Alienation by Deed
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The object of this title is to show how men may purchase and convey according to the legal intent of the words. Previous to entering minutely upon the subject before us it will not be improper to give a slight historical sketch of the origin of its origin.

During the dark ages of Europe estates were held by a sort of tenure altogether wholly peculiar to this times. They were styled fudus and were subject to no species of alienation. Lands were then granted "at will" by the Lord to his vassals as a reward for military services, and as proof of their not being sixty subject to alienation they were always held obedient to the will of the Lord and may be strictly aloestoates at will.

Hence from the strength and antiquity of these principles that we are lead to act upon them, when in reality the cause of action has long since ceased to exist.

As for instance when A. grants to B. a farm of land without saying anything more, it is always considered a grant for life and for life only. This rule received its birth under the Norman system of fudus and previous to this system estates were held "at will" as has before been observed for a longer period; for previous to this time alienation was not dreamt of.
of an operation which estates could possibly undergo.

In the history it was observed that after a long succession of years estates became decedible and became so long before they became decedible alienable or devisable. The descent of property was indeed the work of necessity. Some became very necessary in their cramped situation working strongly that their lands might be at the disposal of their families and friends. Step was taken after step to the business of descent because you recall for at this time the word "heirs" was introduced so that estates were given by these words "to him and his heirs."

The practice of aliening first arose from consent being given by the lord to his wards or tenants to dispose of their lands in this way which consent extended to only one half of their required estate but none of their decedible property. But it provided the consent all of the heirs be obtained the whole of their required estate might be aliened. And the first law which gave power to sell lands was by Stat. 11 H. I, into this statute gave power to sell but one half.

Provided the word "assign" was used in the
Which was called the great charter of the III.
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deed by which the purchase was made, the whole of the purchased lands might be sold but none of the deed

Then also one quarter of the demesnable estate could be sold, and then by Stat. 4 H. III. which gave
the Stat. quia venditio an half of the demesnable farm state was liable to be sold.

Then by Stat. quia venditio 13 Ed. I. which allowed them to sell all their lands except those held by the crown.
But by Stat. of Edw. III all lands held by the crown might be sold by paying a fine. The next important step taken in this business was in a Stat. of 12 Cha. II. which swept away all fines so that mankind had a complete right to sell all their lands.

About this period lands became liable for the debt of the owner and this became so known as early as a Stat. of West. H. 15 Ed. I. which one majority of the lands to be tendered for the discharge of debt. And the whole of the lands were likewise subjected to be pawned in statute Merchant by the Stat. diemercatorius made the same year, and in a Stat. statute by Stat. 27. Ed III. C.q. and in other similar recognizances by Stat. 2 & 3 H. VIII. And now the whole of the land is not only liable pawned for
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The debt of the owner, but likewise to be absolutely sold for the benefit of trade and commerce by the several statutes of bankruptcy.

Who may sell and purchase

We are now to consider alienation on the ground on which it at present stands. And it is first to be most remarked that there are several classes of characters that are unable to alienate either from some natural or legal disability.

All persons who are in possession actually in possession may sell if they are not under some special disability. But provided an alienation is made by him who holds under a disputed title the alienation would not be good even if the title of the alienor should eventually prove to be a just one. And even the alienor would be punishable under an express statute. The amount of this statute was that the alienor if punishable should be punished within the compass of one year after the alienation of the land. However there have been exceptions to this rule in a case where A. entered and took adverse possession of lands of which B. had a good title; in this case B. aliened the estate.
but the time specified by the stat. for the prosecution of such offence was elapsed, state the alienor was prosecuted and fined at Comm. Law. However provided that the alienation be made to him who has entered and taken adverse possession, the alienor will not become subject to the running of the statute, Co. Lit. 36q. 36. tit. by Ali.

But it is not to be understood that a man may not alien a remainder or a reversion, although he may not be in possession of it at the time of alienation, as in many cases it would be absolutely necessary; for instance, when A. grants to B. an estate for life keeping the reversion in himself, which he wishes to part with in some way or by devise or sale, and unless this privilege is allowed, it would often happen that the grantor would die before the grantee, so that it would be impossible for him to command the reversion of his property.

Of persons who have committed treason or felony, etc.

but their hands back to the time of the commission of crime being committed, this no actual forfeiture takes place be- fore conviction as no grant can take place during the in- termediate time, i.e., from the committing of the act and conviction. Mr. Beale supposes that in the U. States we are not obliged to establish the old Comm. law principle
of forfeiture or it is a feudal idea and more fitted for those times than for the spirit of the present. Dr. Tuke's conviction nothing was said of a forfeiture of his lands as that respected no part of the judgment—had Tuke not have been pardoned the question might then have arisen respecting a forfeiture of his lands.

**Persones non compos mentis;** this class of character which is disabled from allying is composed of idiotic natures, and those of non sane membra, the mind a mind at once revolted at the idea that a person under any of the foregoing disabilities should be able to convey or that any one should a tithe by such conveyance be heirs undeniably set such conveyance aside, but it is a question whether the person conveying can himself set aside the conveyance by pleading his own insanity, or this would be subverting himself still the courts could see no impropriety in letting in the heirs to state their father after his death and misrule! In the time of Ed. I., non compos was admitted as a good plea to avoid a man's own bond—But under Ed. III., an idea began to gain ground in the courts, that a man could not subvert himself, and during the time of H. VII., the very rage reason was offered and so decided that a man
could not tell whether he was insane or not and therefore
should not come into court and avoid his conveyance by
proving that he was insane.

With respect to conveyances of Infants it is sup-
posed and rightly supposed that they cannot alien-
for it is certain that no infant can be bound by his con-
tracts. And if the infant cannot have the full
benefit of his privilege by considering the conveyance
voidable, let him consider it as void.

This privilege however must be understood as
given to the infant to defend himself and not
given him as a means by which he can cheat and defraud.

An other character which is disabled from shiv-
ing is a female covert. A wife’s conveyances even when her
husband joins with her may after his death be avoided
on the ground of coercion except in the the case of a fire
and recovery.

If a female covert should attempt to make a
conveyance by alienation the husband could most assuredly
interpose and stop the proceedings; but provided she
should actually alienate her property and he should not
dissent, it would be a good conveyance as against any
after interposition of the husband.
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The wife in a conveyance of her lands cannot make such conveyance so as to take effect at the death of her husband; as there is a maxim so maxim established in the English courts and strictly addressed to adhered to, that no prehald can be made to commence in future but always in present.

With respect to a wife's status to purchase she certainly can. If the conveyance is made good to her she can hold it unless her husband objects to the purchase but she is not liable to pay a ransom i.e. she cannot be compelled to fulfill the portion of the agreement although the alienor may be.

All persons who are under distress imprisonment (as has been found by them) are not the privilege of alienations; if they are under distress imprisonment, persons cannot be freed to make conveyances as conveyances are in themselves not void. This will be noticed that if at any period after the assignment of distress is taken off it shall happen that the person who has made a conveyance under any restraint, may think proper to now accede to it, it will be to all intents and purposes be considered as a good and valid contract.

A male born in still another character whose dis...
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It is this that an alien born whether an alien enemy or an alien friend is unable to purchase estates for his own use whether estates in fee simple in fee tail or feehold estates he has not the liberty of taking leases of lands and as he is deprived of these liberties he is of course unable to convey.

It is observed that an alien is disabled from taking a lease of a house, this is not strictly true or an alien friend is always allowed the liberty of taking a lease of a house and gardens for the purpose of better carrying on of business. But when he purchases land for his own use he is in constant danger of being deprived of it by the arm of the law.

But provided an alien does purchase lands and it so happens that he so happens that he lives unnoticed and dies in the peaceable possession of them his children provided that he had any will inherit, or they are citizens.

In Eng. title of late years properties were considered as unable to convey.

What is the definition and what are the peculiar qualities of a deed.
Originally land could be conveyed by making delivery of
* quit rent* without any written instrument. But since the stat
utes of frauds and perjuries, no interest in lands can be con
veyed unless by an instrument in writing.

A *deed* is a writing sealed and delivered by the party
Agreements therefore conveying an interest in lands, unless sealed
cannot be denounced deeds - such as writing agreements to
convey, which can be enforced only in chancery and need not be
sealed.

Incorporated indorsements were always conveyed by
deed.

Sealing which the Eng. law has rendered so important, is
not in truth add anything to the solemnity of the instrument. In pit
and ages when writing was generally unknown, it was probably the
best evidence procurable of the consent of the parties "sed tempora
mutantur."

In Con. it is universally the practice to seal deeds, this
there exists no state, undering sealing necessary.

When a fraudulent is executed, with an intention
to defraud creditors, the deed or between the parties inme
diate parties is good. One no respect is bad ignorance of the
grantor whom the law supposes to have perfected it by his fraudulent
conveyance and the grantee is said to hold in trust for the grantor.
the fraudulently and illegally.
Of course creditors may lay upon the land or the
property of the grantee.

If with the same object in view (defrauding defraud-
ing creditors) a fraudulent consideration be paid by the grantee, it
is still a fraudulent conveyance so to creditors and the land con-
veyed is not liable even for the partial consideration paid by
the grantee.

And even where there has been a full consideration
paid, the conveyance may be fraudulent and void as to creditors.
This can happen only when a man, possessed of real estate, and owing
debts equal to the true value of the estate, sells it for the full consi-
deration to a grantee for the express purpose of screening him-
self from his creditors by turning the property into money
and evading their demands, and their intention known to
the grantee at the time.

The statute against fraudulent conveyances 13 P. 2d
is generally adopted in its provisions by the states and invoked
in enforcement of the same law.

It has been shown that the grantor or between
himself and his fraudulent grantee, loses his title by the fra-
dulent conveyance of

But the grantor cannot recover
the land, still may he not recover its value from
the fraudulent grantor. This in question exists. If the whole design of the law is to bear hard upon the grantor, he cannot recover the value. But if the law proceeds upon the principle, that the grantor shall be estopped by his own deed from questioning the validity of the conveyance, and that the bargain is a binding one, between the parties, it would seem that the grantee ought to give a quid pro quo and that the value may be recovered from the grantor.

By the statute decision of the superior court in Suffolk county, in the case of Brann v. Latine it seems to be the opinion of the court, that the value of the land cannot be recovered by an action brought by the grantee against his fraudulent grantor—stated, however, it "quid pro quo indeterminate."

A difficulty has arisen in construing the statute. The statute provides that the conveyance shall be void as against the creditors of the grantor intended to be defrauded. This it was argued could not include subsequent creditors, for they could not have been contemplated at the time of making the conveyance.

But on the other hand it is said that the property of the fraudulent grantor at any time ought to be liable to all his creditors, and that the argument used on the profit, proves too much; for suppose the fraudulent intented
grantor intended to defraud and only one of the prior creditors could not
the word come in! undoubtedly they could, and it is now settled that
fraudulent conveyances are void as against all creditors prior
and subsequent; but merely voluntary conveyances made with
out any fraudulent intent is void only as against prior credi
tors. This is a leading distinction.

The statute further provides that the conveyance
is utterly void as to every person for whose
benefit it is made, but against if the grantor
all, it must be on trustee for the creditors; as representative
of his testator, the fraudulent grantor, he could not, but in
con; it has been decided that the grantor may claim
the land as trustee for the creditors of his testator.

There is a very celebrated question concerning
which the luminaries of the law have "agreed to differ" says
M. Reeves — Supposing a bona fide purchaser buys of the fraud-
ulent grantor, who shall have the land — such honest pur chase
see or the creditors or the testator? who are no left house?
In equity the scales are equally balanced between the parties.
It is M. Reeves' opinion that the conveyance is bad in the
hands of the bona fide purchaser. On the other side it is her
wandered, could not the grantor himself have conveyed the land to
a bona fide purchaser, and would not such conveyance be good?
And if so why could not the fraudulent grantee convey to the bona fide purchaser? For surely there can no harm arise in the fraudulent grantee's doing what the grantor could do—what difference could it make to the creditors?—The policy of this plausible argument says not. Reason lies in this—The law is made to give strict creditor, to give them every possible advantage, and not merely to prevent conveyance without a selfreference to that subject. Nowhere the debtor conveys to a bona fide purchaser, he receives a quiet possessory and is as able to pay his debts as he was before the sale. But this is not the case when the conveyance is from the fraudulent grantee to the bona fide purchaser for here the property of the debtor (i.e., the grantor in the above case) in no wise benefited by the sale—because what a door to collusion and fraud does the opposite construction set open! How easily could the fraudulent grantor and grantee combine, first to make the fraudulent conveyance and then the bona fide sale, and this exclusively for the purpose defrauding the creditors! To this it is objected that the fraudulent grantee is liable to the creditors, what then? Right ought the creditors to be obliged to resort to him who may be a bankrupt.

Again, "Picta in toto potior est in jure," the creditor owes more in time to the bona fide purchaser and in a
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analogy to the rule adopted in cases of theft, ought to be performed.

The following question was from the bench to Mr. Chitty: "Whether a conveyance may be made not to be made to discharge creditors in any case whatever, which will be valid?" The meaning of the question seems to be, this: can property be so conveyed as to save it from the demands of creditors? When there is sufficient real estate in defendant to answer their demands? This will be perceived, has not the effect to deprive creditors of their security but only of their stat

ion on what part of the property of the defendant their execution so it does not contravene the spirit and intention of the law? can hardly be termed a fraudulent conveyance if made reasonably, therefore says Mr. Chitty it will be allowed.

An other question: May not more voluntary

veyances be made under such circumstances, that even the pro-

er creditor will not be permitted to take the property from the voluntary grantee? Mr. Chitty answers this question in the affirmative; and puts a very striking case which happened during his own practice—Mr. Tintord was the wife of a young gentlemen of large fortune, exceedingly disposed but subject to occasional fits of repentance. On one of these

interests of compensation, finding his estate rapidly wasting, he made a conveyance to his wife of a small estate amount
ing to about $800 after a lapse of twelve years his whole fortune was expended. The property was the rapid diminution of Sanford's property, but they could no means to secure their demands; and afterwards were precluded from examining upon the estate upon the ground of their neglect.

If however a man in debt voluntarily conveys his estate to his children, the inference is that it is for a just consideration.

This declaration of voluntary conveyance is not grounded on statute, nor upon any other statute of the common law, but is that a man must be just to his heirs generous. Comp. 437, 909. Fall. 64, Wils. 56.
Covenants in Deeds

If there be two different kinds as first a covenant of the grantor that he is seguro of the premises conveyed And secondly that he will warrant and defend the

A quit claim deed may contain neither of the covenants but warranty deeds generally contain both.

If a grantee is fearful or to the goodness of his title if he knows or suspects that the real title is in some one else he may sue the grantor on the first mentioned warranty covenant at any time either before or after he has been disturbed in the possession or after he has been ejected and if in such suit he can prove the grantor's title not to be good or that the real title is in some one else he may prevail in his action.

But the covenant of warranty cannot be sued upon until the grantee has been actually ejected.

If the covenant of warranty be against "all claims" the grantee can recover not the essence he may have been at in defending the title against illegal or ineffectual claims but only his damages in defending the title against legal and effectual claims; for the terms "all claims" or "all claims whatsoever" mean only all legal or effectual claims.
But if he be warranted in the quiet quiet enjoyment of the estate against all legal and tortious claims, the grantee may recover in an action be of covenant broken all the damages and expenses he has suffered in defending against such claims.

When the grantee is sued and his estate is challenged it is the safer way for him to notice or vouch in his warrantor to defend the title. Because if he so vouch in (whether he really appears or not for that purpose or not) and he gets beat the warrantor is as between himself and the grantee at any rate entitled afterwards from proving his title, but in an action of covenant broken the grantee must recover. But on the contrary if the grantee do not vouch in the grantor but himself make as good a defence as he can, still the grantor in an action of covenant broken upon the covenant may prove his own title to have been good and thus get clear of all damages from covenant.

Any notice which can be proved that the grantor had of the suit against the grantee is a sufficient voucher but it is better to issue a writ called a voucher against him.

There has arisen in this country a great question whether in case the title fail the grantee of a quit claim deed cannot recover back from the grantor the
So in this contract, to the rule that no disease
pted, tills shall be sold. For unless a man is or has been
actually exists, he may sell his till.

But if the till is diseased, even if it has not been
actually sold, the owner may still sell it.
consideration money—

It is a little extraordinary that the Eng. laws furnish us with no decisions to this point—the cause of it probably is that quit claims are seldom given in Europe except under peculiar circumstances—and then it is a contract of hazard; For in these cases the situation of the title is perfectly well known and all the claims and demands against it are known to exist by the grantee when the buyer.

But in this country the case is very different, such deeds are very common particularly when land at a distance is bought and sold—and whenever the grantor is not perfectly acquainted with the title, the he knows no dread worse claim it is common here to give a quit claim—

Hence when a man buys a title which he knows not much about and gives a valuable consideration for it, it is reasonable that if some unheard of claim should be made to it, and he ejected the consideration money should be returned and so in an action of debt assumpsit it can be recovered.

The law as this respects it respects these kind of covenants viz that in deeds differ from other kinds of contracts because in common cases the life and not the heir can sue for a breach after the covenantor's death.
If the covenant be a covenant of inheritance, the heir of the covenantee shall take advantage of the breach of it.

But herein the distinction is, to be taken viz. if the breach be made during the life of the covenantee, the Est, only as in common cases shall take advantage of it, and the right of action in every just action go to the Est. But if the breach be made subsequent to the death of the covenantee and the covenant be an inheritable one, or one which runs with the land, the heir only shall sue, and this tho' the heir is not mentioned.

In this then it differs materially from covenants concerning personally.

If in common cases the "executors" are not mentioned in the covenant, but only the heirs shall the right of action will descend to the Est, only and not to the heir.

So in cases where the covenant runs with the land and the heir are not named yet if the breach is made during the covenantee's death, life, the Est shall notwithstanding sue for the breach.

The heir of the covenantee can never sue for the breach of the covenant of seisin — Nor in this inconsistent...
with the foregoing rules, because if ever a covenant of seisin is broken, it is broken in the covenantor's life; viz. on executing the covenant. Because the covenant is that the grantor was at the time of the execution of the deed seised— and if the in fact was not at that time seised, the covenant is in its instant broken.

According to the foregoing rules, if A grants lands to B for twenty years and in the indenture B. covenants to pay a certain sum annual rent and A. the lessee die before the expiration of the term and after his death B. neglects to pay the rent thereby breaking his covenant, A. or his only shall sue; but if the breach had been made before the death of A. the executor only could have sued; and if the breach were made both before and after, the heir shall recover for all all damages accruing from the breach after, and the £2 for all damages accruing previous to A.'s death.

So if A. covenant with B. that B. shall have a right of way over a certain part of his farm, or that he A. will not stop up a water course running through his land on to B.'s land, this is a covenant running with the land, and if after the covenantor's death it be stopped up, the heir not the £2 may sue the covenantor or his heir provided A. covenanted with B. and his heirs &c.

And if the covenantor assign his farm to
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ed to which is this covenant, the assignee the not named in the
original covenant and the other be no priority privy of contact
between him and the covenantor yet may sue him in covenant
and recover the same damages which his assignee might have
received.

And the same is with respect to assignee of leases
where for instance where the covenants lease covenants to repair or
the assignee or his assignee on the subject of his assignee
see the covenantor for damages in not repairing or may be
said by the heir of the lessee for not performing his cove-
nants viz. in not paying rent &c — and it will make no
difference in this case whether the word assignee is mentioned or not in
the covenant.

Who may be sued

A. In the case of the death of the covenantor if the cove-
nants be relative to a lease (as if the covenant or the lease)
and there be a breach of the covenant the lessee should
necessarily be sued because the lessee has nothing to do with the
lease which is personal property

But not so if the covenant be touching real
property as if a man covenant that B. shall forever
enjoy the benefit of a certain water course which A. had the right
to turn or stop, in this case if A. dies and B. is deprived of it,
the benefit resulting from the water course he must the heir
of A. and not his Exeq., because the covenant is rather at
tached to the land than on a personal engagement only—
however in most cases either the heir or Exeq. may be sued
as where A's sells land and enters into a covenant of warrant
ancy the Exeq. the estate in then challenging by an other
claimant and it is proved that the covenantor had no title to this
in this case the Exeq. who has the appropriations of personal pro-
erty may sue the sued and as the covenant is by a sealed in-
strument so may be the heir—

In con. however it is very problematical whether
in any case the heir or heir can be sued because the Exeq.
uprising of his office
is bound to satisfy all demands against the
estate and for that purpose the whole property real and as well
as personal is put into the hands of his hands— however
the cause might happen in this species of covenant that
the breach be not made till after the settlement of the estate
by the Exeq. and he has procured a quieter— In such situ-
ation it is probable that the heir (viz. all those persons
to whom the estate is distributed) may sue—

And if the covenantor devise his estate it is
As you may find, A sells land to B. with a warranty of
deeds to other lands to C and dies. now provided
that another claimant appears claiming as his
the land which A. had sold to B. and substantial
states his claim and proves A. to have had no
title to the land which he sold to B. - B. in
this case can come upon C. the devisee of A.
and take the lands in his hands; but provided
C. the devisee has aliened the land previously
B. will sell the without any recourse.
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It is not liable in the hands of the devisee; but if the devisee skin it and no other property can be got at, the covenant is without recourse (c)

Of assignees of covenantees and where bound

From former remarks it would follow that an assignee of a lease will be bound by the covenants of his assignor, but this rule must not be taken as universal.

There are cases where an assignee would be bound whether named or not, in the indentures of the lease. There are cases where he would not be bound if the same mention it, and there are cases where would be bound or not bound as he is mentioned or not. And here is to be taken a distinction between covenants not affecting the demised premises; covenants which may affect them but which do not run with them; and covenants which run with the land.

A covenant not affecting the demise is a collateral covenant. Is to build a barn perhaps, or a stone wall on lands other than those demised.

A covenant respecting the demise but not running with the land is where a lease for years covenants at a given time to build a barn, a house or a stone wall and do so on the demise premises.
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And a covenant affecting the demise and running with the land—i.e. where a lessee engages by covenant to pay a certain rent, to keep the farm be in repair &c. the assignee is not bound to remain.

