort to the original cause of action, but if there was an obligation created for there was a right of recovery on the obligation. But as the law in this respect is altered it is probable in this as in all other cases where a new is created by the award, no it can ever be brought on the original cause of action, but each party must in case of non-compliance, sue pointed out before. Since if obligations are not given, without.

Formerly when no duty was created by the award, but the old one was extinguished, the award itself could not be pleaded in bar of an action grounded on the original cause of action complaint: yet the thing awarded might be thus pleaded upon release. If a new duty was created the award itself might be pleaded in bar. Since if no obligation was given, with antit.

It is said that if one of two persons should pay damager for the trespass, by an award of arbitrators, the award may be pleaded in bar of an action against the other trespassor, if the award has been performed.
Contracts.

But the efficacy of such an award as a plea in this case appears to depend wholly upon the circumstances of the satisfaction received and not upon the operation of the award itself. For before satisfaction of the party injured was received and accepted such an award cannot be pleaded in such cases.

There is an old adjudication that after a submission and before an award made neither party can recover in the original action without express revocation. The bringing of a suit not being considered as being a revocation.

II.

Tender

Tender is an offer to pay a debt or perform a duty. Tender is a good plea in lieu of all actions in which the damages or demand are uncertain, or capable of being ascertained by any determinate rule as in debt. So in an action of debt, after a quantum valebatur, the market price may be ascertained. In trespass also if the damages are not certain or being fixed by law, or ascertained by the parties, tender may be pleaded. But in all actions, where from their nature damages are uncertain, tender is a bad plea.

In replacing the rent avowed for, may be paid without
Contracts

it being certain. 18th, 574, Cases note 429.

See that the Dpt. that the D. was ready and offered to perform his contract not good § 140. 2d, 59, 2d, 74.

If Dpt. pay money into court and Dpt. not withstanding proceed to trial and a verdict is given against him he is not entitled to costs even to the time of payment into court, if the Dpt. does not proceed.

Payment of money into court is an admission that the Dpt. has a right of recovery to the amount of the money paid in, but as to any further sum he is at liberty to contest.

If a tender is made and the tender when made being the money into court the Dpt. is entitled to costs it has been a question, who after the money is tendered is the owner of it.

It is unquestionably clear that if a note is given for any thing but money a tender discharges the note and renders it incapable of being recovered and that the property tendered is a thing in law the property of the teneur. In this case is the tenderer under any obligations to keep the thing tendered as Bailie for the teneur.

But when the note is given for money it is contemned by none that the tender does not discharge it for that
the rule is sufficiently operative, to enable the holder to recover his money by suit and also capable of being operative, or it originally was, by a subsequent refusal, on the part of the treasurer, to deliver the money on demand.

Whereas if the note was extinguished, it could have no efficacy, even if it could be revived by matters ex post facto.

But Mr. Bruce supposes that the note for money is in fact discharged and the property in the money vested in the creditor by the treasurer.

But the treasurer is by law constituted a bailee to keep the money and that he is not permitted to avail himself of his discharge unless he will deliver the money in court.

It is also opposed to Mr. Bruce's opinion that the suit must always be brought on the note. Whereas if the property vested by the treasurer in the creditor some other action would seem more proper.

To this it is answered that the reason for bringing the action on the note, is, that the law will not suffer the creditor to recover his money without bringing such a suit, as will lodge the note with the court, lest at a future time it might be brought forward against the treasurer; yet in cases where other articles than money are tendered and not refused, the treasurer may if the articles are afterwards...
null
Contracts

kept by the tindor and not delivered on demand, sue for them in two
over instead of bringing his action on the note. The reason of this dis-
parity in the two cases, appears to be this: The tindor of money is
by law obliged to keep it till it is demanded by the tindor.

And as the tindor is there made liable to be called on
he ought to be answerable in the manner which is most for his ben
efit.

But as the tindor of any chattel thing as cattle be is
under no obligations to keep the articles tindored, the law does not show
him such indulgence for he is not liable to be called upon at all
except for his own folly in keeping as bailee articles which he is not
required to keep: And if he will make himself liable, the tindor
is not obliged to sue on his note. With regard to the princi-
pal question principle question whether the note is directly
sued by the tindor of the money there are no law adjudications
directly in point: there are however two cases in one of which
it was determined that the note drew no interest after the ba-
der, and in the other that a loss a depreciation depreciation
in the value of the money should be borne by the tindor.

To consider the note as surviving by default, the not
altogether agreeable to technical notice security is not ab-
cissed on unmatured. As a statute repealing a statute, revives the
first.
Contracts

With respect however to the principle question the most rational opinion seems to be that the note does not revive on a subsequent demand by the teneur, and refusal by the tenderer. But as in this case he neglects his duty as bailor, he should not be allowed to avoid himself of the discharge created by the tenderer, unless he continues to do what the law of him he shall not avail himself of the advantage which the law has put into his hands.

In some few cases the tender is a good plea when the damages sought are uncertain, as in the case of an involuntary trespass, tender of sufficient amends before action brought or a discharge. 3 D. & P. 246. Wilk. 120.

What are sufficient amends must be determined by a jury. It is supposed in those few cases in which tender is a good plea in trespass it is by statute, and not by Con. Laur. Exon.

After a right of action has accrued tender is not at Con. Laur. a base to an action (by stat. Laur.)

In Eng. any Deft. having leave of Court may being told Cost Ex. to the time of his application for leave into Court, and shall operate as a tender.

It is a rule not to permit Defts. to pay money into Court unless the justice of the case requires it.

By an old rule of law money due on a personal duty
Contracts

(which is required to be such a duty as the party bound may perform
at any time during his own life) must be tendered if at all by
the original debtor himself and not by his executor or his.

In all other cases a tender by any heir or executor as
one by the testator and it is probable that the last rule would
now be disregarded.

An offer to pay a debt on condition that the credi-
tor will give a receipt for it is said to be good in case of a
conditional one it is not. Is it good in any case?

To make a good tender money must be actually paid.
It is not sufficient for the debtor to say to the credi-
tor, I am ready to pay.

It is not necessary actually to produce the money if
the creditor declares that he will not accept it.

Tender of more than is due is now good.

If a man engages to deliver one of two things, and the
obligee shall choose, a tender of one is no bar to an action.

But if the declaration is not then given to the ob-
giee. It is supposed that a tender of one would be good.
But as to this point opinions are contradictory.

In Eng. any money made current by proclamation
may be tendered.

In the U.S. any current money that is any money
Contracts

Tender of money in a bag is a good tender for it is the tenderer's business to count the money. Tender of a large amount in copper is not good either in Eng. or this country it being an unreasonable.

It is said by the old authorities that if an insuffi-
cient sum be tendered and accepted the tenderer can have no remedy for the remainder this rule is directly opposed to the equitable rule adopted in the action of Fact. Aet.

If counterfeit money is tendered and accepted the
tender according to an old Eng. authority must hear the

Bank notes have been considered in Chancery a
good tender and it is probable that they would now be con-
sidered in Law. They have been considered as a good tender
in Law, if the tenderer made no objection because they were
not cash.

