Private Wrongs.

The subjects of tort are either the person or property of those who suffer.

The tort may also have been committed on both. If the tort be done to the property of the injured person, his real or personal property may be the subject of both.

In every case of a tort, the injured person has a remedy, unless it be accompanied with a felony. If so, it is doubtless whether there can be a remedy, the injury being merged as in the law.

In some cases of tort, there are two actions: one in favor of the party injured, and one in favor of the public. And as the rights of the public are altogether paramount to the private right, the wrong done to the individual is merged in or swallowed up in the public offence, if that offence amounts to a felony.

It is a true position that the right of the public is always paramount to the private right: and in cases of felony, the public by the old common law always had a right to the person or life of the wrongdoer, and also to all his property; it followed that nothing was left for the sufferer.

But as there are now in the U.S. States but few cases of felony where the life of the wrongdoer is taken and fewer still where all his property is taken, it is submitted whether the sufferer...
might not in every case to have relief, when either the person or the whole of the property is not经过, the...no more so, not notwithstanding?

As the doctrine of merger resulted from the practical requirements of the law in general, the person of the wrongdoer that it might be red...or for example, and to all the property that the public might be...me. The law in America does not require these things but it...rued, the rule of law which resulted from this...Here a true state of things might be that hence supposed to be changed also. For which as in this case the reasons of the rule have ceased it is the sight of weakness foolish not to change the law also.

And even in Eng. if some of the property from the abolition of punishments, either the life or some of the property of the offender be spared. No reason convinces that they ought upon the genuine principle of the common law to be made subject to the demands of the injured person.

So, it is however, it in these would be brought against the representatives of a person who was charged for the commission of the offence; but the rule depends not upon the principles of merger, but upon the idea that no main loss by far the wrong of the testator or deceased.

In summing up the subject of torts or must of course re.
Private Wrongs.

As to the several actions arising in delicto, of which some arise from simple tort, disconnected from the idea of any force or violence, some are from torts connected with the idea of actual violence and force used.

From the first division arise the several kinds of actions of EXPEASE ON THE CASE. This is an action arising in delicto simply from tort or wrong where no breach of any contract is suggested and no forcible violence imputed to the deft.

This negative description, is the only one which can be fairly given of this action; for it would be impossible to account for the various occasions of bringing these anomalous suits. They may be brought for injuries respecting the person's person or his reputation, safety, health, and other inconveniences, or they may be brought for injuries respecting his property; or of some inchoate right, some consummatory or expectant interest. It may be brought also for deceit or fraud, or in acts relating to improper negociance from which damage may result through a conversion to be.

Trespass vi et armis & Replevin, which are for torts accompanied with force real or implied. As for Assault, Battery, False imprisonment the Property wrongfully taken to be.

A general view of Slander.

Malice & Falsity are the essential ingredients without which
such injuries to the reputation of one, or the injured person may recover damages for: and if neither of these exist, the Fifth must fail in this action.

To speak a truth therefore, of one, although it be said with malice and with a design to injure, will not entitle to a recovery.

So also to utter an untruth without malice will not support an action — this will necessarily lead to some inquiry into the legal effect of the word "malice." This term does not convey the same idea in law as in common parlance. The extent of the term is better understood by the native word "malice" as used in the books; it means any improper motive, a wanton disregarded to one's own interest, which may actuate a man in a particular transaction, and is not confined to any special ill will or spirit of revenge against an individual.

When a man orally repeats any scandalous report of another not having any substantial reason for it, the law will presume him to have been actuated by malice, and this it will be really believed, the story which he propagated. So it would be at least idle and unnecessary to repeat the story, and having told it of course wounded the reputation of one he should make retraction unless he can prove the story to be true.

However if there be an evil report about a man which is accompanied with such circumstances as to cause it to be such
[Handwritten text not legible]
generally credited, and one may tell it to another, he will merely before
be presumed to have been uttered by malice, and this presumption he
may by the attending circumstances rebut.