If the thing warranted to be done does not relate to the demised premises but is collateral to it, the assignee, whether named or not, is not bound.

As if the thing covenant'd to be done be to build a barn on other lands than the demised premises. In no such case as this, will the assignee who mentioned in the indenture or the lease be obliged to perform the covenant of his assignor.

Where the assignee is bound if mentioned and not bound if not mentioned.

If the lessee should covenant about a thing not having existence at the time of entering into the covenant, but concerning the demised premises his assignee is not bound by the covenant unless he be named in the indenture. As if the lessee for years covenant'd with six years, to build a barn or stone wall upon the premises, in such case if he be named or mention...
...ed in the lease he shall be compelled to precisely fulfill it, the covenant for the building of a barn or stone wall concerns the demised premises, and the annual rent, no doubt, is proportionally less as the thing to be done increases the value of the farm.

But if the covenant was broken before the assignment to the assignee, the lessor can have recourse only to the lessee, whom he can always compel to perform the covenant whether the assignee is otherwise liable or not:

Who the assignee is bound at all events.

If the lease covenant respecting a thing which had existence at the time of the lease, and which respects the demised, the assignee is compelled to execute the covenant of the lessor assignee, the there is no privity of contract between him and the lessor and this, tho' he is not mentioned in the indenture i.e., if the lessee do not covenant for himself and his assigns.

That is a covenant which is said to run with the land which has existence at the time of the covenant and in every such case the assignee is bound, named or not named. As if a lease to 1340 years a house and farm and in the indenture 13 covenants to keep the house
fence be in repair and then assigns the lease: and this the assignee does not exonerate B. from his covenant yet it renders this assignee liable if called upon. So if B. had covenanted to pay a specified sum as rent this is likewise a covenant which runs with the land, for it had existence at the creation of the estate and notate to it.

But if the covenant be to pay a certain specific sum in gross it is a personal contract and does not run with the land but the land and the lease is considered as an absolute sale for a certain time.

But a reservation of an annual rent is not of that nature: such a lease is not considered as an absolute sale, but as a continual enjoyment of the lessor of the land the rent is considered as a thing issuing out and on the death of the lessor shall go to the heir when on the contrary land is sold for a term for years of years, in consideration of a certain sum in gross, that sum tho' not become due till after the lessor's death shall go to the E. for a certain proportion of his estate or turned into personalty.

**Implied covenants in Deeds.**

The word 'give' 'grant' and 'sell' deictic con-
= cesse or demise = are said to imply in deed a covenant, that the grantor will seise of the premises was well seised of the premises. And on this implied warranty the grantee or his latters may at any time sue.

But those words likewise imply a general warranty of quiet enjoyment, by which lasts only during the grantor's life. But these covenants in law are always sustainaible by express covenant or by coverture in deeds.

**Exceptions in Deeds**

A conveyance of land will regularly convey every thing which is attached to them. The word land is a technical expression of which will of itself convey tenements and hereditaments.

Hence it becomes necessary if any right is withheld to be reserved reserved by the grantor (as a field of grain) he must make an express reservation in the deed.

If this reservation is not expressly made in the deed or in some sealed instrument, all things on the land which are considered as attached to it not notwithstanding any partial agreement, will absolutely pass, as even rent in arrear and even lata can give no relief in such case.

But when a thing is properly reserved, the
the law requires every thing which is necessary to the full enjoyment of it— or if a crop be reserved by implication of law, the right of ingress egress and regress is also reserved on.

The exception in a deed and the deed itself may be incompatibles; i.e. the grant and the exception may be incompatible as where the whole which is given is excepted. In such case it agreesably to the rule that every deed shall be taken most strongly against the grantor, the grant will be good and the exception wholly void. For as the exception is wholly repugnant to the grant, it could not be made to stand or to a part because it could not be determined which part to prefer— as where a man conveyed to one all his lands in A. which did not come to him by descent and it so happen that they all came by descent the exception being repugnant is void.

Again an exception may be void for its uncertainly as if A. grants to B. his farm containing twenty acres except one acre the exception in this case being uncertain is void. And yet there appears to be no good reason why the grantor should not remain tenant in common with the grantee.

The date of deed is its time of delivery and this may be inferred merely from the derivation of the word. What in common parlance is called the date is only presumption evidence of the date of delivery which presumption may be re
null
right to use it for a certain number of years or for life leaving a
reversion or remainder in the lessor or other person.

5. A deed of exchange is, that by which tenants-in-common divide
their joint-tenancy and re-embed them into severalties. The method
is, for each to convey absolutely

do to the other.

There are several species of conveyance, which
are called original or primary. Those called derivative
are yet to be treated of.

6. A lease and release was invented to avoid the trouble of an actual
entry of securities. The method is to execute
a lease, perhaps of one year, to the grantee; and the grantee,
being constructively or actually in possession may then
take a release of the reversionary right from the grantor.

7. Confirmations and assignments are not now in much use.

Uses and Trusts

In order to understand well, the third method
of conveyance viz. bargain and sale and in order to acquire
other useful knowledge we must be made acquainted
Deeds —

with the doctrine of Uses and Trusts —

The doctrine of uses of uses is now at an end under
the Eng. law; this much the same doctrine is revived under the
name of Trusts —

Early in the annals of Eng. History much alarm
was excited by the rapid accumulation of real property in
the hands of the ecclesiastical houses. To put a stop to this
the statutes of mortmain were passed — These statutes, however,
could not withstand the ingenuity of the ecclesiastics of the
day — As by those statutes, ecclesiastics as such could not own
the legal title to any estate they contrived that conveyances
should be executed to some indifferent person — but for the
use of such ecclesiastical houses and as the courts of Orono
filled with ecclesiastics and were supposed to have power in
such cases — Those persons who held to the use of an other or
others were compelled to execute that use — But the evil was
too great not to be remedied — Thought upon by the super-
vision of the day people on their death beds and otherwise
would make numerous grants to the clergy under the in-
pression that it was good for their souls — And in this way
there was a threatening prospect that all the real property
in the kingdom would be swallowed up by the religious
houses — The legal estate in hands could not at that time
be desired: but by the construction given to the invention, it was held that the use of land could be devised and having this advantage and some others about the time of Edw. 6. it became the most general mode of conveyance.

The grantee is called the feoffee to use and the person to whom the use is given the certain use use.

The incidents of this curious kind of estate were as if that if the certain use were committed treason or felony among the use was not subject to the forfeiture, the legal estate only being liable to forfeiture and was then held by the King die charged of the use. This was considered as far as real property because that like an incorporeal hereditament it was descendable; but different from others it was likewise divisible. It was not liable to dower or to the curtesy nor was it subject to be taken for debts or subject to any of the feudal burdens.

Some inconveniences attended this estate how ever which were very great. The beneficrant of the feoffee to use would hold discharges of the use and at first it was held subject to many other incumbrances which the feoffee to user was able to put upon it. But after a little time the legal estate became no longer subject to dower of curtesy or indeed to anywise affected by any act of the
grosser except by alienation to a bonâ fide purchaser with- 
out notice—so that it became a thing entirely without the 
reach of forfeiture or debts or dower or any thing else—But 
this privilege was found productive of bad consequen-
cia and by statute of 14. 5. 6 Rich. 3. the estate of the rectui 
gue use was made liable to forfeiture to debts &c—


These statutes made a very considerable attrac-
tion in the nature of the estate—they enabled the rectui 
gue use to make leases which he could not do before 


decision after decision at length very much ar-
restituted this estate to real property at length the stat-
of the 27. H 8 declared that the legal estate should be con-
sidered as following the use—Their ecclesiastical ingenuity was 

at length frustrated for the conveyance of a use being likewise 
a conveyance of the legal estate the statute of mortmain again 
superseded and the practice of conveying to ecclesiastics was 


firsts—


But why at the present day do we hear so much 
of use estates? It would certainly from a view of this sub-
eject these far appear that the doctrine of use was entire 
ly annihilated—


But the fact is that this stat. of use had
no other effect than to give rise to some modes of conveyance.
The doctrine of uses was again revived with very little variation
under the denomination of trusts.

A rigid adherence to a few technical niceties
then frustrated this statute.

The judge held in the first place that no use
could be limited on a use and that when a man bargains
sells his land for money which
implication to the
bargainee the limitation of a further use to another person is
repugnant and void. And therefore on a peppermint to A.
and his heirs to the use of B. and his heirs in trust to C.
his heirs, they held, that the statute executed only the first
here and that the second was a new use not adverted that
the instant the first use was executed in B. he became sear
zed to the use of C. which second use the statute, might as well
be permitted to execute as it did the first; and so the legal
estate might be instantaneously transmitted down thro
a hundred uses upon uses till finally executed in the last
esoteric use.

Another example which the judges thought
too weighty to get over was that of the statute mentioned
only those who were seized to the use of an other be the
statute could not be made to extend to those who were only
possessed to the use of an other: or therefore that estates for 100, or 1000 years might be created and devised to A for the use of B, and the use was still disconnected with the legal estate —.

And lastly (by very modern notations) where lands are given to one and his heirs in trust to receive and pay more over the profits to an other, this use or trust is not executed by the state, for the land must so remain in the trustee to enable him to perform the trust —.

Of the two more ancient distinctions the court of equity quietly avoided themselves: and having wisely avoided in a great measure those mischiefs which made uses intolerable have by a long series of uniform determinations for about a century past with some assistance from the legislature, raised a new and an extremely beneficial system of national jurisprudence —.

Qualities of a Trust estate —.

A trust estate like other real estates must be created by writing and with the same solemnities as other real estates and like them it is descendable —.
able and devisable liable to debt (being considered as equitable assets) liable to forfeiture for treason but not to escheat for felony.

The certain estate (or trust) may change it by mortgage &c; it is subject to curtesy and if it were subject to dower its symmetry would be complete—but in England it is not.

The trustee in is considered as a mere instrument of conveyance and can effect the trust in no other way than by alienation for valuable consideration to a bona fide purchaser without notice, which as the certain estate is generally in possession can rarely happen.

And Mr. Pynne thinks that if the trust were negotiable given in the same deed of conveyance as the legal estate it would amount to notice whether the purchaser actually saw it or not.

The third method of conveyance which took its rise from this system of uses and trusts and which has now become one of the common avuncularia in Eng. and much used in America in my deed of bargain and sale.

And this when for a valuable consideration A. contracts and consents with B. Now A. having received his money from B. in to all intents seized to B.'s use and
Deeds

the stat. of uses immediately transfer and annex the use to the legal estate and the bargainee becomes co-instant to seisin of the legal and beneficial estate.

But in order to prevent the inconvenience of the seisin estates it was provided by Stat. that all such bargainees and sales should be recorded — But to be at that trouble and expense being considered as being the way the way of our sturdy sturdy ancestors they devised a method without biny of seisin to get rid of it which was effected by the method before spoken of viz. by end of Peace & Release.

And by the same doctrine of use the lessor may acquire the freehold. For when A leases to B for one year he becomes seised of the freehold to B's use for one year — But a construction possession follows the use therefore being constructively in possession the lessor may take a release of all the lessee's interest.
Injurious consequences are remedied by an action on the eip.

1. Trespass, it has been observed, is remedied by an action of Trespass. Trespass may be defined to be, the entries into another man's land without his consent, and doing some damage thereon. The word land includes includes houses, trees, and every thing annexed to the freehold. The right of Mesne and Term is so strictly guarded that no damage can be done however small without subjecting the agent to this action.

There are many cases however where the entering on lands is permitted by the law; as to execute a legal process, or if worse be committed to be.

This action is upon the possession of the Plaintiff. For in Eng. a man's land may be very injuriously invaded, with impunity so it relates to this action, for Ejectment is the action when there is no possession, by which action possession must be established.

In Eng. the law contemplates an actual possession (by a legal possession by entry) the law, law contemplates only the right of possession to sustain this action. As in Eng. where the ancestor dies, the heir cannot maintain this action for an injury done before he obtains possession. It is otherwise in Fry. The 1st constituent, probably the only difference between the Eng. law and

End.
Hearsay by someone who has heard — the opinion that one testimony alone has been more common against sedition recoveri and for indemnity — almost appears to be an understanding of truth — the 22 case where judges at the grand jury report — a long on voluntary hearsay confusion — the law of sedition in medium, that the principle of protection — when considered in connection with the verdict — it is more that unless — whether may deny of the common sense over this subject confusion. Sense, suspense. The nature of fear and copy in the case of January thought — of evidence before of the decay of the become by Lord 500 166 perjury. Have you of the breaking of destroy the profession obtained by fraud, punishment to been.

[Some handwritten text and numbers]
Trespass

If trespassing trespassers, the lease or tenant in possession may bring this action against him.

Tenant at will or by sufferance may bring this action against strangers who are trespassers, but not against the owner, because the entry of the owner is a determination of the estate. But it may be brought even against the owner in this case, if he invades the premises, for to those the tenant has a right of possession.

A mere trespassing or intruding person, having no licence either express or implied in the only possession who may not enter.

It is to be remarked that if a lease at will does any act which constitutes a wrong, he is a trespasser.

In case of Disregard, the Disregard is the real owner, the Disregard the possessor. The Disregard may bring an action against the Disregard for the disservice itself. But be it a service or an other action can be brought, that of ejectment must be brought to recover the possession.

The law however permits an action for the whole profit; but to support this action of Trespass, the law requires the disservice to have been constantly in possession. The action of ejectment suspends all others, by giving both possession and damages.
There has been a great question on which even the elements of

law differ. Where a stranger enters, enters, disturbs, and does mischief,

the trespassor being in possession, can the real owner bring an action

against him, or does it belong to the trespassor being in possession

the real owner bring an action against him, or does it belong to the
trespassor in possession only solely? Now there seems
to be no doubt but that the trespassor might have an action and
if this be the case, it would follow that to give the real owner
an action would be subjecting the trespasser to two actions which
contradicts a known principle of law. The argument of
all who quote Coke quotes Coke (which authority seems to support
him) is that the trespassor should bring the action because
the trespassor may bring an action against him.

If the person trespassed upon, trespasser of the premises,
he does not thereby with all the right of action. He has
a right to sue if he was possessed of the land at the time
of the trespass committed.

It is settled that all persons who enter upon land by
the command of an other shall be sued may be sued. But
if these servants are damned by acts committed
against them in this manner they are not considered as joint
wrong doers and therefore they have their remedies against
their master; the reason upon which this is founded, is that
in such case the master claims, and it does not belong to the servant
to investigate the legality or justness of his claim or title. But it
seems where the servant knows of the wrong of his master it will be
otherwise—

**Trespass**

**Trespass** her against any person who aids, procures,
commands, advises, the commission of a **Trespass**—

**Trespass** her not only against master servant
so be but for trespass committed by a master cattle getting into
an others land and doing damage—

When there is a dividing fence one half belongs to
one proprietor and consequently must be kept in repair by him,
and the other half to the other proprietor— If a breach is made
over the foot which is lawful, the proprietor of that part will
have his action— Not so if unlawful or neither not lawful—

If a part is lawful and a part not so belonging
to the same man and a breach over the lawful part, it will
give him his action— By “cattle” in this place is meant— Hogs,
horses, sheep, goats, and cattle &c. &c.

Commonable cattle are sheep and next cattle and there
are protected unless the fence is lawful. But neither Horses,
Hogs, nor goats, are commonable, and therefore if they break
over a fence not lawful, their owners are subjected—

Whereby laws make these beasts commonable with
were not so near to the execution of the bye law, yet damages may be recovered for their trespass— the bye-law notwithstanding, and the only benefit of such bye law is to free them from being imprisoned.

This injury must be immediate and not consequent

section 35a. 604.

It is said that where a man breaks open a house & trespass cannot be brought for the damage because it is merged in the felony, this is reasonable when fortuituses prevail; but is not where they do not prevail; this action is said to enumerate the party trespasser upon 2 roll 507.

There are cases in which the law gives a man a right to enter his neighbour’s land, after this lawfully entering if he commit an unlawful or wrongful act the law makes him a trespasser at inchoate,” & where a man enters a tavern which he has a right to do, but after entering commits some act of violence, it will make him a trespasser at initio— But for an act of non-feasance it will not be so—

So where a man enters another’s land in pursuit of a hurt Damage, Jespaut, and afterwards kills the creature the trespasser will apprehend back.

There are some cases in which it is lawful to enter a man’s house and some in which it is not— 24 Geo. iii case
he have process to-

The law is, that where the doors are open he may always
enter, but he cannot ever break an outward lock, unless in
circumstances criminal care. If however he gets into the
house by an open door praisably, he may then break an inward
doors may be broken open in all criminal cases.

It has been said that outward cannot be broken in
civil cases but to this there is one exception and that is where
a man has bad judgment against him and has been actually
taken under an execution, the officer may break outward
doors to retake him. A man's house is his own castle (i.e. his own
as well as those who reside with him and any of his family)
therefore no protection to others.-

One reason for the general rule that outer doors
cannot be broken open applies on to large houses only or cities
and is that they should not be broken open lest thieves and
fugitive should be set in. Another and which is the most parsible reason, rests on the public and few good, and is that the
breaking doors should spread general terror thro' the neigh-
bordhood and would often be productive of the most de-

When a man makes a mansion house for himself inten-
siding thereby to avoid creditors and keeps an other house open, this
mansion house shall not protect him, for the reasons above mention
ed do not apply.

An officer may enter a house in any way in which he
does not break the peace—this is the law generally.

*Question rexata—* All are agreed that outer doors
cannot be broken open, but that inner doors may; but suppose
an officer breaks an outer door and having entered and leaved,
will the levy be good? It is said that it will, for at this the
officer subjects himself to a trespass by entering, yet having
entered his act is valid, but Mr. Brome is of opinion with
those who entertain a contrary opinion—doctrino.

If an outer door is entered legally, a trunk be
may be broken within.

Mr. Brome supposes that private family rights ought
never to be injured, infringed, unless the law positively per
mit it—therefore the law in favor of creditors ought to be
enforced strictly.

When a man is arrested on Sunday (which can
not be done legally) for the purpose of arresting him a second
time on Monday, now this second arrest will not the good,
because it is a poor consequence of the first arrest, which
was illegal.

*Question.* A. conveyed land to B. having out of P's
12. a convenient log one and another no observing
11. a convenient log one and another no observing
10. a convenient log one and another no observing
9. a convenient log one and another no observing
8. a convenient log one and another no observing
7. a convenient log one and another no observing
6. a convenient log one and another no observing
5. a convenient log one and another no observing
4. a convenient log one and another no observing
3. a convenient log one and another no observing
2. a convenient log one and another no observing
1. a convenient log one and another no observing
A summation of the necessary steps and points:

1. A clear understanding of the purpose and goals.
2. Identification of the resources and constraints.
3. Development of a plan and timeline.
4. Communication with stakeholders.
5. Regular review and adjustment.

In summary, the process involves:

- Setting clear objectives.
- Gaining support and commitment.
- Implementing strategies.
- Monitoring progress.
- Adapting to changes.

By following these steps, we can ensure that the project is successful and meets the desired outcomes.
of the leasable of the agistment of

lads of your liberty of Alnwick 209.8

1st turn 33 1/2 - of general sand

Warrants 20d. 20d. A weight of earth

is taken away - long 40 by 25 by 1 by 12 in.

contract - of land under strap 33 1/2 removed yet

launge, day not here 16th 15.5 -

of the day well 1 dge. 13 20.5 to 17.5

of 580.5 of 151.5 of 580.5

To constitute an unreasonably large cloth

13. Land levies and approvers off content

upon and appropriation to hold the judgement

of the last terms as concerneth the same many terms

may be given in evidence 16th 15.5

1. As to lands to 15e and yeasts there has been 15 into

rest of the but he has it not been been the

same.
S炭pans

but not hunted. Whether 1 Cor. 6:21.

Where a man has found a bee hive on another's land, he
may by custom enter to take the bees and honey.

A man may enter an other's land to get his own prop-
erty which may have been taken there, or thrown thereon by some
provisional act, but no injury must be done to the land.

So when a man purchases land the law gives him a
right to the it.

When a man claims land by jeté, he may
go on it, notwithstanding, he is not in possession of the premises.

Statute of Cor. relating to S炭pans.

There is a statute in Cor. relating to trespass on real prop-
erty, which it will be necessary to notice.

When trespasser are committed on lands (or where
there are cut down) this statute not only gives the party a
right to recover such damages as might have been recov-
ered at Cor. law (which a jeté) but a penalty for each tre-
cut down.

You cannot recover on this statute, where there was
no trespassing intention or intention to do wrong, or where there
was any mistake, &c.
3rd of Selling from the two mentioned lands, unless you determine my property further.

In the meantime, I will take the land and the farm of the property. I will be bound by the
word of my instrument, the farm of the property, and the lands, and by the hand of the
object of the land.

5th of the declaration of the mortgage.

6th. The mortgage must be said to be secured together on the
principle of the common law on an action of payment
on a mortgage for money or goods. The act of the
mortgage by the seller to the mortgagee. The mortgagee must
be sure and sure that they can zend up to a
favour of any against another. Length of payment for
under an execution claim may take among able

12th of the party of the foreclosure.

Concerning sale or land to the common sense, may
secure an action against a person that is in default
part, either only in the name of the person. Such
persons may give another. Such persons may
not be sued out. To put themselves in court of law.

7th being by reason of the agreement.

524, p. 3. Edw. 8th. 25th October 1554. C. 5. 34.
trespass.

One action under this stat. recovers damages as well as the penalty.

A man may trespass, claiming an adverse title, and no penalty shall be recovered on this stat.

Although an action is brought upon the stat. and not upon intent, yet if the Pt. has sufficiently stated a trespass in his declaration, he will recover common law damages.

If a jury bring in single damages when they ought to have been double, or triple, the court may double or triple them.

When barb the one thrown down, extra damages are given.

So when a man sets either his own or his neighbor's house on fire, he is accountable for injury done to others.

And this is the common law construction.

There is also a penalty given for gathering heather or victual of which wood is made.

Under this stat., where one man suspects another of having committed a trespass, he may sue him, and this upon the trespasser to acquit himself by his own oath.

There must be however some ground for suspicion. The practice is unknown to the common law, but it has been assumed that it is nothing more than what Chancery permits.
every day. It is not common in courts of law—

This estate statute enables a man to detain as well as to bring this action.