If no place is fixed for the payment of rent the
on the land is good.

The two rules already mentioned as to the place of
tender apply to money only.

Bulky articles if no place is fixed for delivery must
in general be tendered to the creditor at his dwelling house.
Contracts

In this case the residence of the creditor at the time of entering into the obligation.

Yet in some cases when the creditor has changed his residence, the tender must be made at his new abode. The rule of discrimination is this: "If it is more inconvenient or inconvenient for the debtor to deliver the articles due at the new than at the old residence of the creditor, he may tender them at the latter; but otherwise he must deliver them at the new dwelling of the creditor."

The obligee may direct the delivery of the delivery to be made at any place provided it is not more inconvenient to deliver the articles there than at the dwelling of the creditor. In some cases the obligee must be at the expense of transporting the articles which he claims. This when the goods were purchased of a merchant at his store.

In a transaction of this kind usage directs the delivery of the goods.

The obligee must also call on the or , or Admit ae also on public officers for payment.

Tender at a time and place fixed.

If the time fixed be on or about before a part
Contracts

By law, the last day mentioned is the legal time for making the
deal. So if the time appointed is on the tenth day of or within
a month the last day of the month, following the 10th in the
gal time, yet in both of these cases, if the parties meet on
day before the last the money may be tendered.

The time of day fixed by law for a tender is the "at
term most convenient time," which is construed to mean such a
time, or that the money may be counted to before nine
out, yet if the parties at any time of the day fixed the money
may be tendered therein.

Is not the last moment early enough for a
tender?

If the place is fixed, and not the time the debtor
must give notice to the creditor of the time when he
would make payment and if the time is reasonable a tender
of the money or an attempt to tender is good.

If neither time nor place is fixed, but money is pay-
able on demand, is notice necessary?

If bonds, notes, or not negotiable are assigned it has
been questioned, to whom the assignment should be made
payment should be made after the assignment.

It is an established rule that the obligor must
suffer no inconvenience from the assignment and also that
the money shall not be paid to the assignee if he is a bankrupt. It is incumbent therefore upon the assignee to tender the pay
amount of the money to himself or some other as the oblige as
it would be to pay it to the assignee, the obliger will then be ob-
eged to make payment or tender to the assignee.

If A. promise B. to pay money to him for the use of C.,
the money may be tendered to C. But it is said if A. promise
B. to pay money to C., a tender a tender can be made to B. only
and not to C.

If after tender and refusal, the tenderer shall sell
for the money he must demand it in a reasonable manner, the
law not obliging the tenderer to subject himself to any great
inconvenience.

The consequences of tender and refusal:

In case of a gratuitous mortgage tender and refusal
discharge the obligation as well as the right of action. For
the obligation is discharged by the tenor, and then being
no privity of duty or consideration the mortgagor has no
grounds on which to recover.

In cases of other mortgages, Persons be the time of
the mortgage be is perfected by tender and refusal, tho
the old duty in his favor still remains.

If a single bill is given with deficiency separate tender and refusal of the sum named named in the deficiency discharge, not only the part paid but the whole duty.

The reason of the difference between a single and a joint bond, or to the effect of tender and refusal is not easy to determine.

In the case of a bond given when there was no exigency duty as in a submission to arbitrators by bond and refusal in a complete discharge of the whole.

In some cases, a person by making a tender acquires a right, as if A. agrees with B. that if B. pays $10 on such a day A. will grant him such a farm; in this case B. by tendering the $10 acquires the same right to the lease as if he had made actual payment and become bailee of the money.

Also where a man contracts for the construction of a building and makes a tender of his services according to contract. In such a case, he would recover actual damages only in this case, the tenderor gains the same right as that he would acquire by performance.

Indeed it is a general rule in all those cases in which a right right is acquired by tender, that the right thus acquired by tender in an extensine or it would
Contracts

have been in case of an actual performance; thus if a contract
with B. to build him a house for $100 and at the time
appointed tenders him his service B. refuse to employ
him. It is entitled to the same stipulated. This rule, how-
if admitted in its full extent, will operate very inequa-
ibly.

The manner of pleading a tender.

In pleading a tender it is not sufficient for the
Plt. to aver that the tendered "according to law" but he must
pledge that "to be tendered on such a day and of the utmost
convenient part of the day." The utmost convenient part
of the day" need not however be stated unless the credite
was absent at the time fixed. The reason of this partic-
ularity is, that the questions of law respecting the legality of
the tender ought to be referred to the court.

It is necessary to state the refusal, if the creditor
was present at the time of the tender; and if he was not
present at the time of the tender, his absence must be
stated and that the Plt. stated or tendered for.

But omission to aver refusal is cured by verdict.
If payment is to be made "on or before" such day...
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it is not sufficient to plead "a tender" before such a day but the

day of tender must be specified.

The Deft. must also plead in case of money due that
he always has been and still is ready to pay the Deft. and
now tenders payment in court.

When the debtor after tender refuses payment, it would
in principle be sufficient for the Deft. to the plea of tender
that he ought not to be blamed, without that, that the Deft.
has always been ready & that the uniform practice has been
to reply strengths the subsequent demand & refusal.

If the Deft. traverses tender and the issue is found
against him he cannot take the money paid out of court.

but he waive supposes that he does not finally lose his
demand but that he may afterwards recover it in an act
ion, yet by suffering a non suit the Deft. might have let
taken his money out of court.

If a tender is made of collateral things the
defendant must plead the time and place but need not
ever that he always has been ready to do.

Tender is always a good plea to an Deft. on quantum
nullitiat.

It is also a good plea to truven, when brought for
the recovery of money. It has been a custom in C. B. of
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Whitney, the deft, or motion to bring into court chattel articles wrongfully detained.

The practice obtains in cases in which it is apparent that the certificates of the specific articles are the object of the suit rather than damages; or where an involuntary trespass has been committed.

Paying money into court is an admission of the execution of the writing on which the action is brought.

As to the mode of proceeding after money paid into court—vide 3 Dab.

V.

Payment.

Payment of a chattel thing must be pleaded give'r mode.

If a seller of goods takes notes or bill for them, without asuming the risks of their being good and it happens that they are not good, there is no payment.

VI.

Bonds given for the same demand.

For authorities to this title, see Coop. 129. 3 F. 159. Bp.
Contracts

Receipse

A release to one of several joint and several obligors is a release to all.

Otherwise of a covenant, not to sue one. This is no release from the same. Suppose a covenant not to sue one of two obligors joint obligors.

The term "all demands" in a release comprises debts in present, cognizance in future, but does not extend to demands growing out of the covenant, not broken or to any accruing profit or rent or debt to arbitrary bonds 8607.

Courts will however often confine the meaning and operation of such general expressions to the subject matter.

VIII. Bankruptcy

A debt occurring after an act of insolvency, on a contract made before is not bound by the act.

A discharge of a bankrupt pursuant to the statute 4, 5, 10 of Ann does not discharge the solvent partner.