**Trespass to try title** is now very common in convent. Let us exemplify the manner in which this is conducted. Let A. be the plaintiff, both claiming the same estate in the said land of which B. is in the feudal possession, in the tenure and capacity of; B. being to be before a magistrate, upon which to judge in a plaintiff's title. The cause after this not being tried by the justice, is of course carried to the county court, to do this, however it is necessary that the justice takes a recognizance of B. the claimant. This bond is given to compel B. to pursue his claim to trial and not as a punishment for the trespass, if to. should prove yet defeated in his claim. Then in the title tried and judgment given for him who is found to be the just claimant.

Both the Eng. and Cou. limitation to this action is

three years.

There is also a restriction respecting costs. Where a man does not recover more than £5, he shall recover no more costs than damages. This rule does not apply where the title of land is in question.
Dissuision or Dispossessing

Trespass upon chattels real as well as real estate is now remedied by a writ of Ejection or an Action of Ejectment. In all cases of trespass whether by violent means or otherwise, the party dispossessed may come into it as Action or Dissuision, tho' by violence there may be Hr. of 20 years. Where a man enters under a claim he may be considered as a Dissuisor.

There have been many ancient remedies in Eng. for recovering real property, which are now done away, but even at this time if a man has been out of possession 20 years which taker away his entry and drives him to some other action than Ejectment.

The remedy by action of Ejectment was annually made use of for the purpose of recovering a term for years, but is now applicable in almost every state in the union, to the trying title to Real Estate.

Mr. B. has shown us at full length in what manner a way this action was formerly conducted by the following example.

A claim to own land of which D. is possessed. A. enters on the land and makes a lease to B. for 3 years. A. & B. are agreed that their neighbour C. should enter and turn D. out. Now B. the lessee of A. brings an action of ejectment against C., upon which C. writes a friendly letter to B., letting him to come and defend for that he has no ground of defence himself. Therefore unless he enter a recovery of the premises will be had.
Dissuasion.

enter the cause then stand. But D. formerly B. must prove entry
have, entry, and title, but now the manner is much fuller
he brings an action against C. without having made any lease upon
which runs a letter to D. as before. Deponent and prays to be made
which the court will suffer upon condition that he will
confesse, entry, and bustle (being a string of legal fiction)
which when done nothing remains but a fair title of the
It may be however that D. will not confess. Entry, entry and bustle.
In this case then nothing is proved, but the court will order
C.'s name to be inserted and a recovery against C. will rest D.
for if he will not defend it will be taken pro confesso against
him.

This action is brought as well to recover land as for
damages, this in Eng. I presume) nominal damages only are re-
covered. As nominal damages only are recovered, an acti-
on of trespass will lie for the mere profits.

In law, there is no legal fiction at all but a direct ac-
tion. The Act. states reseizure, and that he was deprived to

Here, their action may be brought for the land, as well
as for damages, and either real or nominal damages may be
recovered. If the tenant an action of trespass for the mere prof-
site may be brought.

Where it is a doubt whether real or nominal dam
Disseisin.

In declaring in *trespass* and *ejectment*.

Young men about to enter on the practice of the law are something frightened with the idea of the difficulty of drawing declarations and pleadings. Let this be controlled by this circumstance, that if they make themselves masters of the law, they cannot mistake in declaring. A thorough knowledge of the law, will render it certain and easy.

As to trespass upon real property. In declaring it is necessary to aver "that you were possessed of a certain lot of land" (describing it) that "the Deft. with force and arms broke the Plts. said close" (this does not mean an actual force of arms, but a legal force) that "with the like force he entered into the close, and cut down" (describing what the Deft. actually did) "to the Plts. damage so much, and for this he brings suit" etc.

It is necessary to state possession, but the grounds of a right of possession need never be declared.

If the injury in done by your neighbour’s cattle, you state that "the Deft. entered with his cattle" etc.

Ejectment. In declaring in an action of ejectment according to the Engl. mode you must state possession.
An execution upon a judgment of ejectment and the difference between 1 st 2 nd and 3 rd court to satisfy a debt.

Injury point 25 Cambridges all due found greatly damaged against the 1 st 2 nd and 3 rd court.

This writ is made to shew that any said action which contains therein against all.
Nuisance.

If a time of years" &c. But in Con. where no fiction is used, you must
state a reason of the Pst. (if the injury was done to a freehold) that
is that the Pst. was raised at such a time, and at such a time
the Pst ejected him, that the Pst. still holds the Pst. out, this
damage so much, for which, together with the surrender of the
land the action is brought.

In case judgment is recovered, and before it is enforcing the Pst. dies, how is it to be enforced? Where personal prop-
erty (i.e. damages) only is recovered, the Pst. may bring a new pro-
cess to recover the judgment—But when the land and dam-
ages are both recovered, the Pst. must bring a new process for
the damages which are personal property, and the heir a new
process for the land which is real—This is a mixed action.

Nuisance.

First, what a nuisance is & secondly its remedy. Nuisance
is not merely an injury to real personal and real property, but
in a certain sense it may be said to be an injury to a man's pure
person.

I. A Nuisance is any thing done to the hurt or annoyance
of lands, tenements, and hereditaments. There are a species of
Nuisances which are public. Concerning these nothing more
Nuisance

will now be said, than that such nuisances affect the public only and therefore must have a public remedy. In other words, no one man can have an action, unless he has received a personal or special injury.

A private nuisance then is an injury to personal or real property, but it is not a direct attack upon it but operates consequentially, for if it were the former, it would be irreparable. Consequently, if it is a nuisance, it is that a man by using his own property may commit a nuisance, the rule is " sic uti tutius, ut alienum non moleat."

1. Occupying a man's house is a nuisance; for the words " sic uti ut alienum non moleat" will not extend to permit occupying.

2. Obstruction of ancient rights is a nuisance. But what are ancient rights? Agreed on all hands that they must have been made at a long time or existed a long time. D. Mansfield (I am informed) in a decided decision in 1859 has called them "ancient," if they have existed 20 years.

All nuisances in these cases depend upon privity.

3. The exercise of any offensive trade, or the erection of any offensive business buildings are nuisances. As tenants of another Chandler's shop; so the erection of certain kinds of buildings too near an other's houses, lands, or estates (where the noise of the horses interferes with the peace and sleep of the
neighborly &— but it would seem that if the man had no attempt to have built his statute &— that they would be permitted to stand. The privation of a fine prospect is not a nuisance.

There are also many nuisances to lands &— as when grounds are raised and our flow the neighbor lands. When the over-flowing has proved beneficial to the land it has been determined to be no nuisance.

So the carrying on of some kind trade is a nuisance as the smelting business &— thus also affects real property.

So where a stream of water runs through a man's land, if it is diverted from the original course it will be a nuisance.

It will be a nuisance if a man Above-constructs or spoils a stream, by building dams &— houses, &c. To be a nuisance however it must interrupt some use to which the person to whom he had been wont to apply it. So that whether there will be nuisance, yes or no, will depend upon first occupancy.

It matters not whether the spring issues on the snows, lands who does the injury &— he cannot claim the water, and say he will turn it off, use it, construct his. He mayhow ever turn some of it, and it will be no nuisance, provided he leaves enough to answer the neighbor's purpose.

Wherever there is a good site for a mill below and one is built, thence the water above must not be drawn.
Nuisance.

...st from it. Where a mill below would be of more use than the watering of cattle, but above, above the latter will be prohibited to the advancement of the farmer; priority notwithstanding.

These are cases where a man professing the same calling, trade or vocation will not be allowed to follow or pursue the same man another of the same calling to upon the ground of its being a nuisance. As where a man sets up a ferry near another having a prescription right which is an in corporal hereditament.

But where a man having such right attempts to keep a ferry, he must do it with fidelity, the care of mills, etc. const. in some exceptions to this rule for a multiplicity of there, will only advance the public good.

Mr. Hale supposes that in law, where lands are given to a man on the condition of keeping up a mill, this would seem to prejudice the building an other near the same place, upon principle; but the case is not settled.

Waste.

The remaining injury to real property is that of waste.

Relative to this injury, there is much law in Eng. which will not be applicable in these United States.
The action of Waste at common law was formerly maintainable only against tenants for life, made so by operation of law. It was
sought by the Crown and tenant by Power, because other tenants
might have contracted in their leases, a deed to prevent Waste,
but by the Statute of Gloucester 6 Ed. I., other tenants were made liable
as tenants for years to-

Waste sought injury done by the lessee or some one under
him, or by his permission, and the reason that neither trespass
nor ejectment would be brought in these cases is for want
of that possession which the law in such cases requires a theft
should. A lessee to do the thing being in possession cannot be said
not to have done it (if he pulls down a house) in trespass, by the lessee because
he is not in possession.

By the Statute of Gloucester damages are not only recover
ed but the thing wasted i.e. it is a forfeiture of the property,
as it expects this it is immaterial whether the waste was vol-
untary or involuntary

The lessee is liable not only for waste committed by
third persons himself but for that committed by third
persons, strangers because he is in possession, and can recover of
such third persons. Mr. Nourse says it is hard law to make him liable
for the waste committed by every stranger, a bankrupt who may invade
his property without his knowledge.
Waste.

There are thousand of instances of Waste applying either to loss of lands or trees.

It is waste if a lesee suffers his house to be destroyed either by exposure or by the act of an other. He is not liable however to the full extent for prorcedental accidents. But of this hereafter.

The tenant must use due care and diligence. He is bound to repair unless there is contract to the contrary.

It has been held that where a man builds a new house or enlarges an old one, even if he benefits the premises, it will be waste on the ground that there must be no alteration whatever in the estate. Mr. No, presence that this would not be so. In

With respect to changing or altering land, or meadows into arable & vice versa, the same idea of waste must prevail.

A lesee at whose he has a right to dig he yet he must not open new mines, unless the land is leased to him without injunction of waste.

As to timber. The word "timber" in appropriate in say the tenant has a right to plough bole, fire bole, hay bole and hedge bole, but he is not at liberty to cut down wood for other purposes.

If there in dry wood on the premises greenwood must not be taken for fuel. Timber may be cut down for repairing but the tenant is bound to repair if there is no
The lessee is liable as a trespasser and his trespassing is a forfeiture.

The lessee is not liable for loss or injury from the act of the common enemy, yet it has been determined that the tenant is bound to repair if the property wasted is tenable, i.e., not totally destroyed, so as to render continuation in occupation and enjoyment possible. 10 Co. 34.

When a stranger commits waste, the lessee has no action but the lessor has, who is answerable to the lessee. 10 Co. 24. 20 Co. 18. 290.

2 Rolle 324.
1 Co. 325. 40
Ev. John 268.

2 Rolle 828.
It has been held, where a man had timber not rotative, but sold it to enable him to buy more, which was rotative, he was guilty of waste. Most persons presume it would not be when all these rules are made so rigid, for the purpose of restraining binding lees or, and benefiting lessor a landlord.

If the lessor excepts the woods in the lease and the tenant cuts down the it will not be waste, but trespass, for the lessor was never dispossessed of the woods.

But who may bring the action of waste? Suppose an estate is given to B. for years a for life remainder to Bird. If the remainder man is in the place of the lessor and therefore may bring the action.

But suppose an estate is given to B. for life, remainder to B. for life, remainder to C. in fee. A commits waste, B. cannot sue because he is not the remainder man in fee, no matter can C. sue because he is not the immediate remainder after man B. then is indistinguishable for waste. A had care. But chancey will grant an injunction.

If the tenant for life dies, no action of waste can be brought against his estate.

Tenant at will has not been mentioned because he cannot commit waste for he has not a sufficient pos
Waste.

Sease "without impeachment of Waste" and pow. of Ch. to prevent Waste.

It is very common to make leases "without impeachment of Waste." By such cases the trees, timber, &c. may be cut down and used by the tenant, for in them he has a vested property by the lease.

It will be recollected that Ch. grants injunctions to stay waste, when even an action of waste might be brought at law. Ch. has gone further. This court has granted an injunction to stay waste when a lease was made "without impeachment of waste," and the timber or trees he had been taken "wilfully, maliciously, or wickedly." Where lands are leased "without impeachment of waste" a property in the timber &c. is thereby vested, and it has been thought a stretch of power for Ch. to interfere. This will not be done except in cases of

whimsical or malicious waste, either upon houses or trees, and where in fact such waste was not intended to be permitted at the time of making the lease.—As where trees of ornament were cut down, or houses stripped of their leads, appendages &c.

There are other cases of waste in which Ch. interferes. As where his trustee for is the legal tenant then is in it, but still Ch. will not suffer him to abuse the property by wasting it. The "trustee trust" must not abuse it.
Waste

Where there is an estate for life till, remainder to B, for life remain
ced to C in fee, here although it is shielded at law against being sued for
waste, yet Chan. will grant an injunction to stay upon application of the re
mainderman in fee

Chancery interferes to prevent waste upon the property of an infant
There is one set of cases where Chancery interferes upon a
different ground, as where there is a lease "without impeachment
of waste" and the tenant during his term does not cut down much
of the timber, until just before its expiration, and he then con
cludes to make a sweep of the whole, and this to answer will
official purpose. Chancery in such a case interferes

The estate of the Mortgagee in possession is not a tenancy
at will, but a distinct species of Tenancy, the mortgagee herein has
not a right to commit waste, because thereby he deprives the

Where a Mortgagee in possession dies, the Est. must re
ceive the redemption money; but may such Mortgagee commit
waste? If he does he must apply it to the payment of the Mort
gagee and it will be payment so far as it gives goe.
Of Evidence

There is almost an infinite variety of questions made relative to Evidence, which cannot be treated of in any moderate length of time. But there are certain general and leading rules, with many exceptions to those rules, which will govern in almost all cases. These will be the subject of the following lectures.

Evidence or testimony may be classed under three distinct heads. I. Written testimony or evidence, which includes all kinds of written evidence, from unsworn instruments to seconds inclusive. II. Oral Evidence, which is all which may be derived from a sworn witness, whether it be delivered by him in open court, or whether it be a deposition in writing. For albeit a deposition be sworn, yet it is derived from a deponent who having taken the proper oath is called upon to testify, or to the certain facts, and its being delivered, via vero, or taken down in writing, does not alter its nature.

Evidence of either of these two kinds is supposed to go directly to these the principal facts. But there is a third kind called Presumptive Evidence. This is testimony

Evidence.

from the evidence or proof of other facts: whether there collateral facts be proved from partial or written testimony. If it be repudiated from partial proof, it is called presumptive testimony. Suppose A. on Saturday evening saw Sam. After riding towards Litchfield, on the turnpike road, not far from the town—Not long after B. saw him on the same road going from Litchfield—and in the meantime C. saw some one from the meeting house on a horse who that answered to the description of S. If these facts would raise a strong presumption that B. was in Litchfield on Saturday—But if the presumption be raised from a written instrument, it is called constructive evidence. As if A. executes a lease of land to B. reserving $10 rent:—for the rent A. gives B. the point to be proved, is, that B. accepted the deed, and agreed to pay $10. It appears from the face of the deed that it was delivered to B.; proof of proof is introduced to prove that B. went on the farm andcultivated it— and perhaps that he had before paid rent at the rate of $10. From all these collateral facts, the presumption arises that B. agreed to pay the $10 rent. This is called constructive proof.

Of the Causes for excluding Witnesses.

There are three general causes for which witnesses
Evidence

are excluded. Big Interest, Infantry, and Atheism.

There is likewise an insatiable ease to be taken notice of, in a subsequent part of the title.

A mere relationship generally does not exclude, a son for against his son—the son for
or against his father—a brother for or against his brother, &c. But in the argument to the jury, all advantages
which might be—are taken of all such connections; whether it be
founded in consanguinity, affinity or friendship. For, to
whom such witnesses are competent, yet the jury are judge
of the degree of credibility to be attached to the evidence.

To the preceding rule, there is one exception, viz.
the case of Baron and Greene. They are not permitted testify
for against each other, not only because of an interest which
may have in the property of another, the other but also from
a principle of principle of policy. The law is peculiarly
anxious that domestic peace and happiness be preserved,
particularly as between husband and wife.

And at this the parties agree, that they will receive the
testimony of the husband or wife to one of them, yet the court
will not permit it. Although competency proceeded from in-
direct only, such might be introduced.

It has been made a question whether this rule
Evidence did not likewise apply to wives de facto married, but the law is settled that it does not.

There is one acknowledged exception to this rule by which a wife may testify against her husband, and converso, i.e. when it becomes necessary for her to sue for the peace against him, for Illinois ill usage, &c. Since his, or her oath is admissible evidence.

There is likewise an instance in which it is said the husband or wife the wife are good witnesses for or against each other — to wit in the suit of a criminal prosecution of either of them for ill treating the other without adopting the frequent method of obtaining retribution of the peace &c. The prosecution being entirely at the suit of the public officer.

But on this subject, there is a great diversity of opinion among lawyers, for it is by no means a conceded point, that when the prosecution is at the suit of the crown, the wife may testify against the husband (or converso).

Those who oppose the doctrine object to it, that it subjects the husband and family to the ill humour of a bad wife (or mutatis mutandis) who by entering a complaint before the prosecuting officer, founded or unfounded, and may destroy the peace of the family—
Evidence

On the other hand it is said that the complainant's reputation will prevent a conviction, there being no other evidence, if the complaint be unfounded, by detracting from the credibility of the witness. And also if it were not allowed, the wife or house servant would be subject to the cruelty of the strongest without hope of the protection, for it is not to be presumed that he will treat her ill, before people. This latter opinion is confirmed by a decision reported in *Hatton*, (Lord Brougham's case) where the wife was permitted to testify against the husband. But some other dicta have fallen from Judges, by which it would seem they did not consider this case as law. Those dicta of Judges, have given occasion to most of the elementary writers to deny the case in absolute to be law. But in the *Vattin* it seems to be expressly recognized. And in *Agane's case* (Strange *Rept.*.) the case in *Hatton* is consequently stated to be law, and the principle seems settled as *Mr. Beeve* and *Mr. K.* thinks that there must have been some case decided, which we have not got, or perhaps in some state trial, wherein the principle is settled for Strange is a very correct *Rept.*

There is also set an other case, in which it is said by many elementary writers, that a wife may testify against her husband, namely in the case of treason. But
Evidence

can find no case, which supports this principle, and in Brown
slow it is denied - A reference is sometimes made to the state-
trial of Russell, in support of the position, but nothing is there
said about it, which, however, seems to me decided have then
been decided in that case, and so reported; and at any rate
the point may be considered as a disputable one.

The relationship between clients and Attorneys
uses the latter incompetent to testify as to any fact, confidential
nately instituted to his client by his client in the case.

Authors frequently frequently lay down the rule
that an attorney or counsel, shall not he compelled to test.
ify to - But the rule is more extensive, an attorney shall
not be permitted to reveal before the court as a witness
against his client, any fact confidentially confided to him. - This rule is founded both in policy and
Justice, and prevents a dangerous breach of trust.

But whatever an attorney knows relative to
the matter upon trial, and that not an attorney, having ac-
quired this knowledge in some other mode than by a con-
fidential disclosure from his client as such, he shall be
compelled to testify, it bear hard upon his client.

A question has been raised whether any person,
with whom the party in the action has entrusted the know-
Evidence

Ledge of a particular fact known only to himself and which from the nature of it never can probably be found out shall be compelled to discover it in court. The fact not being communicated to him as attorney, but as a friend in whom the utmost confidence was placed by the party in the suit.

If the confidence confided in him be already in part betrayed, so that a rumour of the fact has got about, then there is no dispute but the person shall be compelled to testify. But is there not something morally wrong in compelling a person to betray the confidence deposited in him and perhaps ruin his friend, when otherwise the act or offense would never have been known? Yet it has been decided in England that such person shall be compelled to testify. And in law it has been so decided also by a divided court.

Of Witnesses made Debtors.

No person may be a witness in his own cause. But it is easy to see that one may be made a debtor in a suit by the debt with others on purpose to prevent him from being a witness. And this is not infrequent.
Evidence

by the case: particularly in cases of assault and battery.

But such a proceeding is not allowed by the Courts to effectuate the purpose intended: If on hearing the evidence there appear none against the person, the real defendant may move the court to have his name struck out of the record— which the court will do.

But it is a principle in Courts never to decide the weight of testimony. Hence if any, the slightest evidence appears against the person, an other course is adopted—

If the real party moves the Court that this Deft. (whose testimony he wants) be tried first; and this the Court will direct. If the Jury find him not guilty, or otherwise find for him, he immediately becomes a competent witness for the real deft. And although he be found guilty, yet if the act constituting the crime of which he was found guilty were such as that he would not be interested in the event of the succeeding suit, i.e. if it be not such as that the P't. can take out execution against either or all, at his election, then he may still be a witness.

It was a litigated point, question whether an accomplice in a crime, could be witness for or against a Def't.

But it was found, that a vast many crimes
Evidence

would go unpunished, if they were excluded. It has therefore been customary for one or more of the guilty persons to turn witnesses for the public, in order to convict their companions. But in such cases, they be competent witnesses, yet their credibility is with the Jury. In such cases it is always a matter understood, that such as turn witnesses to convict the others, be excused from any proceedings themselves. The mere fact of their having turned witnesses is of itself no excuse—but it is always considered that the honour of the public is pledged, that such witnesses shall not be proscribed.

Of Persons interested

It has already been observed, that the great causes of incompetency in a witness, are Interest, Partiality, and Atheism, or such principles, or such a defect of knowledge, as rendered it probable that the person felt not the peculiar obligation of an oath. We shall first treat of in Competency by reason of interest.

The interest in order to incapacitate the witness, must be a pecuniary interest. And if it be a pecuniary interest, it is sufficient, however small the interest may be: for if it be even
Evidence

or $600 it is equally improper to examine into the quantity. And it is
as well known that $600 will have as much influence may
have as much influence upon some men, to cause them to swear
from the truth, as $600 would upon others.

And lest the best friend, or the nearest relation to
the party, is a competent witness (except the witness herself)
and always admitted to testify, if there be no exception other
exception taken. But it is proved by experience, that the
influence arising from friendship, or nearness, may be
greater perhaps than any pecuniary interest. The credibility
of such testimony, therefore, is a question for the Jury to decide.