Acts of insolvency operate on contracts only not on torts.
Contracts

An insolvent act in other states has been considered by the courts in this as a good bar to an action on the stat. Suppose the creditor lived here?

In the state of Aljork it has been decided otherwise: a judgment in one state is indeed a good bar to a recovery in an action for the same cause of action. But this is expressly provided by the constitution.

A person whose estate has been confiscated is still liable on his antecedent contracts.

So that that the confiscation is not a good plea to actions of this kind: this if the estate confiscated was applied or appropriated for the payment of his debts and was sufficient, relief may be had in equity.

Bankruptcy is no bar to an action of covenant broken, but if new secured if before.

Is a good plea under Stat. 8 & 9 Geo. 3.

Covenants Broken

The words Covenant, Contracts, Agreements are often used synonymously. 1 Boc. 524, 1 Pow. 244.

The word covenant in its more limited sense means a covenant written and sealed. 3 P. 266.
A covenant may be created by indenture or deed.

If this agreement is by indenture, it is sufficient to sustain an action against the covenantor: it is sufficient that he has sealed and delivered it to the covenantor, tho' the covenantor never sealed it himself.

The usual remedy to enforce a covenant is at law by an action at law for damages, the debt will lie for a breach of covenant in a deed.

But when the covenant is to do something in special, as to convey the executory deed to the mortor common and further, the remedy is by bill in chancery to obtain a specific performance.

In cases where there is an adequate remedy at law, the party seeking redress will not be permitted to go into chancery, that is if it is a good objection to a bill in chancery, that there is adequate remedy at law. If therefore the matter of the bill shows a right to damages on the covenant, it will not be sustained for damages are not sustainable by a specific performance by the Chancellor's conscience.

But even in these cases, that is, where the remedy is in damages only, if the relief prayed for is merely consequential or collateral loss to a ground of relief properly recognized in chancery, the bill will be retained, as where...
a matter of fraud is mixed with the damage. Thus, if A. sue B. on a covenant at law and B. files a bill for an injunction on the ground of fraud and A. files a cross-bill for relief on the covenant, the court will direct an issue to ascertain the damages if no fraud appear.

All covenants are divided into two kinds: covenants by deed and covenants in law. The former are expressly mentioned or recited in the agreement between the parties. The latter are raised or implied by law. Thus, if A. demij to B. for a certain sum of money, the law raises a covenant that the lessor shall enjoy quiet possession. This division of covenants arises from the nature and form of the stipulation.

Again, covenants are divided into real and personal. Real covenants are those by which one binds himself to pass or assure things real as lands or tenements.

A personal covenant is such as is annexed to the person and is merely personal, as to do an act of reversion, to pay money, build a house, &c. This division is derived from a reference to the object of the contract.

The set form of words is necessary to make a covenant. Any set of words showing the concurrence of the parties in an agreement are sufficient. Thus, if A. agreed

[The rest of the text is not legible due to the quality of the image.]
Contracts.

A lease to be in these words "renewing such a rent" or "paying such a rent" & to accept the lease covenant for non payment of the rent. The lessee against him to the deed he and the words the lessee. It is a constructive covenant by the lessee or he accepts the lease.

A covenant may be as to something past, present and future. The covenant is as to something past when one covenant that he has done a thing and if he has not covenant he against him. As to something present the case of a covenant of seisin and to something future in common contract agreements, covenants of warranty etc.

Covenants in law differ from covenants in deed, in that covenants in deed are founded on the words used as amounting to a covenant express, tho' the words are not the most direct, apt, and explicit. Their "yielding & paying rent" "renewing rent" as well as the words "covenant agreement etc" are verbal covenants, the covenant being expressed. Covenants in law are implied, not from the phræsæology but from the nature of the contract or agreement which is expressed, or from the express covenant. Thus the words demurrer to import a covenant in law that the grantor has a good title, and if the lessee is evicted, covenant he against the lessor.

It seems also that covenant with lesse before written
for the covenant in the lease be is a covenant of seisin which is to be
isolated from the mere fact that the lease granted what the lessor
had no power to grant.

But covenants in leases are ascertainable by the express
text of the lease, or by the words “dimin quire grant” by which scum it
the covenant, that the lessor has a good title and that the lessee
shall quietly enjoy, followed by an express covenant against execu-
tion by the lessor or any claiming under him, then the covenant is
not broken by a stranger existing.

In one case it is laid down as the rule that if one lease
is to another by the words “I have granted to...” covenant will
not lie on eviction by a stranger. But this must mean a tortious
entry, otherwise it cannot be reconciled with the preceding rule.

If a recital in a deed of a former agreement creates a cove-
nant on which this action will lie—As where it was recited
that “whereas it was agreed or has been agreed that A shall pay
$1,000 be the deed confirm the past agreement and intent by
petition and make an express covenant.

But in covenants in deed if the word covenant is ex-
tended, there must be words which import an agreement or the
action will not lie; then if the lessor for years covenants to
repair provided and it is agreed that the lessor furnished the
be it is not only a qualification of the lessor's co-

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but a substantial covenant. But without the words "it is agree" it would be a mere condition precedent to the lessor's performance.

If promises a lease to B, for 60 years with the proviso if B dies within 20 years his executors shall have the premises for so many years as remain, this promise is a covenant, and not a lease, it is not in the nature of a grant, a demise but of an agreement executory. Besides it is void for a lease thus uncertain in the legality, beginning and continuance, and length of continuance.

If a lease executor a bond conditional for the performance of a covenant in law or to those in dudge.

A lease "provided and on condition" that the lessor does some act and is not a covenant, but a condition to defeasance of the estate, so where a defeasance in a deed in the nature of a defeasance, covenant does not lie at law.

The construction of Covenants.

It is a general rule that covenants are to be construed literally, that is, that the meaning of the parties is to be sought, without such strict adherence to positive rules as in case of deeds or grants executed conveying a present interest. 
Contracts

...Therefore in many instances a literal performance will not be sufficient.

Thus if A covenants to deliver a bond to B on or before the day of delivery, B may deliver the bond to A on the same day, there is no breach. If however he delivers the bond on the day he is liable on the covenant.

On the other hand, a substantiate performance, though not literal, one will excuse the covenantor. Thus if one covenants that his son being under the age of consent shall marry the covenantor's daughter before he attains that age, and he does marry her and afterwards disavows there is no breach, but there is strictly no marriage. Yet this is not a literal performance.

If the lessee covenants to leave all the timber on the land and cut it down and then leave it there, it is breach of the covenant.

If A covenants to deliver a certain piece of cloth to B, cut it into rags and then deliver it at the time, this is breach. So where the deed is because as a breach covenant that the gift shall have his goods, and deprives them.

In case of a covenant to pay £30 money not being mentioned, it has been gravely held that a delivery of £30 would prove if a covenanted estate is no performance.