Of interest in the event an.

An person offered as a witness, may be interested either
in the event of the present decision, or merely in the question.

An interest in the event, always excluded. But an ins
interest in the question merely, does not.

But it may be difficult to distinguish between a
consequential interest in the event, and an interest in the
question.

An interest in the event consequentially is where
the judgment to be given may play a foundation for a suit
in which the witness suits the party. As in the case of bail
Evidence

rendered for the benefit of a witness:—it is not certain that he will ever have to pay the execution against the principal, for it is not certain that he will ever be made as bail—but still it is a contingency which may happen and the judgment in the case now on trial, will lay the foundation of some subsequent suit on such a suit—so if A. agree with B. that he will institute a certain suit, and happen to fail, he (A.) will pay half the expense of the suit A. becomes consequentially interested in the event.

But a wise distinction is here necessary to be drawn. Where this consequentiate interest in the event is a mere possible contingent interest, it will not extend And the following is a strong case: suppose A. a man of 80 years old to have commenced a suit to recover his farm, black acre; that before the trial he should become very sick and on the appearance of one at the point of death, under all these circumstances the trial comes on, and B. his only son and heir is brought into court to testify at and although he may testify the next day inherit the whole estate yet he is a competent witness and may be sworn as such.

For this is but a mere possible contingent interest in the event A. may make his will and devise away his estate; B. may die first, or having made his will and give
Evidence

given it to B., he may sue it — the will may not be established — he
may yet well of his illness. And finally this judgment doesn’t
in the sense used above, lay the foundation of a suit against
B.

An interest in the question is where the witness
may have just such a case as the one at B., but being in
by wholly independent of it, and disconnected with it, the de-
scision of the one at B. does not decide his, neither lays the
foundation of a suit against or in favor of such witness.

A. is publicly prosecuted at the suit of the public, for a suit
and knocking down B.’s teeth. Now in this prosecution B. is a
competent witness, and may testify. Yet B. intends bringing
a private suit against this same fellow, to recover his dam-
sages. He has therefore an interest in the question, inasmuch
as it has an effect on the public pulse, and gives him for
that reason a better chance of recovery in his civil suit. But
as he is to get nothing by a conviction of A. on the public
suit, the fine being paid to the treasurer, and as the verdict
a judgment can be of no service to him in his civil suit, he
he cannot be said to be interested in the suit.

Suppose again A. be prosecuted for embezzling
too much money, B. who paid the previous interest, may be in-
troduced as a witness to prove the fact. He has no in-

Evidence

If A. be convicted, the record of the conviction can never benefit B. in a private suit— and if A. be fined, the money goes into the public treasury not to him, still however B. must be supposed to feel a sort of interest or influence in the question—

Again A. & B. have severally brought each one a package of goods from C. D. claims that the property is his. He sues A. for his package—and B. may be introduced as a witness for B. has only an interest in the question. The property which B. brought is in precisely the same situation as that which A. brought—but it is not the same property—If D. recover of A. it is not a recovery as to B. who neither gains nor looses by it—it will lay no foundation for a suit against him. But yet it is to be supposed that B. may feel himself a little interested in the question—or influenced in the question—

Again A. & B. have severally brought. It is agreed by all that if a person be offered as a witness who is directly or consequentially interested in the event, he shall be excluded, unless the interest be a mere possible contingent interest in the event. And the following has been adopted as a criterion to determine whether the person the person be interested in the event, i.e. if the judgment to be rendered in
the case on trial can be used to procure a judgment in a sub-
sequent suit to which the witness shall be a party, the wit-
ness is said in this case to be interested in the event — and
it matters not whether such judgment be the foundation
of the suit or whether it be made use of in evidence —

The mode of ascertaining that a witness is in-
interested is either by introducing witness testimony to
this effect, or to put the witness upon his voir diir —
Both of these methods however cannot be adopted; if the
opposite party appeal to the witness himself, putting him
upon his voir diir, he makes him for this purpose his
own witness. — It is a principle that a man shall not
impeach his own witness, the party shall not therefore ef-
stowards being in evidence to show that he is interested —
And the rule also embraces the case of the party’s having
before introduced testimony to this effect and an attempt
be made afterwards to put the witness upon his voir diir —
But Mr. Wroe does not think the reason of the rule applies
when the appeal made to the witness oath of the witness
himself in subsequent to the introduction of his other
evidence —

If such witness be bound in honour only in the event
of the judgment going in a certain way to pay part of the costs
Evidence

of anything of this sort he shall be held equally in the event
as if he had been bound in law also.

The questions usually put to a witness on his o
sides are commonly such as the following: "Are you interested
in the event of this suit?" "Can you be interested any which
way this cause turns?" or "Are you any way affected by the re
sult?"

But as to any interest merely in the question
it has long been a very litigated point whether and in what
cases it should render the witness incompetent to testify.

Until within a few years a practice has obtain
ed as to dispel to admit in some cases persons who were thus
interested and in others exclude when in either case the in
terest was quite as strong. In civil cases the witness
was universally excluded but in all criminal cases except
Forgery, Perjury, and Usury they were admitted.

There was no question in the law on that subject, for the
distinctions were merely arbitrary. In the case of assault
and battery the person injured if it was a good witness
in a criminal cause. In a civil cause where the kis
case was equally as strong he was not permitted in the
case of Perjury. Forgery or Usury the person having
suffered more, perhaps by the wrong done was not in a
criminal suit to testify.

The origin of the distinction we shall endeavor to trace and then point out what law is now on the subject.

With respect to the distinction between civil and criminal suits as it to this particular there seems to be no reason for it, but as the line was substantially early drawn it was well enough perhaps.

As to the exceptions in criminal suits of Perjury Perjury and Uracy the distinction appears altogether unreasonable. The reason is given for it in the books. Mr. has conjectured that the following might be the reason. In the case of a prosecution for Perjury the person injured by it gets a gratuity of fine of £10. on a conviction. This exclusion may well be accounted for therefore on the ground of interest in the event.

In the case of Forgery and Uracy Mr. has inclined to the opinion that in the event of a conviction for these crimes the instrument forged on upon which serious interest was received was brought into court and cancelled. This at least he is persuaded is the case as to forged instruments, and from many passages which he has met with in the books he thinks it is the case also with various instruments.
Evidence

If this conjecture (for it is merely such) be true, it accounting rationally for the rule—because in that event such persons become interested in the event, and not merely in the question.

But in cases of injury, the person injured might be a witness of all the money had, been paid on the obligation for this removed the interest—

So it was a rule that if in any case an interest in the question excluded, it must not have been a mere contingent interest—

But Ed. Mansfield prepared the way for a decision which was afterwards had, breaking down most of the distinctions. He says, the only proper mode of determining whether a witness is so interested as to render him incompetent in the solution of this question, is he so interested, that the present judgment may in any manner hereafter be brought up for or against him? If he be, then be shall be excluded if not then admitted—

But the famous case of Buck and Baker had determined this matter—It is there expressly decided, that an interest in the question merely shall not exclude. And this is now a general rule, according to the Eng. law both in civil and criminal cases.
Evidence

This question has been agitated and much debated in almost all the states. In some states the old law is retained, in some, the new is introduced.

In Pennsylvania, the old law obtains. In New York & New Jersey, the new is adopted. In Con., the old law obtained otherwise wise.

The question has likewise been raised in the national courts. In the southern circuit including Georgia, the new system, i.e., that established in Bent & Baker, was adopted. In the northern eastern, the new was also adopted. In the middle circuit, i.e., that including Pennsylvania, the old law was confirmed.

But the question having been finally raised in the supreme court of the U. States, the principles established in Bent & Baker were recognized and became the law of the supreme court of the U. States.

The general rule then is that no interest which the witness may feel shall exclude him on the ground of incompetency except it be a pecuniary interest and an interest direct or consequential in the event. But this rule has exceptions. A. was to sign a bond to B. for £100. B. wrote the bond, which appeared to the face to be signed by A. A. signed it, but it afterwards appeared that B. by some trick of hand caused A. to sign one for £100. B. was indicted and A. introduced as a witness. But was declared by the court incompetent.
Evidence

But even before the case of Bent and Baker, the decision was declared not to be the law.

The established exception to this general rule are

1. When from the nature of the case, there is a necessity to dispose with it, or in the alternative to destroy the operation of law.

As in the case of the state of New York vs. Clarks. By which, if a robbery be committed, the hundred, or justice, a county, within which it is perpetrated, is competent either to discover the offender or to refund to the person robbed the amount of goods taken from him. In this event, if the person robbed me, the hundred, he finds every one of the hundred who might happen to know of the transaction interested in the event; but that the state might moreover may not be minded to say to the shall himself be admitted to reveal the commission of the robbery and the amount of property taken. It is frequently and unequivocally laid down that innkeepers are liable if loss or damage happen to the goods of their guests, but in such case how is the law to be carried into effect? In nine cases out of ten, none but the guest knows anything of the property which he may have in his trunk or portmanteau. It seems apprehended that by the English and on the ground of necessity the first, the interested must be admitted to the oath, but not in this kind of testimonies.
dangerous as we are apt to conceive since the Jury may believe or not as will weigh all the circumstances.

Note I. If the daughter of the P'ty a competent witness when the suit is brought for being the P'ty govt. she?

She is not interested in the event for she can win or lose by the judgment. She is not interested in the question because she can never bring an action for it being particeps criminis. She is a competent witness but not for the reason given viz. that she is a witness thereto necessity.

Note II. A guardian or proctor may not be admitted as a witness where they sue for the infant an infant or idiot because they are liable for costs if they fail in the action but it may be said that in such case the property of the infant is in the event answerable for the costs. This is not a sufficient objection to the rule. The Guardian may have a claim upon the infant and for these costs yet that claim may be satisfied, and the there be property enough yet the action brought for the infant may be of such a nature as conducted that the court will not allow the Guardian to recover of the infant. And at any rate this judgment lays the foundation for a Sc, ia in the Guardian to recover the costs.

Note III. When A. takes charge of B's case employs counsel
Evidence

In the witness, the trial, or the world if it were his own, he shall not be a witness but the evidence and witnesses can clearly and satisfactorily show that he was employed to do all this by the Plead or Deft. and that he is a mere uninterested agent. Otherwise it will be presumed that he is a witness.

Note XVI. The Plead in a penal action (which may be brought by anyone) shall not be a witness but in consequence the state be not carried into effect, for it is not like the case of the state. The U.S. court decided that an interested witness should in no case be admitted to the state. failed of effect. But their decision was confined to the foregoing rule.

The same doctrine is introduced in many instances in New and Massachusetts. As in the case of theft, the person who knows from may were the fact and recover the value and he is permitted to testify not because of any state organization but because without it, the state could not be carried into operation.

Under this rule of necessity also may be clared other cases; or where the original Plead in a suit over the sheriff for an escape, here the escape may be introduced as a witness to prove that the sheriff voluntarily suffered him to escape—This note
of proof is allowed for without it there is not generally a possibility of proving the fact. And yet it is easy to see that the sheriff in this way is wholly at the mercy of the escapec for this innocent he may be convicted. And it is equally so clear also that the escapec is interested in the event, for if he can convict the sheriff he is wholly cleared himself; neither the sheriff nor the original plaintiff can afterwards sue him for the same debt, because no one shall recover two satisfactions for a debt, and the sheriff is partly a criminal and cannot take advantage of his own tort.

Precisely is the same in the case of recusals. The original plaintiff may sue the recusals and bring in the original plaintiff as a witness to prove the fact, for according to the nature of the case he is the only person who can know these

II. The second exception to the general rule may also be said to be founded in necessity — which is that of joint tortfeasors. The plaintiff may sue one and introduce the other as a witness to prove the commission of the fact. The witness is in this case interested because if he do not convict the defendant he may be sued himself. This was originally in necessity founded in necessity but is now he some a general rule.

III. A third class of cases excepted from the general rule
Evidence

in that of agents — There may be admitted as witnesses for or against the principal in civil actions. This exception also springs originally from necessity, as where D. S. delivered money to T. K. to be delivered by him to A.B. — In a suit between D. S. and A.B. relative to this money, T. K. the agent may be introduced to testify that he delivered the money to A.B. T. K. is interested in this instance, for if the money be not proved to have been delivered to A.B. he is liable to refund it to D. S.

And as to the best evidence, that the nature of the case will admit of shall be had, yet the nature of this particular case is such (no receipt having been given by A.B. to T. K.) that T. K.'s evidence is the best; for neither the law nor universal practice makes it necessary to take a receipt.

But if it had never been heard of to pay money in this manner without taking a receipt, then this testimony would be excluded. And it is now a universal rule that agents whose interests may be witnesses.

IV. The members of a corporation may sometimes be admitted to testify when the corporation is interested in the suit, and the criterion by which to judge when they may be admitted is this — If such members have any considerable interest, they are incompetent; but if their interest is small, they are competent.
Evidence

This rule breaks in upon the symmetry of the law, and introduces a new principle. In other cases, the quantum of interest is not at all regarded. And the more modern decisions adhere especially to this rule. And more particularly because that, negotiations have been made in Eng., which embrace almost all cases where it would be proper on the ground of the trifling nature of the interest, to admit. But the more ancient decisions do not so universally exclude on this ground.

The Common law has fully adopted the principle of necessity, in respect to admitting the members of Corporations to testify, but has not adopted the distinction between a small and a large interest. — As if one of the Parish be present when a part of the Parish's salary is paid he shall be a witness in an action respecting it, tho' as one of the Parish interested. This is allowed because it is not always customary and the law does not require that a receipt be taken yet if a receipt were taken the taken were taken, the evidence would be excluded as of course.

But the rule excludes persons who are appointed as agents for the town or parish in its name to communicate or carry on for the town or actions or accounts of any interest or anxiety such are supposed to feel in the details.
Evidence

Section of the cause. This rule is peculiar to Law, and is opposed directly to the principles of the Eng. Law.

V.

It sometimes happens that persons become more made interested in the event of a cause about to be tried on purpose that they need not testify in it. This the law utterly discountenances.

If a witness become interested, after the right, to have him as a witness has accrued, it is a rule with some restrictions, that the interest he may have in it shall not exclude him.

If the witness have been made interested for the purpose of excluding him; or if by some wanton or unnecessary has madethimself interested merely that he need not testify, his interest notwithstanding, he shall be a competent witness. As if he gave bail for the interest or lay a wager with some one as to which way the suit will turn.

But if he had become interested by the act of God, or by becoming interested in its honesty and for the furtherance of his own good or interest. Then it shall render his testimony wrong inadmissible.

If one of the parties for fear that the witness witness will not attend and knowing that his life will not commence him fear will not accompence him.
Evidence

for concealing and having as far as can be discovered, honest in intentions, offer him 1 or 2 dollars a day if he will not fail to come; this will not render him an incompetent witness, the such persons might have been subpoenaed by the opposite party; because he may expect that his testimony will not operate in favor of the one by whom he is subpoenaed subpoenaed but on the contrary.

VII. The Deft. in the action of account as used in Bay. was to be admitted to testify for himself as to all affairs to be adjusted by the arbitrators and in the necessity of the case perhaps required it.

But in Con. this is a statute regulation or applicable to the case of Book debt; the parties being allowed to testify both as to the delivery of the articles and the price agreed upon.

So also in the case of a secret assault & battery a Con. stat. has provided that the person assaulted may both with civil complaint and showing his wounds testify as to the facts in a civil suit and recover.

But the Deft. shall not be a witness for him, because it is for of the Deft's own act that he is made interest, but he may be exchanged for other bail and then admitted as a witness.
Before the case of Bent and Baker it was a controverted point whether a servant could be a witness when his master sued for an injury done to such servant for qualms. The servant in this case is interested in the question only, and before the case of Bent and Baker the decisions were contradictory. But this decision settled the point.

Note 1. Generally speaking where property passes by sale to many hands, no person who whose hands it has thus passed can be a witness in respect to it — E.g. A. sells a house or a tract of land to B. who sells it to C. and D. ever C. for it. In this case neither A., nor B., can be a witness — because if D. prevails in establishing the property to be his, C. may sue A., or B., upon the covenant, express or implied, that the property when sold was his. And in many cases of quiet claim deeds the rule will also obtain — But if the quiet claim deed be given under such circumstances as to show the transaction to be a mere bargain of hazard — such or raise no covenant that the land is the vendor's, there is no interest direct or consequential, then such vendor may be witnesses — But there is much contention among lawyers, as to the question whether the vendor who by a quiet claim may not in every case sue the vendor and recover the consideration money he gave
Evidence.

It has been a litigated question in Court will be the
same whether the process of foreign attachment is known whether the fac-

tor: Attorney- trustee: or detinor to the absconding tenant?

The courts have decided that it is competent for him

to do it.

The courts of Chor recognize the same rules in re-
gard to the competency or incompetency of witnesses as to

stain at law, except in regard to the testimony of the Deft.
himself of his own Deft. when appealed to-

For it is a rule that the Deft. may always appeal
to the Deft. except where the acknowledgment of the fact would

criminalize him: & mutatis mutandis.

But the answer of the respondent is not neces-
sary: it is not necessarily conclusive— After having appealed to
him the Deft. may disprove his answer by other testimony
for the Deft. is not in such cases so far the witness of the

Deft.: as that his testimony may not be impeached by him,

for is he so far the other witness like other
...
Evidence.

Witnesses are that if he do not choose to speak he will be in contempt and punished by the court — But if he will not swear the petition shall be taken him confess

In Eng. the party of scire est always answer upon the party appealed to particular question with oath but not else oath. But in Con. this is not generally the case and this difference obtains. E.g. that if the deft answers under oath it is in Con. conclusire.

IX. A person equally interested on both sides of the question is a good witness.

X. It is a principle that the verdict found by the jury in a criminal prosecution shall never be given in evidence or pleaded in a civil suit for the same act.

It is a principle that the quantum of interest is never a subject to be enquired into by the court — it is sufficient that the witness be interested directly or consequent by in the event and in a pecuniary point of view and he is incompetent. If B. be tenant in taint of an estate in some remainder in fee to A. — A. has a valuable interest in the reversion. If a suit be instituted relative to this property by B. A. shall not be a witness, the his reversion in common nor he not worth 10 cents for the taint may be docked by B. and the possession may be also that B.'s
Evidence.

capable of taking may never become extinct and yet is son and
presumptive heir to this estate is a good witness and competent
witness for he don't take or purchase and has no interest.

E. But if A. and B. both severally claim a right of com-
monage in black acre and A. sues for a disturbance of knight
b. shall not be a witness because their several rights de-
sending on the same principles be the establishment of
the right of one is the establishment of the right of the
other.

E. It is a little that such a case as the following
should have been questioned — Can the Sheriff's deputy
be a witness when the sheriff as such is sued for an
escape from such deputy? If such deputy can save
himself from the sheriff by his testimony he absolves
himself from liability: if the sheriff fails he can come
upon his deputy — the deputy is then interested and as
such should be excluded — but whether he is excluded or
not is as yet an unsettled question.

Note. So also in the case of a suit brought against the
master for the negligence of his servant in diving his land
his servant shall not be a witness — for if the master
is liable the servant is also liable to him. But if he show
a release from the master he may be admitted for then
Evidence

be her only an interest in the question of the master's liability.

Of Persons infamous.

An infamous person is one who has been guilty of the acts and actually convicted of the crime of false

The crime of false or willful perjury is not confined to the commission of perjury as some have supposed. It is the commission of any crime which goes directly to impeach the integrity of the person—his character as a man of honor.

It is true that the commission of any crime will affect a man's character. But in order to exclude a man from testifying as a witness it must be such a crime as goes directly to impeach his integrity as the crimes of theft or

But there are crimes the commission of which will not render a man's contract suspected or that of fornication assault & battery. &c.

An idea once prevailed that the punishment of the crime committed was the criterion—i.e. if the punishment were such as what is called infamous the witness shall not be suffered to testify. But this idea is now exploded.
Evidence

The King of Eng. has power by the constitution of that nation to restore an infamous witness to competency by granting him a pardon. The idea that a pardon in this country and indeed in that ought to restore to competency is rank nonsense. The granting of a pardon is a sine quae. If it proceeded on the ground that the criminal was not guilty of the crime, it would be perfectly consistent that it would restore to competency; but then it would be an exercise of power of all others the most arbitrary and dangerous. If after a Jury of 12 men acting under the influence of an oath and under the direction of a court, had found a person guilty of a crime, the Chief Magistrate had the power at one breath to say he was not; he would be far higher than the laws. But by what other hypothesis can the stain upon a man's character consequent upon such a conviction be said to be wiped away— and himself restored to any kind of confidence in the pure eye of a Court of Justice? But it is conceded that no pardon is given on the supposition that the convict is not guilty. But it is a matter of grace of favor, and can their be said to regenerate him?

In case that a witness is excluded because of his infamy, it is indispensably requisite to produce the record.
Evidence

(or a copy of it) of his conviction no other evidence will be ad-
mitted.

But if the record can be proved to be lost—other
evidence will be admitted.

In all cases it is a rule that the best evidence with
the nature of the case will admit it shall be had—from the
nature of the case if the witness be insufficient there must
be a record of it.

But the superior courts have permitted witnesses
to testify notwithstanding the production of records of their
conviction—and of convictions of the criminal facts of crime
which go directly to impeach their integrity—the cases were
of the following description: viz. the persons brought in to
testify had when young and many years before been con-
victed of this crime—but as it appeared by all their
neighbors who were introduced as witnesses for this pur-
pose that they had lived lives improbable ever since
and their conduct having for many years been fair &
honorable in all respects it removed the presumption
founded on the record—but there will be very rare—

When a state prescribes a mode in which an
offense shall be punished and among other items pro-
vides that the perpetrator shall not be a witness in
any court of justice, this incompetency cannot be removed
by a subsequent pardon granted by the King. A pardon in
Eng. can restore a witness to competency in no other case than
where the incompetency is the result of a previous con-
viction of the crime. But when the incompetency is the
result of an express statute provision it cannot be removed
by a pardon. In the one case the incompetency is the situ-
concomitant of the judgment; in the latter it is that which
constitutes part of the terms of the judgment which deems
among other things that “the criminal shall never be
a witness in a court.

E.B. Notwithstanding the rule before laid down
to determine what is the crimen falsi, there has been one
species of crime which has been decided to proceed pro-
ceed the consequence of it, which at first view may
we should not conceive to be the offence—viz. what is
known in the law by the appellation of common bocacy.
This is the crime of stirring up lawsuits, promoting quar-
rels and in a word the setting a neighbourhood by the
ears. This crime according the current of authorities
is a species of the crimen falsi.
Evidence

Of Atheists Infants &c.

A person in society professing himself to be an atheist can be admitted in any court of Justice. And this however honest he may be in his principles (if an atheist can be honest) because such principles disallow the superior obligation of an oath, for on this very ground are all stories of hearsay evidence excluded viz. because not given under the sanction of an oath.

Universalism it is contended ought to bar a person from swearing in a court of Justice to attest one speecr of whose creed is that there is no future state of rewards and punishments and of course who will not feel in it to agree the obligation of an oath. This question has been made in Maryland but Mr. Boone does not know how it was decided. One instance also has occurred in the state of New York where a spectral justice of the peace excluded a witness on that ground.

It has been much contended in Eng. that neither aliens nor atheists should be permitted to testify. But the law is now settled that they may.

It was formerly by the laws all over Europe that no infidel or pagan should be a witness and that none but Christians & Jews should be. This rule arose from the pagan
Evidence

It is more practised in wearing witnesses &c. on the old as

This law was clearly and unequivocally settled by

until Coke's time. Co. 176. 1178. 7 Edw. 6. 2 Raw. 434.

But since then it has been settled that all persons

believing in a God or gods and a future state of rewards and

punishments are good witnesses and are to be swore according

to their own mode — Thus an Indian will swear by the great

spirit — A Hindu takes hold of the Brahma's heel and the

Alypinian Pagan taking hold of his own nose will swear

by the navel of his mother — And it is of importance

that each one swear by his own creed and ancient custom

of his own religion otherwise the oath cannot by such person

be considered as binding upon him.

The presumption in this country is however that all

are good Christians and shall be sworn by the uplifted

hand — by the everliving God.

Persons who from defect of understanding do not un-

derstand the nature of an oath are incompetent witnesses.

Dr. idiots — Lunatics — Infants &c.

With respect to infants no precise rule is formed

fixing the time at which they shall or shall not be deemed

to have a sufficient discretion

Its offence is ever recorded to have been made
Evidence.

to them on the ground of infancy if they were as old as 12 or 13 years, but they have been admitted as young as from 9 to 12.

If over 12 they appear to be admitted of course if an order that age the court examines them in order to discover their knowledge in this particular—and if they are found discreet and aware of the solemnity of the occasion they are sworn and permitted to testify—

And this such children be under the age of 9 years yet if upon examination by the court they be found to feel and to know the peculiar importance of the ceremony Mr. Brown apprehends that they may be admitted and sworn—yet there does not appear to be a case decided in which the court has allowed it—

But the not sworn children have been frequently admitted simply to relate their story and if this perhaps is the only instance wherein a simple story without oaths has been admitted or evidence—

According to the Eng. law Quakers are not permitted to testify in criminal cases. In civil cases provision is made for them to testify according to the solemnity of their own creed but in civil cases they are excluded unless they will swear—which their principles forbid—
Evidence

While we contemplate the beauty of the Laws of the State, we cannot but feel a degree of mortification in discovering this blemish: it is a putrid fly in a sweet and fragrant ointment.

Desultory Rules — &c.

I. The best evidence which the nature of the case will admit of must always be had.

By this rule is meant the best that the party can obtain from the nature of that particular case. It shall be added — Ex. If A. contracts with B. to deliver him ten barrels of cider — the contract being in writing and A. fails of delivering the cider — a suit being commenced — B. must introduce the writing or fail in the action, for the writing is the best evidence that the nature of the case will admit of — Hence also if there be subscribing witnesses to a note or to a writing they only shall be admitted as the witnesses to the contract for they are the best evidence. The nature of the case will admit of —

This rule is founded in the strictest policy and good sense — The writing in the one instance and the subscribing witnesses in the other are best calculated to
Evidence

develop the true intent of the contract — If, for instance A. could support his action against A. by introducing paid witnesses to the contract they may not know the whole of it; it may be that the writing will show the sides was to be delivered only on the performance of a condition precedent which act may be in the contract they may not have heard on hearing such may have forgotten — In the other case the note may have been delivered as an earnest to take effect on the happening of a contingency: the fifty witnesses may have been present yet the subscribing witnesses who were called for that purpose are the only ones who may know this secret act as of the contract —

And if the Pt: does not introduce the best evidence the nature of the particular case may admit or none shall be heard and be shall become nonsuit —

Unless however he show that the subscribing witnesses are dead in the contract for sides (knowing the contents of the writing) be lost or destroyed —

There are cases however where the Pt: will not necessarily become nonsuit: but his not produce the best evidence which the nature of the evidence will admit of will only operate as a circumstance of great weight against him upon the jury —
Evidence.

In the case of a dispute about the title to land, if the party do not produce the deed or the record of it, or prove it destroyed, he shall produce none whatever, and must be con templative. So if there be a claim founded on a judgment, the record or a copy must be produced or none, and the plaintiff will become non sui.

But on the other hand, if there be an amanu or a warranty, the party must prove it, unless it can be shown that he knew or should have known all about it, and on the trial the plaintiff introduces the which were ten rods off, and not those who stood nearer, those introduced mist must indeed be sufficient to support the testimony, but as they are not the best, which the circumstances of the case admit ^ it will be inferred unless this presumption be rebutted that the other witnesses were kept back because they knew of facts militating the plaintiff and the presumption will have great weight with the jury in the argument.

II. Relevant Testimony.

This kind of testimony shall always be excluded by the court. By irrelevant testimony is meant such as does not go at all to prove the point in issue — As if a
Remarks

[Text continues on the page]
Evidence

That upon the first introduce proofs of extortion if the Dep.

It is to prove the first, guilt of extortion it might not be of great we-

But it is improper that the jury should derive from the ques-

But to prove extortion it is not using any evidence

go to prove extortion is excluded as irrelevant and not prove-

III.

Hearsay Testimony

This sort of testimony is not regularly admissible.

By this rule is meant merely that a witness shall not be

But to this rule there are exceptions.

After a witness has testified the opposite party may

introduce evidence to show that out of court and on other

occasions such witnesses told a different story; this is

for the purpose of impeaching the evidence and de-

stroy his credibility.

But here it may be observed that a party can

never at law impeach his own witness directly in any

way. If a man's witness do not swear as he thought and

as the truth may be, still he shall never be permitted
Remarks.
to prove that the witness is not a credible person.

The Def. may appeal in Ch. to the Def. to concurrence, but is not so far this does not as far make the Def. his witness as to preclude him from testifying his testimony for the Def. is not compelled to speak.

Upon the same principle it is that if the witness of one of the parties be impeached such party may introduce hearsay evidence in order to corroborate the testimony given in by proving the good character of the witness &c.

But this kind of evidence is never allowed except when an attempt has already been made to impeach the witness.

2. A second instance where this kind of evidence may be introduced is when the Def. out of Court made an express confession.

Indeed the confessions of the party are the best evidence in the world: taken with this qualification - Whenu a man out of court confesses himself guilty of a particular crime, using the technical term, the confession shall be of no avail against him unless be confess and relate facts: for how does he know what particular facts are necessary to constitute the crime? If you instance a witness confess himself in a particular crime instance to have been guilty of perjury or forgery
Remarks.

[Handwritten text that is not legible]
Evidence

How does he know that the particular acts he may have committed constitute that crime? But his confession as to facts is good and conclusive.

When upon suspicion a man is taken before a magistrates to be examined as to the facts the court ought properly to have taken down in writing his whole confession and made all the proceedings on the case. The person suspected is not obliged in such case to answer any interrogatories, but if he make confessions of guilt and they be taken down in writing the proof is better than any out door confessions and being the best will exclude all other transactions confessions.

When many are concerned in the commission of an act, the confession of one will not be evidence against the others — if the question be as to the breaking and entering in the house of P. B. and A. B. & C. be the deft. the confession of A. that he entered and that B. & C. were with him will be conclusive as to A. and will be conclusive proof that he being accompanied by B. & C. committed the act. But as to B. & C. it is not allowed to be any proof whatever. However A's name may be struck out of the list record and he being sworn as a witness shall be allowed to testify against B. & C.
But except in Ch. what a party confers by the pleadings shall never be made use of against him in a subsequent suit.

What is confessed by the pleadings in Ch. shall in every case be evidence against him for the answer are not expensively given in under oath.

Yet the confession of the Guardian who succeeds by answer for the infant or that of a trustee who succeeds for the estate who trust shall not on subsequent occasions be evidence against such infant or estate who trust.

The most distinguished and important exceptions to the general rule in this country is thirdly the admission of hearsay evidence in respect to the boundaries of land. The states or stones or precise boundaries of tracts of land are frequently known only by the surveyor or first settler of the country, and if they be dead what they have been heard to say in relation to these boundaries may be given in evidence and to have such influence as the jury may be inclined to allow.

That a man is dead is not to be proved by the evidence of a man who saw him die but by general report. And this general reputation of his death is the commonest evidence. If therefore a man saw him die be introduced as
Evidence

a witness he cannot attest to this fact but only that such was the
reputation of the facts of the last paragraph. I should
the pedigree of a man may be proved by the hearsay
Evidence — but this is not always allowed
A.
This hearsay evidence is generally the only mode of impeach-
ring the testimony of a witness already given in. for it is never allowed
for other witnesses to come in and raise that of their own knowledge.
the witness in question had been guilty of the commission of a par-
special fact or crime: — The witness shall be then asked
in another
of one or more particular crimes. — But his general character shall
be shown to be what character the witness has acquired in the high
thought by his
standing and not whether the defendant thinks himself worthy.

But when a party to a suit by proceedings in it or
by the action itself, puts his own character in issue, then the opposi-
t, party may go into proof of particular facts in order to
prove his turpitude: — as when a person brings an action of
slander to recover damages for being called a thief in respect
to a particular transaction, here the deponent may go into the proof
of other particular facts in order to lessen the damages or to prove
that the Fifth

more

So where a man enters into a contract with
his mistress to pay her a certain sum annually as a compen-
sation for the enjoyment of her. Such a contract is at law
Evidence

B. If it can be proved on the part of the girl that the Deft seduced her, and that she was not a common prostitute before, she may recover. But therefore the Deft in Ch. may go into the proof of particular facts criminating her in order to preclude her from a recovery.

According to the laws of Con. there is no need of introducing the subscribing witnesses to a deed if proof can be introduced of a confession of the party that he signed the instrument. But however reasonable this rule may seem it does not obtain in Eng. For according to the Eng. law if the instrument be disputed in Court, the Deft must introduce the subscribing witnesses if to be sued for any confession will not be suffered to be proved.

IV. What is said by one in articulo mortis, it is said by elementary writers is to be admitted and believed as evidence.

This proposition does not seem to be denied and there is a case in the 3 Burr. 1244 recognizing it.

But this rule embraces only such confessions as are made by a man of sound mind seriously and in contemplation of death.

When such declarations are made they are admitted as evidence—under precisely the same circum
 Evidence

It has been made a question whether a mother could be admitted as a witness to prove whether the son is or is not a bastard child.

It is a maxim that no person shall be compelled as a witness to criminate himself.

But the rule that no one shall be permitted to testify whether such person might be criminated himself, has been long since exploded. The question therefore may be considered settled as Mr. Reeve thinks, that if the mother choose she may as a witness testify in the case; but that she shall not be compelled to do it.

If the issue of black are he disputat a naked trustee may be a witness. But suppose such naked trustee be on the second party to the suit? Mr. Reeve conceives that if it can be proved that at the party to the suit he is not interested, he may be a witness.

As if this trustee for the use of the century give trust, & being demised in regard to his suit liability for costs costs being ejectment; in such case Mr. Reeve apprehends he may be a witness. So also where a person (whose right it may be) sick on the bond given by an administrator (the judge of probate) to the judge of probate in his name and having evidence...
Evidence

- And such as Judge of Probate, against his vitality he may be inserted as a witness — 112. 358.

VIII. Of the number of Witnesses.

The Eng. and the Civil laws are different as they respect the number of witnesses requisite to prove a fact.

The civil law requires for this purpose two witnesses. By the Eng. law no particular number is made necessary as a standing rule — one witness or deposition or proof presumed by circumstances may in many cases be sufficient. There is no certain rule but the evidence must be such as will convince the jury.

The first deviation of the Eng. law from the rule of the civil was occasioned by the supposition that the jury who were all chosen from the neighbourhood, of their own private knowledge were acquainted in a good degree with the facts in the case — Sect. 144, Josh. 158, Ed. by 226.

But although in general this matter be left entirely with the jury yet their own cases wherein the law has prescriptively required a certain number of witnesses.

The civil law rule obtains in some measure in all cases arising in the courts of ch. i.e. when the debt is admitted to his suit; for there is no instance in which a
decision has been had in Chas. upon the evidence of one witness only in opposition to the testimony of the Deft. for this is but one oath, off set against another.

But two living witnesses are not absolutely required to establish a fact these men, for any corroborating circumstances may be introduced to turn the cause.

So in the case of perjury in the courts of law there must be more than one witness in order to convict and for the same reason as is mentioned above.

In respet to treason the offence is hardly known in the U.S:— But it is an offence well known in Eng. and according to their laws one witness is not sufficient to convict a man of this enormous crime— but one witness to one overt act and another to another is sufficient. When the offence of treason shall be known then the U.S. their Eng. rule may or may not be adopted: There seems to be no conclusive reason why the rule should be so.

By a law, stat. it is required that all capital cases be proved by two witnesses: or some other evidence equivalent to it. Strong circumstances therefore together with one witness is as much as the law requires: or circumstances only express by force.

VIII. Of Depositions.
Evidence

It is a general rule in Eng. obtaining in the courts of law that plain evidence must be delivered in vivo voce and not by way of deposition.

But in civil actions there are exceptions to this rule in which cases depositions are permitted to be read—As when sickness or other cause renders it dangerous or impossible for the witness to attend the court.

But it would seem a matter of doubt whether even in such a case a deposition would be used could be introduced without the consent of parties. In cases of this sort the court usually recommends to both parties that they agree to introduce the deposition—And such is the respect paid by the Bar to an Eng. court that it may be no question has even been made—Elementary writers say that if this agreement be not made the cause will be continued or a stage may be taken by the Pte. of a stst. authorizing the appointment of Commissioners to take the deposition in perpetuum memoriam. But to this is added a quare—

It is not uncommon for depositions taken in Chancery to be improved in course of law as evidence.

The Courts of Chancery proceed altogether in establishing facts by depositions—not only the answers of Pte. Defp—are written and under oath but if any other witness be
Evidence

...adduced, his evidence shall be taken down in writing and if matters of fact be disputed then, a case is made out and to gather with depositions. (If they be necessary) is sent to be tried at law by the jury.

The law is otherwise in Con. Both the courts of law and law are depositions as the case requires and as to matters of fact the the court of Chancery decide them, or appoint commissioners who decide for them.

In criminal cases the law of Eng. and law are the same in regard to the exclusion of depositions.

It is an invariable rule, that no conviction for a crime shall be had on a deposition— and indeed that none shall be used in criminal cases. And if an important witness be absent, the cause will be put off until he be obtained to be at the end of the earth.

Note — In common cases the public will be at the expense of summoning the deft's witness for him if his attorney so order. If an important witness be absent, the cause will be put off until he be obtained, to be at the end of the earth.

The mode of taking depositions in different countries are different. In some of the United States commission are appointed for this purpose and in others...
Evidence

Justices are empowered to do it—

The Cov. stat. regulating this affair allows a party to improve a party deposition taken before a Justice of the peace—A practice has grown in of suffering depositions taken by Justices of the peace in states (especially) where Justices are not authorized to take them to be improved, and their decision decision has been ratified by a decision of the court—This decision was rather founded on immemorial usage than strong reason just for it—

According to the Cov. law no attorney and neither of the parties may draft the deposition—Nor indeed are any allowed to do it but either the deponent himself or the Magistrate of the degree seven or more not an officer in the case of such as a other before whom it is taken—And such Justice may not let the deposition go out of his hands without being sealed unless he deliver it himself into court—

Depositions are not better evidence than such as is delivered sworn sworn in Court: they are not even so good

A deposition properly speaking is partial evidence: it is but evidence delivered (before a person authorized) sworn sworn and written down or written by the Depoeeet being in its natural: together frag evidence—

A deposition is always good evidence between the parties same parties in a subsequent suit if the same dep
Evidence

Specifically obtaining of getting the witness himself into court - but it can never be used between one of the parties and a stranger or between strangers to the original suit - and by this means that such stranger has not the opportunity to cross examine.

A question has been made as to whether the copy of a deposition can ever be introduced in the stead of the original. When the original has been lost or destroyed, it has been contended that a true copy previously taken, though it may be introduced, but no decision was had.

But there is a mode which will attain the object and which will be safely pursued on such occasions: this is of moving the court that it be entered on the files of the court and then to cause a copy or exemplification of it to be made in court out under the seal of the court. This exemplification if always be used - for it is their copy of the files of the court.

There appear to be but three cases in which a deposition may insupportably be used: viz. when the witness is sick when he is dead and where he is not amenable to the court. They have some times been used however when the witness is no longer to be found.

But this: a witness be out of the state and unwilling amenable to the jurisdiction of the court, a mode may exist standing have been provided in the state in which the
Remarks

I can subpoena a man from the extreme of the state - If a witness live within 20 miles of the court his deposition cannot be taken and used unless the witness has some reason for being about to leave the country. If the witness lives more than 20 miles from the court, he may be subpoenaed so his deposition may be taken as the party pleases.

Notice must be given to the opposite party before you examine a witness if the party live within 20 miles of the witness, but if the party does not live within 20 miles, but has an attorney within 20 miles, and gives notice to his attorney that he has such attorney, that attorney must be summoned to appear.

When a witness is wanted a subpoena issued, if the witness does not obey the summons, a capias will be issued by the court on the person swearing who served the subpoena and tendered the necessary fees, swearing that he had served and tendered tendered.

He is then brought into court, but he is still liable for contempt tho' he is cleared from a liability for damages.
Evidence

witness at such time is, for taking his deposition; if such be the case, this common-law rule will not apply. When there are only four cases in which a deposition is allowed to be made at law as with apprehensions, except in the following case which however is much disputed, to wit when at a time subsequent to his deposition is taken, the defendant becomes interested. It is concluded that in such case, that the deposition ought to be used as that which is analogous to the case of a defendant becoming infamous after the deposition is taken, in which event it is acknowledged that the deposition may be used for the infamous is treated as to this matter as a dead person. But in opposition to this it is said that an interested person is not like an infamous one in as much as he is still a witness. This reason does not seem sufficient for as to the particular action in which this testimony is wanted, an interested witness, like an infamous one is no witness. But the current of authorities seems to be that such deposition must be excluded.

IX. Of the Delivery of Deeds. It is to be proved by parol evidence; but for this see the pages back.

X. Parol proof cannot be introduced in cases when
Evidence

the statute of frauds requires the contract to be in writing—

But as to this point and also as to the question how par per
proof may be admitted when the contract is in writing see
back—

II. Of the mode of compelling witnesses to appear.

In order to compel the appearance of a witness in court
that he may testify a writ called a 

___ Serve upon
him this is a mere summons for him to attend but still the
witness is not guilty of a contempt of court this he do not
come provided the person causing him to be subpoenaed
do not tender him his fees i.e. his mileage and fees for at
least one day’s attendance at court— And Mr. R. apprehends
that he is not guilty of a contempt of after the expiration of
one day he leave court unless the party for whom he is to
testify tender him daily or before hand his fees for attending
on court.

But if after a tender made to him as above men-
tioned and service of the subpoena the witness do not come
to court a capias issue on which his body is taken and
brought to court. But still if he decline the service and
refuse to come he becomes not only liable for the cou-
Evidence

It may be both to fines and imprisonment, but also in a civil suit to the party who wanted this testimony, for damages if the case goes against him.

But what ought in such cases to be the rule of damages in matter of difficulty to decide—for who knows what he might have testified? The jury, moreover in such cases ought to give a pretty heavy sum for want of money that a witness may have some reasonable expense.

In criminal cases it be more safe of the attendance of witnesses, a court of inquiry may compel them to give bond as security that they will appear and testify or if they will procure this security they may be committed.

When books, papers, or other written documents are in the possession of a witness are wanted at the trial what is called a sub poena duces tecum is served upon him.

XIII. Of the privilege of witnesses & suitors

Suitors and witnesses have a right to attend Court without molestation from any. They are protected from all acts or civil process while going to remaining at or returning from Court.
Evidence

But the mode of enforcing this privilege is different in Eng. and Low. The Low. mode is apprehended to be much the best. According to the Eng. mode if a witness be arrested on his way to court or while remaining there or while coming from there, his remedy is to cause himself to be taken before some court. The court of some proper authority if the court be not in session and know that he was a witness upon which (what A is in the Eng. books and led) a suit of *supplication* is granted to him and their stays all proceeding against him while he is going together, being at, or returning from court.

But in order to derive full benefit from the suit of *supplication*, it is necessary that the witness have honesty. He must not attend at the court an unreasonable length of time after he is wanted no more and if going to or from there, he may not go a very considerable rout.

The *supplication* as it is called in Low. The protection will have a retrospective effect, because the witness is entitled to it when he first sets out and if the subpoena be served upon him with in a reasonable time before the setting of the Court, he is entitled to it from such service being made.

As it is essential to the proper administration
Remarks.

There is nothing you hear more oft in Courts than that affirmative testimony ought weigh negative and yet there is nothing more absurd. For example one man cries into court and swears, swears affirmatively that A. the last Sunday came into church and shot at the parson and the whole congregation besides come and swear negatively that they saw saw nothing of the kind—
Evidence

of justice every peace court has power to grant this suit of protection. Before the witness sets out—

In law, the mode is if required, to grant out this suit of protection before the witness sets out—

An important question here arises in law, whether if the sheriff arrest the witness on an other suit, the witness having shown him at the time, his protection he will be guilty of false imprisonment if on the face of it the protection were good. This according to the Eng. mode of proceeding it would not be as supposed then, that when arrested the witness had not his protection and the sheriff ought not on his mere word, to let the witness go—

And it would not be reasonable in this case to subject the sheriff by statute to an action the it so far operates as that the witness is discharged.