Where the words of a covenant are uncertain they...
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...one to be taken most strongly against the covenante and most her
especially in favor of the covenante: for they are the words of the cove
...nant and he is presumed to have used those which are most
favorable to himself. Thus where the Deft. covenanted that if
the Pfite: will marry his daughter to pay $30 per an. it was held
payable for the Pfite's life. But this must not be restated to exist
on failure of all others...

There are certain cases in which an exception is kept
amounts to a covenant by the Deft: and others in which it does
not. The reason on which this rule rests is, that where parties
were agreed upon a thing and words are used to make the
agreement tho' they are not apt and usual words yet if they
show the intention as to the agreement the law will give them
effect by construction for the law always regards the intention
of the parties...

A distinction is to be observed between express
implied covenants in the constitution.

The former are to be construed more strictly than the
latter. Thus, if one expressly covenants to perform a voyage
in a given time, he is guilty of a breach unless he performs its
performance is rendered impossible by causes beyond con
straint.

It is a question whether if a lessee covenant abstru...
It is a general rule that a covenant is comprised in their 768. 1 Ed. R. 310
operations, respecting any particular subject matter, which in 1477. 2 Ed. 470.
the time of making the covenant.
3. Dym. 63—

1 Dec. 68. 1 Hen. 283. 5 El. 374. Sta. 11 91.—
by to pay for a certain number of years and the thing demised be destroyed, so that the lessee does not have the use of it—A Court of Equity can give relief. One Chancellor has decided that the lessee should be discharged. But Tonblanchecombats this decision.

But when the covenant is implicit such accidents will excuse the covenanter, as in case of waste, if a house be destroyed by tempest or by enemy, the lease is expired.

It is a general rule that the performance of express covenants is not discharged by any collateral matter, for there must be an absolute performance. But to this rule there are exceptions—Exp. 178. 2 Sel. 178.

1. If a man covenants to do a thing which is lawful, a subsequent statute makes it unlawful.

2. If one covenants not to do a thing which is unlawful and a statute compels him to do it, the covenant is repealed. So if the covenant was unlawful at the time of covenating, the covenant is repealed.

3. But if the covenant not to do an act which was unlawful at the time, a statute making it lawful does not undo the covenant.

Thus a covenant by the lessee to pay all lost taxes and duties only to such as were in being at the execution of lease, the covenants to be discharged, unless the statute makes them absolutely impossible.
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A covenant is implied in the assignment of every choses in action. 15.15626.

At law, choses in action are not negotiable yet they are often assigned, and such assignment is an implied covenant by the assignor, that the assignee shall have the benefit of them.

If then the assignor receive the money due on the assignment, he is liable on the covenant. 19.113 2 Ed. R. 586 3642. 3 Story 204.

An assignment of a chose in action need not be by deed and of course may be by simple contract or by partial sense since there is no difference in point of solemnity between an assignment by simple contract and by partial sense.

A covenant not to sue a debtor be for a certain time is no bar to an action, but the covenant restraining in the time makes himself liable on the covenant. The reason of this rule is that if the covenant is construed to be a temporary release, it would be a perpetual bar to a personal action once suspended is forever gone.

But a covenant not to sue at all is a bar. It must needs a release and may be so pleaded.

This rule is adopted to prevent a multiplicity of

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suite to produce the same effect, for if a creditor should seek even he would be compelled to pay the whole.

But a covenant not to sue at all of two joint and several obligors, is no bar to the other so it seems to the covenantor.

But if the obligor is only joint a covenant not to sue one of two joint obligors, is I suppose a bar or to the other for it would seem the covenantor had been himself bound himself against all the remedy which he might have upon the obligation.

Sure.

If one grant to his debtor that he shall not be sued before such a day and that if he in he may plead the grant as an acquittance and that the obligation shall be void in that the debt shall he forfeited, this is a release for the grant is in the nature of a defeasance on the part of the grantor.

Covenants used in Conveyances

In all deeds of conveyances except a quit claim there are two covenants 1st Covenant of Seisin and 2nd A covenant of Minority. These covenants are generally expressed but some times implied.
The difference of seisin and a covenant of warranty is this, the former is a covenant that the grantor has a title. The latter is a covenant to defend the grantee against all claims. This distinct rise leads to a difference in the remedy between the two covenants.

On a covenant of seisin the grantee may sue before eviction and it is sufficient that the grantor was not seised.

But on the covenant of warranty it is sufficient to show that the grantor has not been seised.

In actions of covenant on covenant of seisin it is sufficient to aver that the deft. was not seised &c without stating who was seised. It is then incumbent upon the deft. to show that he was seised &c, which puts the Plft. to show his title in another.

In covenant of warranty the Plft. cannot sue till eviction. He must also state the eviction, that it was under claim of title or lawful act, also it must appear that it was under good and clear title.

A lawful right and title in the evictor is not sufficient, for it might have been derived from the Plft. himself.

But if it appears that the evictor was under older title, from the declaration it must not have been formerly stated to have been so.
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It is not necessary to state under what title the eviction was.

It is however laid down in some authorities that the Pfst. must assert what title, but this is not law. If the words
"what title" mean anything else than "good and elder title" the
words in these cases were "legal and good title".

The reason why eviction must be stated to have been
under title is, that the covenant of warranty extends not
to the tortious acts of others who are themselves liable.

Stating that the eviction was not by suit is not as
efficient, for this might well have been brought by the col-
clusion of the grantee and evictor and thus the deponent of the
grantee and not thus a defect of title.

But one may expressly covenant against tortious
acts of third persons, and the covenant, under "good and
elder title" was not necessary.

So a covenant against the particular acts of a par-
ticular person extends to tortious eviction by that person.

If the warrantor himself tortures the grantee
by eviction a tortious act under claim of title, that is by such
an act as appears to be an assertion of right he is liable
on the covenant, and the Pfst. need not state that the Pfst.
had no title or even that he claimed any, if the act appear
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from the declaration to be an action of right.

The same rule holds, where the tortious eviction is
by any person included in the covenant or his heirs. 2 Com. 564. 15 Geo. 3.

A & covenant by Est. as such for quiet enjoyment
against any person whatever is restrained, it is said to them
of themselves, and persons claiming under them, that in the breach
must happen by some act of the Est. dunve, in this the decision?

The rule of damages in covenants of seisin and use
amount is different. On a covenant of seisin, the Plaintiff recovers
the consideration and interest

On a covenant of warranty he recovers the considera-
and all his damages in being evicted &c.

On a covenant of seisin the assignee of the grantor
cannot maintain an action against the grantor first grantor,
for the covenant was broken at the moment of execution
and therefore the right accrued before the assignment &
a right of action cannot be assigned.

If ejectment is brought against the grantee,
he ought to notify his grantor, that he might appear
and defend. Thus when the interest is freehold it is cal-
led something in the grantor

The usual mode of giving notice is by writing but
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according to the infr. authorities writing is necessary.

Quit-claim deeds, contain neither of the above covenants, yet in some cases, the quit-claimant is answerable for defect of title, title in first. Def. for consideration.

The is that if the conveyance was a bona fide contract, of hazard, the consideration is not answerable. If not a bargain of hazard, it is answerable. The deed itself is sure is not conclusive, that the contract was a bargain of hazard.