But if the witness had already obtained his supersedeas and had shown it to the sheriff and the sheriff notwithstanding arrest him he is liable to an action of false imprisonment and to arrest a man under circumstances is a contempt of court.

The former made in Eng. of taking advantage of this privilege was for the person arrested to sue out his supersedeas—by 513. 14. 4 Comi. 274. 18. 113. 119. 3 Alk. 54.
Evidence

But the more modern way is to cause himself to be brought to court and then by a summary mode to be discharged.

In the case in law wherein it was contended that the writ of protection was shown that yet the sheriff was not liable for an action for false imprisonment reliance was placed upon the English decisions, not adhering to the circumstances that the person was entitled to his protection yet that he had it not. To show the sheriff, who could not safely trust the mere assertion of the witness and also reliance was had upon the fact that if the person arrested proved bail he shall not even presume a discharge. The arrest will be good and the arrest with bail will be held. But in the latter case if the person has proved bail nothing more is required, the witness is not prevented from attending the court.

It was likewise urged that the sheriff could not be liable because in this case the court had not jurisdiction over the cause. But this objection was overruled and it was decided that if on the face of the writ it did not appear but that the court had jurisdiction, whether it had or not it should be presumed
Evidence

that it had —

The suit of protection extends not only to the person of the witness but also to his clothes and trunk —

XIII. The mode of examining witnesses as a matter of practice, is, for the party whose witness he is, to examine him first, unti he has finished and then for the opposite party to do it —

Whoever in the course of pleading takes the affirmative of a question (whether it be the plaintiff by his declaration or the defendant by his pleadings) such party must proceed first and prove it — That which is confirmed by the rule in many that affirmative testimony screens our negative testimonies pleading not needing proof — But this rule is to be taken subject to the influence of common sense — if one witness swears that on Sunday during the performance of divine worship, two lawyers came into the church and plead a case — if the rest of the congregation deny the fact the negative must surely must be considered as proved —

Of Written Testimony —

Written evidence may be divided into three classes —
Remarks

...
Evidence

By records - specific records - specialties - and unsealed writings -

I. Records - strictly speaking are nothing more than the acts of a legislative record in the rolls - and the proceedings of & and judgment of a court of record or of men acting pro hac vice as a court of record -

Records of militia - manage deeds on the amount property records but things recorded however in conformity to common practice will be treated of under the general name of records -

A record is of itself a conclusive proof of what it imports to prove -

But generally speaking the records themselves cannot be produced, in which case the copies copies of them are evidence -

There is no rule that the best evidence which the nature of the case allows of must be produced - and the records themselves are no doubt the best evidence - But it would be wholly inconsistent to have the records themselves removed from place to place - this indeed would in many cases cause the impossible for they may be called for in different parts of the union at the same time - hence the best evidence -
Remarks

If you wish to make use of a law from another state in a court of Connecticut, you must prove the existence of such law for the judges cannot be expected to know it.
Evidence

The nature of the case allows of it a copy of the record properly taken. All therefore which is required in such a case is for the proper officer to send the prothonotary, or in his absence or death, the judge to frame a true copy and as such person has already taken an office oath, this is sufficient authentication of it.

If the prothonotary whose proper business it is to be rich or absent, and the judge also who is next regularly to be called upon—Any person in whose possession the record happen to be may frame the copy. But in this case a mere certificate that it is a true copy is not sufficient. For such person has not taken an office oath. He must therefore go before a proper authority and depositions make oath that he has examined the records and that this is a true copy.

And when a copy is thus taken it must be a copy of the case, a copy of the whole of the case record of the case for a mere extract is not sufficient. However long the record may be—

But in Eng. when a copy of the record is required the judge of the court merely affixes the seal of the court to the copy and this alone without a certificate from him is sufficient. For in itself the seal importeth
Evidence

The copy is a true one.

The records of the Legislature are generally speaking the statute books. These with a certificate that the editor or publisher has been authorized by the Legislature to do it are sufficient proof. And even the laws in this published in a newspaper if accompanied by such a certificate are sufficient proof. But a newspaper or even a statute book without such accompanying instrument is no proof.

General statutes however need not be read for they are always supposed to be deposited in the hands of the judges even before they are read at the published at all.

But private statutes the court is not supposed to know anything about. There therefore according to the English law must be pleaded or counted upon specially. But in Con. may be given in evidence.

Private statutes stand on a different footing as to the mode of proof. There are not usually invented in the statute books. But if they be the statute books are not good proof. They can be proved in no way but by office copy under the great seal and signed by the Secretary or other proper officer.

The laws of other countries or states are not supposed to be known by the judges. Therefore the law books of such other states should be produced. And if
Evidence

there can, not rationally be introduced the assertion of a Judge or prac-
ticing attorney of that State should he pass address. Other
private persons have been called upon to testify as to the
laws of such country; but there is danger in trusting to per-
pople whose business it is not particularly to know its laws.

The Court ought not from its own particular
knowledge to determine what the law of an other place
with out some other evidence of it—

As if an inhabitant of the State of New York
should be called upon to testify as to the laws of
New York, interest which is seven percent at this time
of his own private knowledge were to know that in
New York that interest was at seven percent yet he ought not
to give judgment for seven per cent without some
other evidence of it to prove that such was the interest.

The general common law of the land cannot be
proved by known, because the Court knows it—

But particular customs are to be proved
anecdote and proved and this frequently by hard
General historians in respect to many things
are good evidence—

Historians may differ in many things—
but as to many general facts in which historians are
Evidence —

agreed, as histories may be introduced to prove —

But no private right can be determined by such evidence — i.e. histories shall not be introduced to prove that a particular manor belonged at a particular period to the family of the Chatham's &c —

Herald's book may be admitted in Eng to prove the pedigree of a family — and this may also be proved by pendant "say evidence —

Almanacks may likewise be admitted to prove certain facts as the day of the week when the month commenced when the moon rose at a particular time &c —

A custom has sometimes arisen for parents to record in almanacks and calendars the birth or marriage or death of their children with a remunerative security; in such cases these may as records be admissible for proof. And till the law requires that things be recorded yet if they be not they may be proved by this method or even by proof — but if it can be proved that such birth or marriage was agreeably to law recorded then no other proof is admissible —

There are statutes requiring that certain things be in writing as conveyances of land and such case no other proof whatever shall be admitted: But not
Evidence

so of births or marriages required to be recorded; if no record
they may if not recorded may still be proved; but in
respect to conveyances no title passes unless by writing.

Note I. When a prior verdict in a case between the same
parties and relative to the same point but not embracing
the same subject matter has been had, it is not being alse to
the subsequent suit may be given in evidence of the facts
found in the case. Such verdict however is not con-
clusive, it is very weak and only goes to make up the mass of
testimony in the case. But as between strangers it is now
evidence at all; the parties must not only the same on the re-
and but the same in reality also. As where A. had possession
of 10 acres of land which B. claims, B. sued for 5 of the 10.
The verdict may afterwards be introduced in a subsequent
suit brought by B. against A. for the other five, all the
10 acres being claimed as held by virtue of the same
tittle —

These are cases in which certain things as deeds or must
be recorded or is required by stat. — And yet the copy of the deed
not being the best evidence that the nature of the case does
admit of with the excluded —

Such is necessarily the law the genuineness of the
handwriting may be disputed and when the handwriting
Evidence

of the witness or of the grantee is disputed the deed itself should be produced.

It is not an universal rule however that the deed itself must be produced: for the case may be that the person claiming under the deed never had possession of it as in the case often found of the claimant of Indian in which case as the

there is supposed to have the title deeds a copy of the records will answer — so also in all cases where when the deed may be presumed to be destroyed or lost a copy of the record will do. But unless some such fact be proved a person claiming title must at

ways by the Ing. law prove it out by the title deeds —

but there is a remarkable difference between the

Ing. & Ing. law on this subject arising from the difference in

the habits and customs of the two countries.

When land is conveyed in Ing the title deeds are never handed over to the grantee as is practiced in Ing.

these therefore a necessity while this practice obtains when a

person acquires it is used by making out a title in himself by

copies of the record: But the original deeds are required if

within the reach of the person claiming title.

This is really a very unfortunate custom as much as it may lead to many

unwarranted practices for it is evident that a man may counterfeit a number
If the subscribing witnesses be dead, other persons who saw the transaction may be admitted.
of deeds having them ante dated and the copy of them when recored - thus make out a complete title in himself

Of Specialties

A second is proof of itself but every deed ordinarily requires some want of proof i.e. it wants i.e. it wants proof that it was executed and delivered

Proof of the execution and delivery of a deed must from the nature of the case be by word

The subscribing witnesses are the proper persons to prove this for they are the best evidence the case admits of

If the subscribing witnesses become infamous on some other know anything of it and probably if they become interested proof of the handwriting can be admitted: From proof of this the inference will be that the deed was executed and delivered in their presence

If the subscribing witnesses become infamous be out of the state and not amenable to the jurisdiction of the court their depositions must if possible be obtained and there severally are the best evidence of which the case nature of the case allows

But there are two cases in which the evi
Evidence.

Evidence of the subscribing witnesses need not be obtained by
I. When the grantor or obligor has confirmed the execution and delivery of the deed; and II. When the specialty is
forty years old.

It is laid down as a rule that all the subscribing
witnesses or any other evidence is allowed to do it merely to
prove the simple fact of the execution and delivery to the
grantor or obligor — and that it can be except by deed that
any conditions were tasked to the delivery.

It is allowed however that witnesses may prove
that the instrument was not delivered to the grantee be as
the deed of the party but that it was delivered to a third
person as an escrow — to be delivered once on a condition,
and this rule is the same as applicable to simple
contracts in writing or notes of hand not sealed be —

The law as to the important point is invol
ved in much confusion the decided cases on the subject
on the subject being very contradictory.

It must be acknowledged for the rule is shan
doubtedly supported that no prior condition can be proud
to be annexed to the delivery except it be that the
writing be delivered to a third person as an escrow —
but that if the delivery be to the grantee, obligee or from
Evidence

since himself, no proof condition can be proved.

But this consideration here arises - the instrument he delivered over in point of fact is it in law a delivery? A. is obliged by an award of arbiters to deliver B. a deed of Black acre. D. by the same award is obliged to deliver to B. a deed of White acre. A. comes forward at the time & place appointed for the mutual delivery with this deed of Black acre - but being suspicious that B. does not intend on his part to comply with the award by delivering him his deed of Black acre, tenders him delivery the deed and tells him that it is not yet one deed unless he (B) will deliver his deed of White acre. B. takes the deed tendered by A. and then utterly refuses to deliver to A. the deed of White acre. The question now is, whether this delivery is such a delivery in law as to convey the title of Black acre to B.

Mr. Hume is compelled to confess that the current of authorities is that this delivery conveys an absolute and unconditional title to B. the condition notwithstanding. But however preposterous it may appear he does not think these decisions to be founded in reason and cannot think them correct.

In support of Mr. Hume opinion there is a decision which if it be law goes the whole length of his premises.
In the condition in which the following distinction is taken viz. if the act required by the grantor be a concurrent act a condition to be presently done without the performance of which the grantor does not mean that the deed shall have effect as his act and deed the delivery shall not be a delivery in law unless this partial condition and concurrent act be performed. But on the other hand, that if the condition, or act be to be performed at a future time than the delivery shall be absolute and the partial condition notwithstanding the title shall pass. Popham v. desirable the case decided to raise if the grantor say to the grantee this is not my act and deed until until a certain act be done it shall not be considered as an effectual delivery. But that if the instrument be once delivered as a deed no partial condition shall be annexed to it. Thus if A. & B. agree in respect to land after the purchase of bleak acre that A. shall give to B. a deed if it be that B. in consideration of it gave to A. his note of hand for $500 the parties being together for the transaction of the business A. signs the deed and hands it to B. demanding his note B. takes the deed and refuses to give the note. Now if this delivery be valid in law it is clear that great injustice might be done.

But it be true with Popham belize this ought not in the eye of the law to be considered as a delivery. If
Evidence

be so considered it is true A. has his remedy in an other action perhaps not
against B. But this will furnish the proper satisfaction the land is gone and B. may have become a bankrupt.

Those who oppose the doctrine of Mt. Bevye con-
claim that in pages 520 & 884 of the same book Evans, the
doctrine established by the court page 305 in our opinion— but if
we still adhere to the distinction before laid down there is
nothing on these pages contradicting it.

But there are cases which in direct times of
poses this doctrine—

Independent of this question it is frequently a
matter of doubt what shall amount to a delivery, if the
grantor leaves the deed in the statute and from the whole trans-
action it appears that it was the intention of the parties
that the deed was at the same time meant to be delivered
this shall be construed a sufficient delivery and so of every
other case— But when it appears from attending circum-
estances that this was not the intention they bring
no actual delivery it shall not be so considered and why
should not these principles be applied to the case put?

If the loss of distinction of a deed can be proved
and there be no record of it, proof may be made of the con-
tenue which becomes the best evidence the nature of,
Evidence

the case allows of—so also if the adverse party have the possession of it—

There is a rule in Digest (by the Statute of Frauds) that in the case of conveyances of land no proof can be admitted of it except it be by writing sealed be. Does not this appear to oppose the foregoing rule? But a distinction is here to be noticed.

But by admitting parol testimony in this case the foregoing rule is not broken in upon; for it is admitted not to prove that A. at a certain time placed and manner conveyed to B. a certain tract of land specifying the terms of the contract, but it is admitted to prove that B. had in his possession a certain deed signed sealed be and which contained a conveyance to him from A. of a certain tract of land—For it is in vain to prove a parol conveyance of a tract of land because the law provides that no title shall pass except it be by writing—

It has always been a matter of much perplexity to ascertain how far the consideration of a specialty may be inquired into. The following principles however may be gathered from the books. The law has established the rule that in order to render any contract binding there must be some consideration. This rule was framed to render the advantages and disadvantages of all agreements.
Evidence—

...ment, as near as might the equal and reciprocal—But when the dealings among men became more intricate and complex and the interests of commerce better understood, the idea of setting aside all contracts, the benefits of which did not in the event prove strictly reciprocal, was relinquished. The reason having ceased, the rule that there must be some consideration was retained—and it was held, at length, that any consideration however small was sufficient. This idea once established, the quantum of consideration being no longer of importance, little regard was paid to the sum expressed in the deed, and as the mention of this became a mere matter of form, it was not supposed that the parties were ever solicitors to put in the precise sum delivered. Whenever therefore it became of importance as respects third persons to ascertain the precise sum then proved proof may be let in, to show what the amount. As between the parties to the instrument, no proof was whatever in admitted to show there was no consideration—But even as between them proof may be let in to show what the amount, or quantum of that, which was received, as well as if the rights or interests of some third person were concerned; for as between them and as respects the validity of the instrument, it is no matter if it were but a pint...
of wine — but as it may affect the interests of a stranger, the fact
may be of great importance —

The deed of a D to A, if bene fide, and for a valuable
consideration is good against the C, for if an equivalent con-
sideration be paid for it, the D is as well able to pay
his debt as if he had sold the land. But the debtor and
A may collude for the purpose of defrauding the C. The con-
sideration therefore is permitted to show what the real consideration
was — and if there was none at all he may be permitted
to show by proof that at this a consideration was expressly
used to have been received by the debtor there was in fact
none at all received — and that the whole transaction was
cheat and fraud upon him —

The consideration expressed in the sealed instru-
ments is nothing more on ordinary occasions than suf-
face evidence of what the consideration is — Where
own this sum is an sum one or £5, or £5, or 5 cents or $500
it is barely some presumptive evidence of what it really is.
But when on the face of the instrument it is detailed with
some minuteness — as if it say, in consideration of £10, 5
the presumption becomes stronger — and when it is still
more minute as £5 0 5 3 4. then the presumption be-
comes quite strong that this was the true sum — but
Evidence

There are presumpions which may be rebutted — and this the sum ex pressing is 2 cents it may be proved to be $800. and mutatis
mutandis.

Of Simple Contracts

Written evidence which is not recorded and not recognized by the statute to be written must be brought into court with the exception that it be not proved to have been destroyed or not attainable as if it be in the hands of some other party. A copy or exemplification will otherwise be admissible as evidence of the property or evidence of property of the parties.

And of this species of evidence there must according to the rule be a written in camera. But or paper may always be had in copy without profit of same when necessary.

As formal proof can ever be admitted to vary the plain contract or contradict a writing in its operation for it is presumed that the whole writing contract was reduced to writing.

This rule however is to be taken with many explanations and qualifications: — In which see ante but
Evidence.

Of the admission of parol proof to explain or vary a writing.

It still remains a rule that no parol proof shall be admitted when the contract is in writing which does not stand well with it.

But rather than that a writing should fail of effect parol proof may be admitted to explain an ambiguity.

Ambiguities are of two species patent and latent.

A patent ambiguity is where in itself a writing on the face of it appears ambiguous.

A latent ambiguity is where the writing itself for the face of it appears sufficiently intelligible but which from some extrinsic fact become doubtful.

A rule has been framed that where the ambiguity is patent, parol proof may be admitted to explain it; but that if it be latent such evidence shall be excluded.

This rule however has been found too broad. For when in a will the testator desired to renounce parsonal evidence was admitted to show who was intestate. The term itself means the eldest boy, but as it is frequently used in law latter it means the eldest child whether male or female: it is therefore an equivocal term and a patent
Evidence

ambiguity

It is therefore a rule if an equivocal term used in a writing a parol averment may be made explanatory of it, and the distinction seems to consist in this viz. that if the patent ambiguity consists in the general construction of the instrument, parol evidence shall not be admitted to explain it and the contract must fail. But when there is a sentence of doubtful interpretation parol evidence of the existence of certain facts may be introduced (probably) to explain the parol declarations of the parties may not.

But latent ambiguities may always be explained by parol averments, because such averments stand well with the written instrument.

Thus when D. S. in his will gives $500 to the city school in A. and then happened to be two charity schools in A. then parol proof was admitted to show which he meant—So if a devise be "to my son John" and the testator has two sons of that name—

Particular terms of art when used in a writing may be made to signify different things in relation to the real or personal estate or property of the person who uses them—

Thus if a devise be to my "I give my estate to Black acre to my son Thomas and to his children" The technical was
Evidence.

...ing of the term would be to convey to S. an estate tail; but if Thomas had any children at the time of the devise that were alive, Thomas and his children would take as joint tenants or tenants in common. This extrinsic fact may be shown by parol proof of the state of the family at the devise.

So when D. B. had married J. S. and had two children by him, and having become a widow, had married F. K. and had four children by him, and D. devised Black acre to the four children of D. B. Parol proof was admitted to show that D. meant the four children she had by F. K. by declarations and finally by proving that D. S. had abundantly provided for her children by him. But when D. O. proceeded in the will to give certain other property to the children to D. B. Parol proof that the state meant only the four children that D. S. ever excluded, because this would contradict the instrument, which mentioned generally the children thereon the face of the instrument, including all the children.

If in a devise D. S. gives his farm, Black acre, with an proviso to pay his debts, out words of inheritance, parol proof may be introduced to show the state of D. S. property and to show what sort of an estate he meant to convey.

So if D. S. give his tavern called the Bible tavern an estate for life would J. S. provide? These statements...
Evidence

ambiguity. But it appeared in this case, that D. S. owned in the premises, but a distant reverential right only, which as a life estate could not do the devise any good, a specimen was held to have passed — and parol proof to these circumstances was set in — also more relevant in fact of the premises —

All the previous exemplifications of the rules laid down in cases of devises — but the principles of them apply to any written instrument —

Of writing in Equity

It is a rule in Chancery that any equity or equitable right arising from an instrument made to abate may be rebutted by parol testimony atto such instrument be written. Of in other words: parol proof may be admitted for the purpose of...ing an equitable implication of law —

When we observe in the books the multitude of cases in which parol proof is admitted in chancery, when the subject matter of dispute is a writing we are at first apt to imgaine that the rules respecting the admissibility of parol proof when the contract is in writing do not apply thereto; but the fact is otherwise; and courts of equity are compelled to give the same construction to a statute as a court of law.
Evidence

The rule therefore by which parol proof is admitted does not contravene the rule of law. Thus, it is a rule of law that when a man makes a will disposing of his estate, and whatsoever is disposed of a residuum is left, such residuum belongs to the legatees who are constructively the residuary legatees. But in some cases courts of Chan. will not allow of this construction: for where in her will the will a legacy be such an amount is given to the legatee, as that it would appear by a reasonable construction that the testator gave him all he chose to have him to have—then Chan. will not consider him as the residuary legatee. This is an equity or an equitable implication arising from how the instrument itself and not from any thing extrinsic—and this equity may always be rebutted by parol. By the will the legatee has a legacy of $500. This legacy raises a presumption in favor of the heir that the testator did not intend that the legatee should have anything more.

But as this is an equitable and not a legal construction of the instrument the legatee is now admitted by parol to prove that the testator had declared upon his death that if there should be a residuum the legatee should have it, while the equity is rebutted and the law construction is sustained.

So also was formerly the case of a bond given
Evidence

By a man before marriage to his wife payable after his death, such a bond is now considered good at law, and so the case of a bond thus given payable during coverture, which is void at law. The equitable construction of such bonds was that they were as covenants as things express and not void. But this equitable construction may be rebutted by parol. The parol may show that more than the contents of the bond were paid for the bond for this very purpose and that the legal construction is restored by which the bond is void.