If in covenant against two joint covenantors, the Def. can judgment by default against one and in afterwards bind or to the other by plea, pleaded specially, or if judgment goes against him on general issue, judgment cannot be entered against either, the verdicto states the action. For the Def. declares against Defs. as being jointly liable and as one is released, so of course is the other.

This rule does not hold in actions on title against two unless justification is pleaded by one which shows that the Def. has no right of action against either.

The usual action for a breach of covenant, yet in some cases a bill is preferred to a Court of Chancery praying a specific performance of the covenant when proper will be deemed.

In the action of debt, might be brought may be lost brought for a breach of covenant when the covenant is for
Car. 8. 661. 758.
2 Dec. 1609.
3 Dec. 1609.
4 Dec. 1609.
B. K. P. 167.
2 Dec. 15-

Car. 8. 661. 758.
11 Dec. 945
8 Dec. 168.
2 Dec. 822.
C. Ch. 175.
L. 107
D. 103. 163.
C. 115. 118.
65. 3 Med.
158. B. K.
158. A. Med.
247

D. 172. 266.
B. K. P. 167

B. K. P. 166.
C. 8. 196. 8.
A. 5. 5. 6.
C. Ch. 118.
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The payment of a certain and determinate sum, in other cases the action of debt will not lie for a breach of covenant.

The rule that debt of covenant lies only when the sum is certain, connected with others, has led to analogous distinctions in the books relative to the actions which will lie on covenants to pay sums of money by different installments instants. The following distinctions appear from a comparison of the decisions to be just.

On a covenant to pay an aggregate sum by installments, the action of covenant of debt will lie and the same actions lie for damages when the first installment becomes due, but debt on the covenant lie not till the last in due. This distinction is clearly supported by loose authorities.

The ground of this distinction is, the difference lies between the parties actions, covenant and debt, lie to recover damages, for every partial breach of covenant. But the action of debt lies to recover a sum in all respects. The latter action therefore lying upon the whole covenant, or contract will not lie until there is a failure of all the stipulations.

On a covenant to pay several sums, not aggregate, each lie on failure of the first payment.

In this case the action of covenant and debt, and it is said debt will lie.
Contracts.

On a lease receiving rent in an aggregate sum to be paid quarterly, the actions of debt and covenant will lie when the first quarterly rent becomes due; for rent is an accruing interest and in judgment of law no debt exists on a contract made at the time of payment. Therefore rent for the first quarterly is due till the expiration of the second and of course it is an entire debt and may be recovered in an action of debt.

A distinction is to be taken between a covenant to pay an aggregate sum by different instalments and a penal bond conditional to do the same.

On a bond with a condition to pay an aggregate sum at different times debt lies for the first breach. For it is a rule of law that by non-performance of any one of the acts contained to be performed, the whole penalty is forfeited and their is for the bond whole bond which is an entire sum becomes due.

But the action of debt, lies not on a simple bill or covenanting to pay an aggregate sum by different instalments till the last instalment is due; for a simple bill is an entire contract and cannot be received and as debt is the only action which will lie on a simple bill the rule will hold that no action will lie till all the instalments are due.

In the case last cited, it is said when speaking of bonds evidently means single bills.
Contracts.

Several of the preceding rules as to covenants apply to

**In actions on covenant any number of breachers may be**

assigned but in an action on the bond only one may be set forth.

for one breach is a presump'tion of the whole at law.

some expressions in N.Y. on the rule appear to be somewhat relaxed - 2 Wils. 267.

**Also by stat. 8 & 9 Wills the Par. may assign as many breachers as he pleases on bonds in certain cases that is in case of bonds for the performance of covenants in deed.**

**But even where several breachers are assigned contrary to the rules of law great advantage must be taken by special demurrer for it is mere matter of form in the nature of duplicity which is not reached by general demurrer.**

**And assigning cause of demurrer that the declaration "in certain and wants form" is not special enough.**

It is a general rule that the Par. of a covenantor is implied in himself and bound without being named -

But an expressio exception is to be taken to this general rule where the covenant is to be performed by the testator personally -

So the Par. is bound even in the P. case if the covenant is to be performed. Broken in the lifetime of the testator. 

So the ancestor seized in fee may bind his heir by cas
Contracts

Thus if a covenant to sell lands and die before conveyance, his heir will be deemed in Chancery to convey and the money will generally go to the devisee, especially if the personal property is insufficient for the payment of debts. This is a covenant null.

It is a general rule that covenants real being the heir of the covenantor and also descend to the heir of the covenantee.

The heir may sue on the covenant, not named if the covenant runs with the land and appears designed to continue after the ancestor's death, or a covenant with the heir to have the land in repair. "Cp. 294, 295."

It may be questioned whether on principle the heir is liable on his covenant of reversion since the breach must have happened in the lifetime of the ancestor.

Covenants which run with the land & contra

Seavers were assignable at law. Law and the covenants contained in them were in some cases binding on the assignee while he continued on the premises assigned. So in some cases, the assignee may have the benefit of the covenants void of the time to his life and to an integer and may have an action on them.
The assignee is sometimes liable on the covenant on the covenant of the assignee or before the not named therein, he is sometimes liable when made, and not otherwise, and sometimes liable the not named.

The assignee of a lease is bound by the covenant to the not named if they run with the land.

Covenants are said to run with the land when the thing covenanted runs with the to be done, or concerning which something is wanted to be done, was in use, at the time of the lease and period of the demise. The assignee of the lease is liable on a breach of such covenant happening during his possession the not named, as covenant to repair the buildings, &c.

So the assignee is liable on a covenant to pay rent which the substantial land is partly in use, but then is a covenant which runs with the land or is "annexed to the estate."

But by a covenant on the lessor's part to build a wall, demesne, on the land, the assignee is not bound unless named, the thing is not a parcel of the demise, such a covenant is said to be a cottastral covenant which does not run with the land.

So a covenant runs with the land, if it goes to the support of the thing demised.

When the assignee named are named, they are obligations.
Contracts

...to perform all the above covenants whether they arise with the land or not, or a covenant to build a wall on the land. See...

But the covenant in this case must be to do a thing which relates to the demises. For the apsiquees the named rent must be bound by a covenant to do an act which does not concern the demise: as to build a house upon other land or to pay a certain sum. For then the act to be done is covenanted.

But when the apsique is bound it is only for rent unencumbers, or covenants broken during this his possession. If the breach was before, rent must be had to the lessee, tho' the apsiquees were named: For the apsique is bound on the ground of possession his liability rest not on a privity of estate which continues during his possession only as if a lessee covenants to rebuild within a certain time assigned his apsiquees are not liable on the covenant.

So the apsique is not liable at law for a breach after his appurtenance. If he apsique the very day before rent is due, he is not liable for any part, even tho' he assigns to a beggar by deed unless that is proved.

It is said in bent, indeed that "God may be pleased" But this decision is now overruled.

But Chancery will compel the apsique apsique in this cap to account for the rent while he enjoyed the land.
Contracts

Whether Chancery will in any case restrain the assignee—
from assigning to a beggar or a bankrupt, is an unsettled point
but they will not restrain the assignee if he offers to surrender to
the the lessee and the lessee refuses to accept the surrender—

A covenant by the lessee not to assign is binding, tho'
this seems formerly to have been questioned—

Such a covenant is not broken by the lessee's endor
sum, taking the tenant in execution, nor by an under lease of
part of the term, nor by devise of the term Bl. Rep. 466.

* The lessee is always liable to the lessee on the express


But if the lessee has accepted the assignment for his tenant,
as by receiving rent of him he cannot afterwards maintain
debt for rent against the lessee in any case, the priority of
estate being gone—

Yet if the covenant be express he may have the
action of covenant, for in this case priority of contract remains.

But if the covenant is only implied by law the

lessee shall not have any action, even the action of covenant
against the lessee for any failure, after accepting the assign,
see tho' he otherwise may such covenant being founded on
priority, priority of contract estate which the lessee alone
can destroy—
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The lessor may accept the assignee, by accepting and by open
ning to the assignment.

Where the covenant is express, the lessor may pursue his
remedy, on the covenant against the lessee and assignee at the sam
time, but only one execution shall be enforced. After satisfaction
of one execution, if the lessee in the other is taken except for costs
Auditaque sequita lies.

By Stat. 33 Geo. IV, the guarantee of the lessee has the same
remedy on covenants running with the land against the lessor
as the lessor himself had at common law.

The common law extends the remedy only to the represen
tatives of the surety's guarantee, as he had before against the pen
alty.

A distinction is to be observed between the assignee of
a lessee and a derivative lessee.

An assignee is one who takes the whole term of the
whole of the remaining part in character of tenant to the lessee.

A derivative lessee or under tenant or under tenant
is one who takes a conveyance of part of the remainder of the
term as a tenant to the lessee of the whole.

A derivative lessee is not liable on the covenants
in the lease, for there is no privity of contract between him
and the lessee, yet he is liable for a distress for rent in the
the ground of enjoyment.

The assignees of the whole term are liable on the covenant and according to the preceding distinctions, whether the assignee was actual or by devise or by sale under execution.

If the lessee covenants for himself and assignees along with them he in possession after the time, he is liable on the covenant not strictly an assignee.

In action on a covenant running with the land against the assignee's heir infancy is not liable, pliable in her for the heir is incapable of contracting yet as heir is capable of making satisfaction for a breach of covenant shortly after.

If a covenant with B. his heir and assignee for quiet enjoyment, even in a real covenant, or in the grant of an inheritance, and this is broken in B's life time his D. to not named shall have the action. For damages are to be recovered and they accrued in B's life time and redress has belonged to this personal fund.

If a covenant real is broken after the covenantor's death, his heir must have the action.

It is a general rule that the covenantor's Estoppel is not named is always liable for a breach happening during the life of the covenantor even in covenantor real.

For the right of damages accrued in his lifetime.
and would have diminished his personal friends.

Action would also lie against the Est to the covenant
he now not broken till after the covenantor's death and that the Est
be not named if the covenant is expressly

This rule is to be taken with the exception of those covenants which terminate in with the life of the covenantor.

The covenantor's Est is not liable for a breach of those covenants happening after the death of the covenantor or the covenantor expressly

But on a covenant in law in a lease or grant not broken till after the covenantor's death the Est is not liable. The reason of this distinction, between covenants express and covenants in law is probably an artificial one. But what it is we are unable to collect from the books.

If however Est be come into possession of the lease, in their representative capacity they may be sued as signers, for breaches during their own possession.

The heir of the covenantor, if named is liable for breach

Covenants or bonds to save harmless.

A covenant to save harmless is an engagement by
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one to save an other to save one from all harm, trouble or cost, ar
rising out of some collateral transaction.

With regard to such covenants or bonds it is a general
rule that they are not broken by a tortious act of an other, as in
covenants for quiet enjoyment, wherein the one who is guilty of the
tortious act is the trespasser against whom an adequate remedy
may be had.

But if the covenant is particular that is to save
themselves against the acts of a particular person, the covenant
soon will be liable even for the tortious acts of that person.

If a sheriff takes a bond to save himself harmless,
against one's escape having the liberty of the goods and the per
son escapes he may sue immediately on the ground of liability
and need not wait till, need immediately himself, for the
creditor might delay bringing his action against the sheriff it
till the one who covenanted to save him harmless becomes
a bankrupt by which means the sheriff would lose his
remedy on the bond.

So if a surety takes a counter bond of indemnity and
the debtor fails to discharge the debt for which the surety is
bound according to the terms of it, the counter bond is im-
mediate and he is not excused the constitution broken, and the surety
not on mere liability.
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If the principal has been compelled to pay the sum on the surety of the bailie and has afterwards been compelled to pay the creditor; chances it seems will compel the surety to refund. But remark that he can discover no reason why a court of law might not give relief in this case by allowing the principal to bring an action of 

It has been objected it is true that this would in 

speak a former judgment. But this is plainly contrary to fact. The judgment on the bond of indemnity was strictly just and proper at the time, but something expeditious gave it an in 

segundate operation.

If one having obligated himself as surety takes a bond of indemnity after his bailiety has attached, no right of action remains till special damnification; otherwise it would be absurd for his bailiety commence immediate 

If however he had executed a penal bond and taken a bond of indemnity before the condition was broken, it would be otherwise.

If a surety takes a bond of indemnity, but pays the debt of the principal, he may maintain an action of 

Paid. After for money paid be the formerly he could not, yet in this case mere bailiety does not give an action—
But if a bond of indemnity is taken the remedy must be on the bond, for it is a maxim in law that where there was concurrent remedies, that one of the highest nature must be taken and the remedy on the bond is in this case if it is of the highest nature.

In cases of assignments of obligations to the obligee, may in some cases release after assignment and in others not. The general rule is, that if the obligation or instrument is not negotiable the release is good, otherwise not. By the instrument being negotiable is here meant that the legal interest of the assignor may be so transferred or vested in the assignee as to preclude the assignee from having an action upon the instrument in his own name. The reason of this rule is, that where the instrument is negotiable, the property of the assignor has passed by the assignment and therefore the release has nothing on which to operate. But where the instrument was not negotiable the legal interest still resides in the assignor, and in such case he may release after assignment.

So if a lease after assignment of the reversion release to the lessor agrees, leases all covenants, &c., yet the assignee of the lease may recover for all breaches of the assignment, for the covenant runs with the land and is assignable since the statute 32 Geo. III., and according to some it was so at common law.
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If a person be not the assignee of the action against a breacher, a release given before an action is not operative, for the right is attached to his person. The first breach of the rule is obviously opposed to the general principle laid down: for a release is obviously negotiable and of course a release by the assignee after assignment ought to be no bar to an action by the assignee; the rule is well established.

A release before covenant broken of all demands does not release the covenant, because there was no demand at the time of the release, there having been no breach. So a release of all actions, suits and quarrels, does not discharge the covenant.