This equity may first be raised by parol and then rebutted by parol. For whether the equity arise in this way or in any other, the principle is the same. Thus when A. employs B. to purchase for him real property, delivering to him for that purpose $500, B. purchases the land with the money, but takes the deed in his own name. These facts being shown by parol, C. will consider the equitable title to the land in A. And this equity arises out of the whole transaction. But it may be rebutted by parol—i.e., if A. & B. come to a subsequent agreement—and thus parol proof may be admitted always to rebut an equity and restore an instrument to its legal operation. And there is really no other case where parol proof is admitted where the contract is in writing in equity.
Evidence

than in law—The following case may seem to oppose this rule, but it does not: Where A. leased B. for $40 and by a subsequent agreement by parole, agrees to take $20. This parole agreement to take but $20 cannot be a bar to any suit at law for the $40, but if from some equitable right or only the lessee be compelled to sue in Ch. for the $40 as if under that lease certain duties be to be performed by the lessee, the parole agreement may be preceded—indeed for the purpose of destroying or offsetting the leases written lease—but for purpose of being offset against the lessee’s equitable claim of a specific performance—i.e., whoever would have equity must do equity and unless the lessee will abide by the subsequent agreement, Ch. will not assist him but will assist him to get what relief he can at law—Cases of this description then cannot be said to oppose the foregoing rules.

Presumptive Testimony

Presumptive testimony is that where by a thing is inferred from the existence of circumstantial evidence.

Constructive testimony is nothing more than presumptive testimony arising from certain written papers in
conjunction with the existence of circumstances: Thus A. leased a farm to B. receiving $10 rent; but he cannot prove expressly that B. promised to pay it, he therefore resorted to the deed of lease by which it appears that the sum of $10 was reserved and that the deed was delivered to B. this in conjunction with the fact that B. went on to the farm and cultivated it; having paid him one year's rent perhaps — is constructive or presumptive proof that B. promised to pay it.

So when A. sued B. for rent accruing during the 1798. and B. produced receipts of for rent accruing during the year 1799. and another for 1800. — From these presumption is raised that the rent for the year 1798. is paid and no receipt is produced for it.

When it is utterly impossible that the fact contended for can exist in conjunction with the circumstances or attending facts proved, then such presumption amounts to positive proof.

Presumptions are weak or strong as the case may be — but most presumptions may be rebutted. A presumption jus divi de jure cannot be rebutted.
Powers of Chancery
The difference apparent in the decision at law to equity arises in the great measure from differences applying the principles of law in cases where a court of law shall not, in some examples of from fraud or illegal contracts, the manner that the defence, as well as a court of Equity to grant relief or apply to redress of Equity, to grant relief and apply to redress unless the applicant will do equity and to grant it on such conditions which they prescribe in cases of illegal contracts or mortgages.

The rule that they will compel a husband to perform his trust together with the reason that what is enjoined by law is to be performed, and that court jurisdiction in a variety of cases which is concurrent with the jurisdiction of a court of law, the case of legacies.

The rule that charity confers what is agreed to be done or done is to be understood they often that times elapsed when it was to be done the person to do or a husband for the person to whom it was to be done as an agreement to convey is not performed the heir, the legal little is transferred for the person to whom the conveyance is to be made and to husband or wife by her reasons for the exercise of discretion.

no regard to had to be money done to compensate if no damages in any case.
Powers of Chancery

The general powers of Chancery are not easily defined.

The principal difference between a court of Law and a court of Equity is said by Lord Kames to consist in two particulars:
1. The province of a court of Equity to state the sign of the common Law.
2. That a court of Equity decides according to the spirit of the rule and not according to the letter.

Again it is said it 3d. That fraud, accident, or pecuniary exigibility in chancery is not within the province of a court of Equity.

As to the first particularly, the power to state the sign of the common Law was never even claimed by a court of Chancery.

In many instances, the rules of the common law operate inequitably and may be said to work extendence hardships, but in such cases, if it appears upon a fair construction that they are within the common law rule, it is impossible for a court of Equity to afford any relief.

It being clear that Equity cannot control Law.

As to the second, a court of Chancery are as much bound as a court of Law to no more to decide according to the spirit of the rule.

A maxim of the common law, the rule of construction is the same in both courts.
Clear, you may expect on specific relief commonly in pais.

decreed and matters because of great in damages is a sufficient
material but where it is not may be joice of a family

putative - now is hindered in procuring testimony of

on that account you go into clear if you can get

for purpose of fusion but no of it can be made

to reason available appeal at penny - the

case of injury - the case of a civil defendant of occur.

The nature of the opposition of obstruction of prop-

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may from being any express are aboutage

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take place you want of according it in real

thing but in case of mistake there is or two confirm

warrant for such contract -

then mediate advantage is taken of a money subscription
to get a bargain of

1681. 600.
956. 429.
2 320. 690.
2 320. 690.
250. 281.
482.
112.

1681. 381. 2.
487.
As to the third Fraud of perhaps every kind is in some way cognizable in a court of law and sometimes exclusively, as in case of a devise obtained by fraud.

Many accidents are also unusual in a court of law as life of deeds, mistakes in accounts, contingencies that make the performance of a condition impossible &c. Many accidents are not admissible in a court of Chancery. Technical trusts indeed are generally cognizable in Chancery only. Trusts are however not always some are admitted to and enforced in a court of Chancery. Laws on bailments, the implied contract for money paid and received to another's use.

As to the fourth head Courts of Chancery are clearly bound by rules and precedents. The Chancellor of today considers them selves bound by inconvenient and objectionable rules, may in some instances by the abjunct rules of their predecessors.

The present differences between a court of Law and Equity courts consist principally in the different modes adopted by the two courts administering justice. 1st. In the mode of proof. 2d. In trust. 3d. In the mode of relief.

As to the mode of proof—A court of Chancery compels defendants to divulge under oath all such facts affecting the rights of the parties, as rests in their private
knowledge only. Hence the jurisdictions of equity in distribution of
frauds, partnerships, funds, etc. A discovery being thus
obtained, the judgment is the same as it would have been
at a court of law.

2d. As to the mode of trial - The trial in equity is by
examinations in which depositions are taken out of court.
And if witnesses are abroad or shorty about to leave the
country or are aged or infirm, the depositions are to be
taken by a commissary issuing out of Chancery for that
purpose. In consequence of this power to take depositions,
Chancery exercises a jurisdiction which would be used at
Law if the witnesses could attend.

3d. As to the mode of relief - A court of Equity can
grant specific relief which a court of Law in ordinary
cases cannot do. In case of executory agreements to sell
a purchase bond etc. In this case a court of Equity will
compel a specific performance of the agreement
that is will oblige the party which has bound itself to per-
form it specifically. But a court of Law in such cases
can give damages only for the non-performance of the
agreement.

Upon these three or two other incidental grounds viz.
the true construction of securities for money lent.
The powers of Chancery to decree specific execution of Contracts.

A power which Chancery exercises exclusively is that of decreeing specific performance of contracts. By this power is not understood that Chancery can enforce an execution to carry its decree into effect; the mode of enforcing is to impose a penalty in case of disobedience.

At common law this power of decreeing a specific execution did not exist, but the only remedy on a contract was in damages. The power is not exercised by Chancery because no remedy can be had at law but because justice in many instances requires that a different remedy should be had. And it is a general rule that a contract to be enforced in Chancery must have all the requisites of a contract binding at law. No statute was enacted
Powers of Chancery

Chancery with the power of executing decrees, according to the nature of agreements, but from the time of Edward vi, such a power has been exercised by this court. And since the great contest between Chancery and King's bench in the reign of James, the power has remained most undisturbed.

The jurisdiction of Equity in many cases is discretionary, whether there is a remedy or not at Law—2 Pau. Int. 14.

Marriage agreements before coverture will be enforced in Chancery after marriage. A bond also, to secure marriage settlements, is considered in Chancery as an agreement, and enforced accordingly; such a bond is now good at Law. 1 D. 30, 63, 104, 442. 2 Pau. 56.

When there appears to be an agreement in substance, that it be void at Law, Chancery will carry it into execution according to the intention of the parties. As when a bond is given before marriage by a woman to her intended husband to convey land to him after coverture, it will be considered as such, and as a good agreement.

If one of two joint obligors pay the whole sum due on the bond, his only method to obtain a proportional share from the other is by a petition in Chancery.

In Chancery, a suit of contribution in the nature of an Indenture, lies in such a case to recover what the other
The rules in this case as it respects the granular is happen to be unprofitable without his fault.
Powers of Chancery

obliges ought to pay. But no contribution is allowed in Law.
Equity in case of joint tenANCes or wrong does.

If either the person contracting or the person of the
contract, or either of the contracts, or the contract be within the local juris-
diction of a Court of Chancery it will take cognizance of the
case. This rule is intended to apply to those
cases in which the subject matter is proper for equitable
jurisdictions.

It is a general rule, whenever a court of Law will
give damages for the non-performance of a contract respecting
real property a court of Chancery will direct a specific
execution of it. This not against a purchaser for a valu-
able consideration without notice. In other cases Chanc-
ery will not generally interfere.

Yet in cases where the agreement arises under the
laws of the court itself, or where there is in substance a bona
fide contract or agreement but by reason of some formal
defect, a court of Law cannot give damages, Chancery will
direct a specific execution.

It is a general rule that Chancery will not direct a
specific execution of a contract where there is an ade-
quate remedy at Law and this rule has rigidly adhered to
in Law than in Eng.
The case may be mitigated by the performance on his part of the commands, instead of the penalty.

1 Prov. 6:27.
2 Prov. 6:14.
1 Prov. 3:10.
1 Prov. 14:21.
1 Prov. 8:6.
2 Prov. 4:37.
2 Prov. 4:35, 8.
2 Prov. 4:34.
2 Prov. 4:30.
Powers of Chancery

This power of Chancery is usually exercised about contracts concerning real property only. Courts of Equity will not readily enforce to decree the specific performance of contracts respecting personal property because in most cases the damages given by the courts of Law for non-performance, are considered as sufficient consideration to justify the contract.

But if a contract concerns personality on one side and realty on the other, Chancery will enforce execution of both parts. 2 Pau. Eq. 219.

Whenever a party obtains a decree for the specific execution of that part of a contract which is in his favour, he will be enjoined under a penalty to perform that, to which he was bound on the contract.

But when damages would not be an adequate compensation for a personal thing, Chancery will decree a specific performance. As in case of an agreement to transfer stock which is continually rising in value. In a court of Law the value of the article at the time fixed for delivery or performance of the contract, is always the rule of damages.

If a statute enacted after the making a contract renders a complete performance impossible part performance will be void unless the party claiming performance derives it by the act of God.
The penalty among ways to enforce the contract when the court desires specific performance this is to be learnt from the medium of the transaction as well as from express records.

The rule at law of an estate for life to A for life and then to B dies or the death of the body the value is the money where the money is a covenant in the same manner where the money is a covenant in the same manner.

The dispute from debt and where there are other words and indications of a life estate.

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The dispute from debt and where there are other words and indications of a life estate.
Powers of Chancery

If it appears from the contract that the obligor was to have his duty to perform the contract or pay money, Chancery will not decree a specific performance.

It is a rule of the English law that where one conveys by devise, grant be for his life and to his issue or to the heirs of his body, the grantee, devisee be take an estate valid. But one of the limitations causes an equitable title, the other a legal estate. They will not then unite. If the grant be made to a man and for his life & his heirs generally, a fee simple would vest in the first taker.

But if from the terms of the devise it appears the intention of the devisee to give a life estate only to the first taker courts of law will give effect to the intention. A distinction is to be taken between cases in which the first devisee has children at the time of the devise and those in which he has not.

In Chancery, title for life & and to the heirs of his body, or to his heirs in general are considered as giving A. an estate for life only and no other words are necessary to manifest the intention of the devisee except in cases of executory agreements.

Whatever is agreed to be done, Chancery confers as done, from the time of making the contract unless some other time is fixed for the purpose. And even if some other time is fixed for execution, the property will be considered as already transferred if the terms are settled.
As in case a wife before marriage agrees that she will lay out a certain sum of money in lands—

E. Brown.
Powers of Chancery.

and the formal part or execution only remains to be completed.

This rule however is not allowed to operate, as well in any fraud as in any defect in the title deeds and is thus unable to sell the land a second time, this second sale if to a bona fide purchaser shall be binding, the assignee notwithstanding.

When there has been no actual contract of sale, but merely an agreement in future. Chancery does not consider the property transferred but as belonging to the original owner, who of course in case of a loss must bear it.

If a contract was originally mutual and equal Chancery will enforce a specific execution of it, tho' by subsequent events it has become unequal become unequal otherwise if there was a want of mutuality or certainty.

Money agreed to be laid out in the purchase of land is in Chancery considered as land. It will pass by the devise of all one's real estate; yet a person who has the absolute own

ership or fee simple of money, this circumstance he may at his election confine it personal or real estate and of course he may at his election confine it personal or real estate and of course

obliges money agreed to be laid out in land is subject to the husband's curtesy, but not to the wife's dower.

When a mill is brought for the specific execution
a)

b)

Because this is the proper effect, it can be done.

Because this is an adequate remedy, the court will perform a remedy.

To say is the wrong effect. It is not the same.

At least, if the court offers to try the issue that has

6. 1864.
Powers of Chancery

of a contract for money. If the debtor does not demur or object to a suit in Chancery, that court will decree a specific performance.

(4) If an agreement is denied in Chancery and an issue is directed, that court will refine the equity arising from the facts found, and make a decree accordingly. 2 Poth. 216. If bonds have been given for the performance of a variety of acts, Chancery will to prevent the trouble and circuit of suits for every breach, fix a penalty which will either compel a strict performance or be an adequate compensation for non-performance. Parties of agreements are treated between mercantile parties treat.

Agreements to transfer stock are specifically enforced always in Chancery will sometimes be the specific execution of agreements against which they would not grant relief, as in case of unreasonable contracts entered into with fraud.

Any unfairness in the petition of parties in Chancery will prevent an interference of its power in his favor.

A contract must be certain and originally mutual, no decree of a specific execution can be obtained.

An executory contract, merely water under voluntary in several enforced in Chancery. On such a contract, sunder of real, nominal damages only can be given at Law.
why not as least there was no writing of the money in such a contract as here pointing out would falsely for money had & received evermore is paid by mistake of a convey to B under a mistake in both of the sale of the hand well self... nothing mistaken of mistake since you now rest by disengage in effect of law. Law of this matter is as to these legal might.
Powers of Chancery

When nominal damages only are given at law, Chancery will not decree a specific execution.

It is a general rule of Chancery rescinds an agreement it will by its decree to perfect justice between the parties, provided many contracts will be rescinded in part only, or where part payment has been made.

Chancery will sometimes rescind an agreement on account of mistake. It is a rule where there is a mistake in that without which the contract or agreement would not have been made. Then every will rescind if where parties have mistaken their rights in framing contracts, Chancery will relieve against them. As where a man having been driven into a contract by duress, affirms it after the duress has ceased, not knowing that it might be avoided.

A court of law will interfere and give a remedy where money has been paid by mistake. But in this case,indeed this is in nature of a bill in Chancery, but the contract will be set aside by Chancery if provoking by mistake, misrepresentation, false sales, bills and statutes leaves the parties to their remedy at law. Equity does yet in common cases of this kind Chancery has done it. There is a kind of privity that Chancery will not respect to specific execution. As where a sharper had by intrigue, he was the prevailed upon a man to devise his estate from his family, he was himself defeated by virtue misrepresentation.
in cases of rescinding contracts, unless the wrong is
complex at law

2 June 1667.

1 P. W. 118.
637.
1 Soc. 62, 369.
2 Soc. 100.
184, 2, 64.
9 P. W. 279.
which induced the testator to revoke his devise and to give his estate to his family.

Where there is a fraud in real contracts, Chancery will interfere and give relief. In case of personal contracts, their interference is not universal. Yet even if the contract be personal and one of the parties be exposed to injury from the bankruptcy of the other, Chancery will step in to relieve.

Suppose inadequacy of price will render a contract void in Equity. This inadequacy at least furnishes evidence of something that will make a contract void.

Intoxication is a sufficient cause for setting aside some contracts, and an agreement in Equity, if it was superinduced by the opposite party. M. E. Keynes thinks that Chancery ought to relieve when one takes advantage of the intoxication of another in a bargain whether he was instrumental in the intoxication or not.

Chancery will also interfere and set aside contracts entered into for the purpose of defrauding third persons. 2 Pet. 196, 433.

A contract, forced, or voided by some unlawful violence, tho' it does not amount to legal duress, is a sufficient ground for Chancery to proceed upon in rescinding a contract.

Yet a statute, whether degree or otherwise for parents and other
Powers of Chancery

A court of Law can give some
sages only in case of a legal de
cracy and not in case of a legal de

Contracts according to sound principles of policy will be
sacred in Chancery. There is no good reason why the
sound principles of policy will be

But their are two classes of cases under this head, to which

Courts of Law have ever extended their jurisdiction. The first

usage of these in the case of marriage bonds and contracts which are ut

arise in Chancery on the ground that they have a tendency to

distroy domestic peace. The 2d class of cases consists of bargains

for the sale of expectancies of young heirs, or as they are called in

the books, such bargains are refinded in Chancery because they

tend to encourage prodigality.

Had courts of Law extended their own principles so as to

brace these two classes of cases, the interfeetion would be run

spurious and unnecessary.任 Law. Chancery requires a jur

restrictions over various contracts. In Law, such contracts
Various contracts are liable to be defeated both in Eng. and Connecticut, in a court of Law, by proving the
wrong, but the wrong in this case must be proved
as in other cases, by disinterested witnesses. If there
were the obligor cannot prove it in this manner he
is without remedy at law, but he may apply to
chancellor in Eng. and appeal to the confidence of the
obligee and proves it appears from his testimony
that the contract is annuis. Chancellor will relieve
against it so far as to cut off the surplus of
principal and legal interest that the petitioners
must pay the sum borrowed and the lawful in-
terest that the debtor knows of no reason
why the same proceeding may not be had in
Connecticut. But we have a further stat.
in Connecticut provided by stat. which is this:
if the annuis obligation is sued and the Deft.
finding that he cannot reject the obligation by
proving the wrong, by disinterested witnesses
he may on the second day of the setting of the court
to which he is sued file a bill against the ob-
sigation stating it and the annuis and the court
is empowered to proceed upon the bill, according
Powers of Chancery.

agreed of in a court of Law—When the statute on this subject
was first enacted, if a man was sued on a various contract
and compelled by force of Law to perform it, he might come in
to a court of Law again to recover the sum paid. This in case
of an action brought on the contract was an adequate rem
edy. But the party in whose favour the contract was might delay
to bring his action, till the evidence of the wrong was lost in
which case the party of the party would be remediless, but here
the parties by the interpretation of the Chancery are placed
in the same situation as before the contract.

The ground on which Chancery interposes in various
contracts is the presumption that undue advantage has
been taken. And had the law extended relief to these cases,
only where such advantage had in fact been taken its prin
ciples would have been preserved entire. But Chancery
will relieve against all various contracts, whether
they were obtained by undue advantage or not. The rule
why a party goes into Chancery in Eng. is that he has there a remedy
which he cannot have at Law, by applying to the conference
of his adversary. The statute against various contracts it is true
subjects the criminal party to a penalty and it is a rule that
a man is not compellable compelled to testify where by
so doing he will subject himself to a penalty. But as
to the principal of chancery, that is to enquire of the
Defendant, under oath, and if it appears from his testimony
that the contract was assurable, the court are
by statute, directed to cut off the whole interest
legal as well as assurable and render judgment
for the principal principal only against the
Defendant.
this penalty, in Eq, is given to the party injured, he of course may waive it and call in his opponent to testify. In law, the party demanding unlawful interest is made liable to a penalty which is given to any common informer, and therefore according to the common law rule such party cannot be compelled to testify. But this case is provided for by statute, for if an action is brought on an usurious contract, the Def. may file a bill in appeal to the conscience of the Pst. who if he refuse to testify will be non-suited and compelled to pay costs. If he do testify and the contract is found usurious, judgment is that the Pst. recover the principal only of the sum lent or loaned—yet such are the provisions of the statute, that judgment must always be for the Pst. And if the contract on which the action is brought, be wholly usurious that is such an one as is entered into to recover unlawful interest on another contract, the court will give nominal damages only.

Chancery's interference to set aside unlawful contracts.

The idea that a man might avoid a contract at law is a novel one.

Originally no parol proof could be admitted to show fraud.
A contract which the said of plaintiffs, a peremptory inquest should be in writing if it is, provided as in contract, charging 32 or less, but if such a panel contract has been executed in whole or in part by one party, then the other party will be presumed to perform it as a whole, i.e., to pay $2,000 to the said D. In this case, if the money is missing, more in the case within the bond and the court cannot enforce it for all panel agreements, suspending lands made by the statute of frauds, is presumed but if B had paid the purchase money to A on any part of it his part of the agreement being declared to be paid on a whole in such case. There will be a penalty if the court the agreement was by panel - so too if A had by panel leased a farm to B and there was missing money in the case toward not to be had, but if the beginning had been that B should pay him a big building or a stone wall on the premises, 3 B had entered I, built the wall, and shall compel him to pay the lease - the premises in all these cases is, then you are not obliged to fulfill your panel contract but if you make such an agreement as to derive an advantage to yourself and therefore it will lead to ruin which money will not involve in A on the lease case put in the first A got the money I am the last he got 31 more well built.
Powers of Chancery.

topitude, or mistake and hence we see the reason for the write
of equity. But now in Eng. past proof is admissible
of conduct of every description, except fraud. *Wils. 347.

And in Cor. they have gone still further and admitted
such proof to show fraud of any kind.

*25* Bonds given in consideration of past conduct are good, but
those that are given in consideration of future conduct are void.

*25* Agreements merely voluntary are not in general enforced
in Chancery, yet in some cases they are; as where a man after marriag
makes a reasonable settlement on his wife.

If a party seeking a specific execution of an agreement, has shown
backwardness in performing his part, Chancery will more
sympathize with his favour, especially if circumstances are attired
by his conduct or during his delay.

When a contract has been dormant for a long time, Chancery
will not decree a specific execution, unless special circum
stances warrant the neglect. *Bos. 260, 9 Term. 834.

When contracts are rendered void at law by reason of
the statute of frauds, Chancery will in some cases interfere and
enforce them. Or where the contract is executed or partly ex-
acted on one part; or where something has been omitted in
the writing by fraud or mistake. *Bos. 274, 498.

In latter time Chancery has exercised a power of se-
Counts of law ultimately referred to violence against persons.
This meant Counts of Treason to violence to prevent
the manifest repugnance that would arise if no such
vicissitude of violence after Treason had served the
purpose of statute inserted Counts of Law with the pains
of Treason of penalties.