But a release of all covenants before a breach is good, i.e. it is a bar to an action for any subsequent breach.

Pleadings of Covenants broken

In an action of covenant broken, the declaration should state that the covenant was by deed, this case will lie on an instrument not sealed.

From the above rule "paid covenants" caused as used by Powell seems to be an improper phrase.
Contracts.

Formerly the P'tt, in an action of covenant broken must always make a protest of the covenant, tho' it were lost or in the Deft's possession. But he may now declare on a covenant, or other deed, that it was lost by time and accident.

In this action a breach of covenant must always be assigned when the covenant is general; a general assignment is sufficient of a breach is sufficient. Thus in an action on a covenant not to buy or sell certain articles, in two years, an assignment that the Deft had sold to B. and other not mentioning to whom at divers times is good.

The most general assignment of a breach is in the words of the covenant, with a negation; as in an adjudication covenant "that the lessee is reied in fee" and an assignment "that the lessee was not reied in fee" is sufficient.

A breach should be so assigned as to appear clearly to be within the covenant. Therefore in an action on the covenant a covenant by the Deftee "not to cut more timber than is merely for repairs"; an assignment that he cut timber to the value of £100 is not good.

If by subsequent words the P'tt passes over the breach first assigned as if he aver "that the Deft. has not used the land in an husbandlike manner, but has committed waste." He will be allowed to prove nothing more than
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that the Deft. committed waste.

When there is proviso in a deed, defeating the covenant in a certain event, the Deft. need not set it out, but have the Deft. to plead it. Thus in an action on a covenant to deliver goods be with a proviso that if the Deft. was prevented by the sea, the deed should be void - the proviso need not be set forth in the declaration.

But if there is an exception in the body of the covenant, the Deft. must notice it, in assigning it the breach, otherwise it would not be known, that the breach did not fall within the exception.

If the Deft. sets out the covenant his covenant and avails an inconsistent breach under a by, such a suit shall be rejected.

If the covenant is in the alternative to do one or two things, the breach must be assigned or to both. Thus on a covenant by the lessee not to cut any wood without the agent or assignee of the lessor an avowant that he cut wood without the agent of the lessor is not good.

But on a covenant to pay or cause to be paid an avowant that the covenantor has not paid is sufficient for causing to be paid is paying.

If the covenantor is to pay on one of two contingencies, which shall first happen an avowant that one had
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happened is sufficient without avering it to be the first. Thus, on a covenant to pay on the "death or marriage of Sally Stiles," which can happen first, it is sufficient to aver that Sally Stiles is married.

If the covenant is, that an act shall be done by one or his assigns, the breach must be in the disjunctive, that is, if not done, that the act has not been done by him or his assigns. This rule does not hold where the action is against the original covenantee himself, for then an assignment cannot be presumed that is, it is confined to actions against the assignees.

But on a covenant to do an act, or to convey, to a man and his assigns, an averment by the covenantee that it was not done to the covenantee himself is sufficient. If it has been to his assigns, assignee the debt, must show it.

In a covenant for a sum certain there can be no appointment of payment of the demand and the breach must follow the covenant, that is, a non-performance of the whole covenant must be averred.

As if one covenants to pay $100 per ton for iron, an averment that the covenantee would not pay $50 per half ton would be ill or digestible.

But if the covenant had been to pay $100 per
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to rescind the same, such covenant would be good. Have been good.

87. When the covenant is to perform some act precedent to the right of action the must have performance; as in a covenant to pay the "after proof and request made."

So if the precedent is to be done by a third person, performance must be avoided otherwise it is bad after verdict.

But where there are mutual and independent covenants viz., where A. covenants unconditionally for one thing and B. for another A. in an action need not ever performance; so in all cases where the engagement on one side is in consideration of an engagement on the other for either party has a right of action before performance.

A plea that the debt has not been due since covenant is not good for it throws the question of law, to the jury. Besides it is bad on demurrer as it amounts to no issue either general or special, nor is a plea in bar, it negates no matter.

It is laid down as a rule that when covenants are affirmative, pleading performance is generally sufficient.

This general rule must relate to cases in which the things covenanted to be done are in some measure in
dispensable either in kind or number; or a covenant by a sheriff to return all writs to discharge the duties of his office—

In this case a plea that he returned all writs is sufficient, but even here I suppose a plea that he had performed his duty would not be good—

For otherwise the terms would contradict another well-established rule which is when a defendant has covenanted of affirmatively to do a number of specific acts, he must plead performance specially that is of each act—

The rule that where there are affirmative covenants for the performance of an indefinite number of acts, the defendant may plead performance generally is established merely to avoid prolixity and broadening the record—

Where some of the covenants are negative the defendant cannot plead performance generally but he must specially plead specially that he has not done the acts covenanted against. Advantage is to be taken of plea of performance by special demurrer only—

If the negative covenants are void, he may plead as if they did not exist. Reading generally in this case is aided by general demurrer—

When the the covenants are in the disjunctive the defendant must show he has performed, otherwise it is ill on
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general damages the according to some it is ill on special demurrer only 4 plea in

When the covenants are to do some matter of law or to some discharge to the debt. must plead performance specially and not words that in by what means of conveyance be that it may of speak to the court.

So if the covenants are to do an act which must of speak of record or to levy aspence for the performance must also speak by record which must the court must try.

In covenants on bonds to save harmless the defendant sometimes plead by way of performance, non demanificador in others he must plead that he was saved (by the debt), demand also give mode that is show the particular acts by which he has saved harmless. The following are the rules of distinct ions.

If the covenant or bond is to save harmless from anything ascertained in the instrument as for payment of such a bond, non demanificador is not good. He should plead that he should so had saved the debt. harmless show by what acts.

So I presume if the covenant is to save harm

cess in general terms, that is from things ascertained or from all acts, damages and trouble that may arise
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from a lawsuit, by any particular act, or by paying the non damni
fication is not good.

But if the covenant on bond is in general to save harm
ders from all acts that subject to costs charged & especially
unspecified mode is prescribed non damniication is good.

Yet in this case if the Def. pleads affirmatively.
that he has saved the Plf. harmless he must plead quo
modo.

If the covenant is for an act to be done, even bags
stronger performance must be pleaded specially, that is acc
cording to the preceding distinction. There is an exception
as suppose in case of a multiplicity of such acts be.

If the Def. pleads non damniication, a repli
cation consisting of a general traverse is ill. The Plf. must
show the special damniication; Thus if the declaration is
that the Def. has not saved the Plf. harmless" and the
pla that the Plf. has not been damniied "a special buch
in the replication is necessary.

A covenant in one deed, cannot be pleaded in
large to an action on a covenant in an other deed, unless it be in
the nature of a disfavor.

Still however a disfavorance in a separate deed may
be so pleaded. 3 Sal. 298.
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But the second deed must clearly appear to have been intended as a deprecation, and to contain proper words for a deprecation, or "setting the first deed and declaring it to be void.