2 Par. 264.
2 Thom. 316.
259.
38th. 380.
1 Mod. 112.
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...living against penalties ... not long ago than when Sir Thomas More was first Chancellor, this power had never been exercised. Since that time statutes on the subject have been made in England and in several of the U.S. These statutes emp...fare all cases where one binds himself under a penalty to pay money at a certain time, or to do some collateral act and verdict in courts of law the power to chancery to issue such bonds to what is justly due. We have such a statute in ...The ground on which Chancery grants relief in those cases is that it is contrary to sound policy to give equitable penalties and the court in no instance have given relief where the penalty is small.

If it appears from the contract that the sum to be paid is in the nature of a secured damage for non-performance Chancery will not relieve. But if on the other hand the sum to be paid is a mere security for performance the court will chancery it. If neither of these meanings are with certainty be collected from the face of the contract the sum conditioned to be paid is always considered to be in the nature of damage secured as a penalty.

Yet it seems where Chancery can give some compass...
If a bond with a penalty is given for the performance of a contract, or if a penalty is inserted in a contract to enforce performance, the party seeking specific en-
forcement must in his bill swear the penalty. *

*2 Ch. 66.
5 Ch. 261.
66 Ed. 2. 97.
219.

2 Ch. 241.
3 B. 144.
2 B. 544.
relieve, the, the, covenant, executory, or, agreement, actually, performed, by, way, of, a, penalty.

If, a, bond, has, been, given, for, the, performance, of, covenant,

chancery, will, direct, an, issue, of, quantum, damnum, naturale, in, a,
court, of, law, &c, decree, according, to, the, verdict, of, a jury.

If, a, bond, to, perform, a, condition, set, or, to, pay, money,

by, different, installments, be, sued, upon, the, court, will, chance
it, as, often, as, an, action, is, brought, and, this, may, be, as, often
as, any, breach, may, happen.,

Chancery, will, never, relieve, against, a, penalty, too, large, imposed, by, itself, to, compel, obedience, to, its, own, decrees.

If, a, contract, be, entered, into, respecting, real, property, and
the, parties, bind, themselves, under, a, penalty, which, ap-
pears, to, be, in, the, nature, of, damages, for, non-performance,

Chancery, will, not, decree, a, specific, execution, of, the, agreement.

But, if, the, parties, penalties, appear, to, be, a, security, for, per-
formance, a, specific, execution, will, be, decreed., Thus, it
sums, each, case, under, this, rule, will, stand, on, its, own, mer-
its.,

An, other, subject, of, equity's, jurisdiction, is, a, mort-
sgage., The, same, will, originally, existed, upon, mortgage, as, upon
personal, bonds, and, equally, called, for, the, interposition, of, equi-
ty, it, law, Mortgages, are, regarded, as, absolute, estates, in
Mortgages, deferrable only in the terms of performance of the conditions. Thus, the mortgagee was frequently oppressed, since it would frequently happen that he could not perform the conditions by the time stipulated and since a mortgage was frequently held as a security for a debt not amounting to one half of its value; the doctrine which prevails in Chancery is very different in this respect; the mortgagee is merely a trustee to the mortgagee when the consideration is performed. The estate is in the mortgagee where the consideration is performed; the estate is in the mortgagee if it is a general rule that every naked trustee is one of sellable in Chancery to recover such a trustee, a mortgage after payment is considered. In compelling the trustee to consent, however, Chancery will do complete justice between the parties without resorting to the mode that might be worst used at Law.

There is one which falls within the jurisdiction of Law and Equity. Where compound interest is reserved on a note on the event of non-payment of simple interest both Chancery and Law will relieve against the compound interest. Yet interest is always to be paid annually unless it be otherwise agreed to; therefore, a contract reserving interest upon interest is not vicious. The principle on which the court interferes is said in the books to be, that to allow of such interest is
If I were to write for £50 an interest providing to pay the interest annually, if not paid, so to pay the interest upon interest, it would not be affirming further, could the obligation remain, the compounding interest fulcrum obligation couldn't have precisely the same effect as the note had been upon interest without it were events.
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unconscionable—But the Rev. supposes that policy is the true
ground of inference.—As if compound interest was allowed, one
who would otherwise support his family and others educate
them so as to be useful would be reduced to begging. They must
be more rescued from the consequences of their own follies—

Powers of Chancery to issue injunctions.

An injunction to stay waste may issue from Chancery in all
cases where an action of waste will lie at law and in many other
where the action of waste will not lie. Thus courts of law can
never give a remedy in an action of waste against one who
has the legal title as trustee; yet Chancery will issue an injunc
tion against such trustee.

Chancery will also issue a similar injunction against ten
ants in tail after appointitude of issue, or where he is not bi-
cable for waste at law. In the last case however Chancery
will not issue an injunction, unless the tenant has com-
mitted unreasonable and wanton waste.

An action of waste never lies at law against one
having a larger estate than for life interest than an estate
for life, and no person can maintain an action of waste
unless he have an estate of inheritance—2 Bl. 281.
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An action of waste will not lie in favour of a remainderman or reversioner, if any other estate intervene between his remainder and the particular estate in question. Chancery will grant relief by an injunction in favour of a remainderman so circumstanced. So in favour of a contingent remainder man.

If a lease for life is made "without impeachement of waste," Chancery will notwithstanding issue an injunction against the lessee if he commits wanton waste.

If in case "without impeachement of waste" mines arementioned among others things of mines, opened may be wrought by the lessee; but according to the authorities new mines cannot be opened. This rule must frequently be contrary to the intention of the parties, especially when no mines are opened at the time of making the lease.

An injunction to stay proceedings at Law or after the suit commenced, after verdict, and before judgment, after judgment and before execution, or even after execution. This injunction lies against all suits on contracts, with the good at Law are said to in Chancery.

Chancery when it gives an injunction lays a penalty to enforce obedience, which penalty in Law may be enforced in a court of Law. The federal court however refused to sustain or sustain an action for the collection of such penalty.
Injunctions are either temporary or perpetual. Injunctions are usually to the parties or court, but not always.

In law, fraud may be pleaded in bar of an action at law, but the party injured by fraud may have a remedy in chancery, since the equitable party may delay to bring his action till the evidence of fraud is lost.

In equity, if one is sued which a bill filed filed in chancery is joined to the fraudulent chancery will issue a particular injunction to stay proceedings at law. 1 Wm. 489, 12 Com. 48.

Injunctions are sometimes granted without trial. As if one be sued on a contract where a recovery must be had at law but which is void at chancery here the injunction is temporary, but if the decree is in favor of the petitioner the injunction becomes perpetual. If judgment has been pronounced at law the injunction goes against the court or party, to prevent the taking out of execution if execution has issued it goes against the sheriff to prevent a levy. If money has been collected on the process it goes to prevent the sheriff from paying it over. But after the money has been paid over no injunction will issue.

In law, the superior court is a court of equity as well as of law, or is also the court of law. Pleas of course it may frequently happen that these courts will have to issue
Powers of Chancery

injunctions against themselves. A case of this description arose in the superior court. An action at law was brought on a bond in which there was a mistake of £100 and in consequence of the rule "no past proof can be admitted to vary the operation of a writing" judgment was given for the Deft. notwithstanding the mistake. But on petition of the Deft., the superior court as a court of Chancery issued an injunction against the superior court as a court of law.

If a Mortgagee conveys that he will not apply to a court of Chancery to be relieved against a foreclosure and the Mortgagee sued for a foreclosure, Chancery will grant an injunction to stay proceedings notwithstanding the covenant, and if a suit at law is brought on the covenant, an injunction to stay proceedings will in this suit will suffice.

A court of Chancery will relieve against fraud, nothing will grant an injunction on suggestions of fraud to stay proceedings in a court of law—1 Com. 489, 2 Com. 48.

Chancery will issue an injunction against an ejector forbidding him to act as such pending suit respecting the executory lease—1 Com. 489, 2 Com. 489, 1 Com. 179, 1 Com. 52, 116th author.

Injunctions in favor of others, and against such as attempt to republish their books are frequent even before the state of Assn. This state has given authors a legal remedy in these cases—1 Com. 30, 2 Com. 179, 3 Com. 174, 174, 238.
It was however the opinion of Ed. Mansfield and two other judges that an author has an exclusive right to his works at Rom. law. In the house of lords judges were of opinion that the remedy at comm. law was taken away by the statute of Anne. For exmple,

The English courts of chancery have lately issued injunctions to prevent a party from multiplying suits by repeatedly bringing actions of ejectment for the same cause, you to the facts upon which the action is founded in Eng. one fictitious, another like suits might be brought on the same cause of action if there was no such in

In like as the proceedings in ejectment are not fictitious

This power of chancery to issue injunctions has been exercised in certain cases criminal cases but the courts will interfere only in cases peculiarly circumstanced. If when there is a contested right between parties and law makes it criminal to invade that right & prosecution be commenced under this law, chancery will issue injunctions to stay proceedings till the right be decided so where it appears that the right is soon to be tried in a suit pending in a court of law.

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lies from any decree, order, or sentence of that court to the superior court as a court of law and not as a court of Chancery.

Powers of Chancery in other cases.

1. In Eq. Chancery has jurisdiction of the payment of legacies. The principle upon which Chancery compels payment of legacies is that the Executor is a trustee to the legatee and that whenever there is a trustee in Chancery will compel him to execute his trust.

In Eq. legacies are by statute recoverable in a court of Law, and they are subject to the rule that where an adequate remedy can be had at Law Chancery will not interfere.

The rule in Chancery are generally the same as in Eq. unless where our statutes have given the courts of law concurrent jurisdiction.

It is a rule in Chancery that whatever is agreed to be done is done. Thus if a man in his will directs land to be sold and turned into money, which he does not bequeath in legacies. Chancery will compel a sale of the land and distribute the

eques or personal property and will judge but their rule must

be taken with one qualification. If a man devises land to be

sold for a particular purpose and the proceeds of the said sale are

sufficient, to answer the purpose, the residue is confined
Powers of Chancery

as relating back to the heir at Law.

If there are no provisions of statute to the contrary, it is inci-
dent to Chancery where lands are devised by will for the payment
of debts after sale, to compel a sale or a hind oyer against the trustee
at law. Law if the Esquire refuse to sell in this case, the creditor
were left without a remedy.

If an Esquire refuses to accept the trust assign to him due
vest to be sold at suprice, Chancery has the power of appointing an
steer - and the suprice of the sale will be ordered to be brought in
in Chancery and distributed among creditors pari passu.

The principle upon which chancery interferes in this case,
is that the Esquire or whoever accepts the trust is a trustee

In law, the Court of probate may direct the Esquire to sell
deeds, where lands are devised to be sold for the payment of debts.
if he refuse he forfeits his forfeits his bonds. Yet if lands
are directed to be sold at suprice by some trustee other than the
Esquire and he refuse to execute to execute his trust, Mr. Bowes
supposes the remedy must lie in Chancery, for the court
of probate has no authority over such a trustee since he does
not give bonds to the court.

Chancery has power to compel an equity of redemption.

The equity of redemption is unknown to the common law;
for the estate in the case of a mortgage is considered defeasible
in the mortgage. But it is otherwise in Chancery.

Hence Chancery will order a sale of an equity of redemption for the payment of debts or the ground of a trust.

In law an equity of redemption may be attached in the lifetime of the mortgagor and after his death it goes into probate with the rest of the estate. Hence in this instance we have none of the interference of Chancery.

14. An other power of Chancery is that of marshalling debts.

On application the personal estate of deceased persons is liable for the payment of their debts except debts by judgment and special creditors by judgment having a priority to others may exhaust the personal fund, while claims of an inferior rank are entirely defeated. But in that case Chancery will compel the heir to refund the same sum to the special creditors. If the personal fund is sufficient to satisfy all claims, the heir in Chancery may compel the heir to refund it from the same sum which the special creditors have taken from the real estate.

If the special creditors be come on the real estate when the personal fund is sufficient to satisfy all claims, the heir in Chancery may compel the heir to refund it from the same sum which the special creditors have taken from the real estate.

The heir in this case being considered as trustee to him.

5. If one gives an estate in trust to A for B, A must execute his trust according to the circumstances of the case.
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appears from thence that the donor or grantor intended the estate should pass at a particular time, when that time comes and not before, Chancery will compel conveyance. So if it was intended that the estate were to have any beneficial use. In these cases the design of the grant will be executed in Chancery, just as it might be. This beneficial interest the vesting presidency shall always have, and the trustee cannot deprive him of it—yet to this rule there is an exception. If the trustee conveys the estate holder to a bona fide purchaser, the latter will hold, for it is presumed that he is ignorant of the trust, otherwise indeed he would not be considered as a bona fide purchaser.

In law, we can have no such exception since we have public records which are conclusive evidence of title.

In case of implied or private trusts, where the reason of the statute of frauds no remedy can be had at law against the trustee; Chancery will enforce performance of the trust if proof can be procured by the

of the trustee by circumstantial fraud, that testimony be thus if A employs B. to sell land for him and makes out a deed to B. if the land, the latter refuses to sell but retains the deed or if he sells, if he sells and refuses to pay over the money Chancery will consider him as trustee to A. This is an
Powers of Chancery

implies trusts,nuin without writing and can be proved by proof.

It is sometimes said that this is making a past agree

ment respecting lands. But this is not true. It is making

an unavailable inference from facts.

There is one exception to this rule where a man takes

a deed of lands for his wife's.

Fraudulent trust is not regular regarded in a court of

Chancery, the estate cannot be recovered after it is conveyed.

Chancery has power to grant what is called a bill of disco

very by which a party to a suit at Law who has not legal

evidence is enabled to discover other evidence.

After discovery that the opposite party knows the facts

that are wanted in evidence if the case to which the facts

are proper to be sustained in Chancery the court will

sustain it if the party petitioning desire it: but if the case

is proper to be tried at Law Chancery will in some instances

sustain it and in others not; but unless informs that he has not

been able to find and any general rule of discrimination

between the cases.

If an agreement is denied in Chancery and an issue is

created that court will reserve the equity arising from

the facts found and make a decree accordingly. PAxton.
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The Court of Chancery appoints a committee and does not send the issue into a court of law to be tried by a jury for how witnesses may be introduced and examined, or observed, otherwise in law.

3. On a memorial presented to Chancery they will appoint some prisoners to take depositions. But the memorial must shew that there is a more than one ordinary cause for the proceeding, or that the witness was aged, sick, etc.

Formerly the same practice prevailed in law, but now applications may be made to a court of law.

4. Courts of Chancery have the power of ordering a person to resign evidence of debts after they have been paid, but not renounced or given up to the obligor. They have also the power to order evidence of title to be given up, but when it becomes improper that the holder should retain them, as in an ease of a mortgage, when the debt secured by it is paid by the mortgagor. 9 Moore 97, 2 Ath. 307, 1 Bean 479.

In law, deeds take effect by being recorded. The mortgagee therefore may be compelled to recover on receiving payment.

The reason why a man was compelled formerly to go into chancery when his deeds were lost or were, that in an action at

law upon a written contract or instrument, the party may make

complete proof of it when the deed was concealed or destroyed.
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by the opposite party, there was indeed an other reason. For the fact that
the deed was concealed by the opposite party was in most cases known
only to himself & courts of law cannot appeal to the conscience of
the party. But now both in Cov. & Eng. an action at law might be
brought on such instrument, tho' it be kept if the contents can
be proved by other persons, & it may be asserted that the instru-
ment is lost "by time and accident."

The party in Eng. may still go into chancery, but not in
Cov. for we adhere to the rule that where an adequate rem-
cedy can be had at law, chancery will not interfere.

10. An other power which chancery exercises in Eng. is that
of compelling joint tenancy, coparceners, to make partition.
How chancery became invested with this power is very com-
mon. We have supposed that it might originate from the
circumstances of one tenant having taken possession of the title
declarer in which case the other would have no remedy at law, &
so each tenant over the whole estate. Chancery may have
confined each tenant as trustee to the other. However they
become invested with this power they now appoint con-
spicuoues to make partition whose acts are binding on
the parties.

As Sir John Iveson, by writ of praemunire and by
Cov. the practice never go into chancery. But the
sheriff appoints three men whose acts fix the title without
[Handwritten text not legible]
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11. Chancery will in some instances relieve against mistakes in instruments, or if different words are used in the writing from what were intended by the parties, but if the words used are those intended Chancery will give no relief tho’ the words have an import at law different from what the parties really intend. Rest proof is admissible to prove the intent.

12. When the instrument is defective this want of proper form Chancery will remedy it, if such interference does not affect the rights of 3d persons, or if a deed has but one witness, there has been no case where Chancery has interfered in favor of mere voluntary will of a court. If deed deeds are required to be recorded, if a grantor thus fear that the estate will be attached, delay, to procure his deed to be recorded the estate has meanwhile passed and may be attached and where Chancery will compel a grantor under a statute penalty to procure his deed recorded and if he is a bankrupt and cares not for penalties, the court will record its proceedings which will complete the chain of titles.

13. Chancery has the power to protect the separate property of married women. The practice of some courts having separate property has grown up within a century. But now the law is a mere stranger to the title and separate property of
Powers of Chancery

the wife and if she invades her rights she may have a sole remedy in Chancery.

In certain cases if an agreement is made for her husband and wife to own property and if the husband later conveys the property to another, the wife can enforce the original agreement in Chancery. If a husband owes money to his wife she is a creditor in Chancery after his death.

Contracts between husband and wife have been enforced in Chancery and Mr. Reeves suggests that all important agreements can be enforced through this means.
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Art. contracts without the intervention of Chancery trustees.

14. Some contracts are capable of being affirmed and others not. The rule is this. If the contract has been set aside or unlawful it cannot be so affirmed, otherwise it may be, unless the rights of third persons are affected.

15. Courts of Chancery have taken it on themselves to relieve against the lapse of time. Thus, they grant relief where a man's accident has been disabled to perform his contract by the time limited. So they have relieved even in cases where there was some degree of negligence. As where a man was to pay a sum of money by a day certain, and failed of procuring the money for that purpose but a week before hand and then fell sick. If one enters into a conditioning agreement that if another person pay by a certain day he will convey, otherwise the agreement to be void, & takes a note of hand, Chancery notwithstanding the agreement, this conditioned will compel a conveyance whenever the note is collected.

16. When a controversy cannot be settled at law without a multiplicity of suit or in matters of account, concerning which there is no Assign a number of disputes, Chanc will take up the whole controversy. controversy & make a final settlement.

The remedy of law is not deemed adequate in such
Powers of Chancery

this kind since the expense of a number of suits would ruin the par-

ties. The bill brought in Chancery in this case is called a bill of peace.

A bill of peace has been brought in a court of equity, but no

in our court of Superior Court.

17. At law, Deco bonds are not negotiable, yet chancery will

protect the assignment. So in cases where con. where where notes

are not negotiable. Per. 68. 2 Term. 180

18. A court of chancery will decree the performance of an

award, on the ground of an agreement to abide by it. This rule

obtains to prevent litigation, the personal property be the subject

in dispute. 3 P.W. 187. 2 Term. 24.

19. Where one of two partners dies, any action which would

have lain against both had both been living must be

brought against the survivor. And if both partners be dead, the executor of him who survived the other is liable; yet

if the last partner died a bankrupt, chancery will give a

remedy against the Ests. of him who died first. In Eng. appli-

cation is always made to chancery in this case. Formerly it

was so in law, but it has been lately been resolved by the superior

court that an adequate remedy may be had at law. It is nece-

sary to state in the declaration, circumstances showing the

propriety of commencing upon the Est. of the partner who

died first.
In Eng., every bond creditor is considered as having a lien upon the land of which the debtor died seized. But if the debtor in his life time had written to convey, Chancery will not consider him as having died seized on the ground of the general maxim of the

repetition. 1 Mod. 484. 4 Bro. 267.

A question of great importance is whether in case of a loss after an agreement respecting the sale of the property the vendor or vendor shall lose it? If the maxim that whatever is agreed to be done is considered as done holds true in this case, there can be no doubt as to the decision of Chancery in this case. There has however been a variety of opinions on the subject—Mr. Reeve however supposes that the loss must fall upon the vendor, otherwise the application of the general maxim would be uncertain. Sirn. 280. 17. W. 269. 61. 1 Bro. Ch. 156. 2 P.W. 280. 2 Bro. Ch. 69. 76.

Analogous to this would be the decisions in courts of Law in certain cases. If A. agrees to sell a house to B., when B. should produce the money in payment, both engaging to perform, the property of the house is held in law to be transferred; this was settled first by a decision in 18 of 24, 32, which decision has never since been controverted. A distinction is to be taken between these cases, this ease and those cases where it is left optional within the parties whether to perform or not.
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20. Chancery will order an offset when injustice would otherwise be done or when a person is sued by a bankrupt, there being mutual debts and credits. In law, the remedy in this instance is in chancery, but in Eq. courts of law will order a set-off, under the statute 2 & 3 Geo. 3rd. 35 Geo. 3rd. 3 Will. 4th. 48 Eliz. 6. 6 & 7 Eliz. 4th.

21. It is a rule in equity that when one asks equity, he must do equity; and therefore when asks a specific performance of a contract, he must show that he has performed on his part. But it is this rule that, when it becomes impossible for one to perform by inevitable accident, chancery will not interfere. But if, after partial performance, a total performance becomes impossible for one to perform, chancery will interfere. If it becomes impossible to perform in toto, but partial performance is lawful, chancery will decree that the perform in part only. 2 & 3 Geo. 3rd. 35 Geo. 3rd. 3 Will. 4th. 48 Eliz. 6. 6 & 7 Eliz. 4th.

22. If, there be a contract about land which at the time of making it, was good, and substantial doubts respecting the title afterwards arise, chancery will leave the decision at law. Yet if the title is probably good, chancery will decree since a decree of that court does not alter the title. 2 P. Wms. 197. 2 Atk. 17. 20.

23. A vendor from the time of making the agreement is considered as a trustee to the vendor and vice versa, and the agreement wants some formalities; for whatever is agreed to be done is confided in chancery as done. 3 P. Wms. 215. 1 Dall. 410.