But one covenant may be pleaded in his to a covenant in the same deed without words of deprecation, for the sum is to be collected from the whole deed, as where there is a covenant that the lessor shall pay so much rent, and one by the lessee, that the lessee may retain so much for repairs.

If three covenants jointly and severally, all may be sued or one but two cannot. The reason of this is, that the covenant must be treated as altogether joint or several.

This last rule is common to all covenants. If the covenant is joint only, all the covenantors must be sued.

If there are two or more joint covenantors, obliged to all must join in an action otherwise the debt must be

This rule also is common to all contracts. If all do not join the debt, or any may decline, in some cases where one covenantor with two or more obligors, jointly or severally, that is to them and either of them or each of them, one of the obligors may sue alone in others all must join.

The rule is this "if the interest of the obligors appears to be several each may sue separately, or where there
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A desire to A. of black acre, and to B. of white acre and the heirs, covenants
with both and each as to all.

But if black acre only is delivered to A. and the lessee on
rents with each B., the interest of the lessor is joint and both must
join, in each action on the covenant.

So the co-obligors or covenantors may bind themselves
severally for the same cause; yet co-obligors cannot have several
interests or rights of action for the same cause.

So against two jointly and severally of the same thing is
joint only.

If two covenant jointly and severally each may be sued
alone, for the neglect of the other; tho' the one sued has not been
negligent; recovery against one is no bar as to the other; robbing
the body of one in execution is no bar as to the other; but actual
satisfaction is a bar.

If several are bound jointly and severally and one
is made est. by the obligee; the obligation is released at law.

In Chancery as to the obligees, representatives, but
not as to the creditors or legatees — 2 Bow. 244, 245.

If an instrument written that A., B. & C. on one part
covenanted to execute a certain agreement and A. does not so
execute the covenantor may sue B. & C. alone and aver that A.
did not execute.
Contracts

If two or more bind themselves in an obligation together, or make a promise together, the contract is joint; of course it supposes the word "joint" is not used unless words implying a several obligation or duty are used.

Notice and Request

At Com. Law, a request by the Plt. is clearly necessary, but in many cases it may be by suit only.

The Plt. may always give notice to the Deft., when action has not without notice; or, where the fact on which the demand arises, is an between the parties, confined is an between the parties confined to the Plt.'s knowledge as in care to promise of promise to pay to such a rate, as any other person shall pay the Plt. for the same.

But if the promise is to pay as much as John D. Miller shall pay, notice is not necessary.

So on a promise to deliver so much corn if the Plt. approves it, the Plt. must own that he gave notice to the Deft. that he did approve it.

So on a contract to account to before auditor, when the obligor shall assign the Plt., must own notice be to the Deft.

So it must appear that notice was given in due time as on a promise to pay before the end of such a year, as much as
the Ptle. discharges; the Ptle. should own notice given before the end of
the suit, otherwise the suit is too late.

But if the Deft. contracts to do on performance of an act by a
stranger, the Ptle. need not own notice. But in this case the Deft. must
own notice at his peril or where there is a promise to pay be when

it is to be made.

So in some cases it seems, that the Deft. is bound to
own notice, as where he promises to deliver so much warn when

he shall receive it.

In some cases the Ptle. must make and own a special
request, as if the Deft. engages to do a cattellal act, no day being
fixed or in request.

It is said that no actual request is necessary, when
the debt or duty is precedent to the contract or promise, on which
the demand arises, tho' the contract be to do on request; for here
the request is not the cause of action. But this rule must be
understood of those cases in which the subsequent contract does
not vary the duty already existing; for the subsequent contract
may be to do a cattellal thing or request be.

But where the right of action is founded on the
right of a promise and request, there being no antecedent
duty, a special request must be or where there is a prom-
ise to pay on request such sum as the entertainment of the
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Plt. should come to.

When a partial request is necessary the time and place must be named.

The want of an avowment of a special request when necessary is not cured by verdict.

So upon a promise to pay on condition that D. S. does not pay on request to D. S. a special request to D. S. must be named.

In a promise to pay the debt of a stranger upon request, a special request must be alleged to there was some mutual duty and the request is part of that duty agreement.

When a special request is necessary the avowment is traversable; when unnecessary, the avowment is not traversable.

It is a general rule that where there is a contract to do a certain thing "on demand" and the Deft. cannot discharge himself by tender without request, a special request is necessary. Thus, on free bills given by merchants to deliver such a sum in goods to the holder, request must be made not only because the merchant cannot discharge himself without request but because the common course of business has established the necessity of a demand.

So suppose if a merchant obliges to deliver such a sum in goods at a time fixed, so he cannot retract the
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Goods: For the same reason as operated in the example, first put on the score of general convenience, requests must be made for payment, from public officers, in their official capacity. On the other hand, when the debt can discharge himself by tender, a special demand is not generally necessary; this the agreement be, due to pay be "on demand."

The two last rules so far as they interfere with the particular ones laid down, are subordinate.

Questions which have arisen under the Constitution of the U. States.

The 10th section of the 1st article of the Constitution of the U. S. declares: "No statute shall make any thing but gold and silver coin a payment tendered in payment of debts."

The Supreme Court of the U. S. have determined that an export parts law means a law which extends to criminal cases only and differs from a retrospective alien law. A retrospective law which extends a U. S. court to contract as to crimes is not then forbidden by the Constitution, this it is by the common law.
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So that no law should be made "impairing the obligation of contracts" in a law. The two last-quoted clauses of the constitution are thus merely declaratory of the law.

Every thing respecting retrospective laws effecting "civil contracts" is meant to be provided for by the clause, forbidding any laws being made "impairing the obligations of contracts" therefore by the constitution all laws having a retrospective operation whether civil or criminal are prohibited.

It has been a question whether special acts of insolvent, have this forbidden retrospective operation. The first insolvent act which was ever made undoubtedly had this retrospective operation - had there never been an insolvent act made, special insolvent acts made, they would come within the constitution - but at present, when they enter into contracts, are fully apprised of their liability to be defeated by insolvent acts passed by the legislature - the great question has been whether the constitution intended to make any alteration in their state of things -

This question was first brought up before a branch of the national court, in the state of low. In this case, Mr. Huntington petitioned the legislature for a special act of insolvency; while the petition was pending, he prayed for a writ of protection that he might come and attend the
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Assembly free from arrest: the arrest was granted and while he was attending the assembly under their protection, his creditors directed the sheriff to attach his body and commit him to prison on the ground that the assembly had no power to grant his petition and of course the arrest of protection would be void; the sheriff accordingly committed him.

Huntington then paid out a writ habeas corpus from the assembly, which was granted commanding the sheriff (Sheriff) to release him, which done the creditors brought an action against the sheriff before the state court; it was there determined by Judges Law and Chase (with the additional opinion of Lechford) that a state had a right to pass special acts of insolvency without infringing the constitution. This was about the year 1795. This opinion has been affirmed by the supreme court at Philadelphia in even if the first insolvency act was an infringement of the state laws that compacts were past just would at this day prevent such consequence as is the construction at present given to mortgages.