Recovery in slander may be had in two classes of cases, where
the words spoken are actionable in themselves, and where the words
spoken are not actionable in themselves, but being attended with
special damages to the person to whom they were spoken, are
sufficient, if the special damages be proved to support the action;
and in the latter case the special damages must be stated
in the declaration.

Words actionable in themselves are divisible into two
classes, viz. I where by them one charges another with the commis-

sion of a fact punishable by the law more severely than

Barbery by fine, then are the words actionable in themselves; and tho

the party cannot prove any special damage whatever, and state the

shall recover; for it will be presumed that he either has or may

suffer damage.

For tho the facts charged, if true, may subject the

party to accused to punishment, but to none more of a higher de-

gree than fine; yet the words as a general rule are not ac-

tionable of themselves.

But there is a middle class, wherein the words are or

are not actionable according to circumstances.
Private Wrongs.

As it respects this class of cases, the books and decisions are quite confused. But from a collection of the several decisions not rare, thinks that the following rule may result. If the charge be a crime, which according to the general ideas of people effects the reputation of the person charged, it being a crime also which, if true, would subject him to a fine, then the words shall be considered actionable in themselves. If the charge be not of crime, subject to the party to punishment by fine, the words are not actionable of themselves. In this the charge subject to a fine, yet if it be not such a charge according to the prevailing notions of mankind, had a tendency to injure the reputation of the man, the words are not actionable of themselves. There is a law of the city of New Haven, that if any one lands on a vessel from the vessel into the harbor, he shall be fined or off a sea captain, he secured it, yet that it were true the charge would subject him to a fine, it would not have been according to the common notions of people injure his reputation materially; such words therefore are not actionable.

This class of cases may however be included under the first decision.

II.

The other second class of cases general class of cases of words are actionable in themselves, are such as are calculated to injure a man in his trade or profession.
*So he is more a lawyer than the Devil*" 3 Wils. 57, Ser. 527. So "he will overthrow his client's cause" 3 B. 589 so "he cannot make a declaration" 1 Ser. 297.

Where one confidentially and by way of friendly warning to another said of a trader "to be a bankrupt soon" He is not actionable the special damage was laid and proved 3 P. 303, 3 P. 601.

So if the words were spoken between two members of the same church in the course of their religious discipline & without malice no action lies. Jacobson Hathaway. 3 John 180.
Private Wrongs

But the words must be such as would go immediaty to affect him in his trade; for every stain upon a man's moral character is calculated in a degree to affect him in his trade, perhaps remotely or in a circuitous manner.

Thus to say of a merchant, that he is a bankrupt, has tendency directly to affect him in his trade. — To charge a physician with want of skill in his profession is actionable, the same for a similar reason. To say of a lawyer, or any other agent, or attorney is actionable. Toray of a clergyman, that he was a knave, according to the old book, actionable. In law, to call a clergyman liar, has been held actionable.

III. Those words are actionable in themselves, which charge a man in office with principles inconsistent with it, or with inability to perform its duties — whether the office be one of dignity, trust or profit. Under this class, that species of scandal, or what is called scandalous defamatory is by the English books included. Of this we know nothing in Cor.

To say of a man holding an office, that he is not fit for it, is colloquium respecting his office, or him as an officer, is actionable. To say of a justice of the peace in a colloquium respecting his office, that he is "a Jack ass of a Justice" is actionable. But in such case it must be avered in the declaration, that the words were spoken...
respecting his official acts on duty, and must be approved or the
Plt. will fail.

Under this class, a distinction has been taken between
officer's merely personal, and those which are pecuniary. The distinc-
tion is not to be founded in principle.

IV. The last class of words upon which a recovery may be
had, are without proving damages, are those which may operate
to exclude a man from society, as to say of E. I. that he has
the leprosy, or the venereal disease, and an action was
brought in Con. against a man for saying of the Plt., that
he has the itch, but the suit did not secure a legal de-

amination.

In these cases of words actionable in themselves,
the Plt. need not, state to entitle himself to a recovery state
any special damages. But if special damages have accru-
ed, it is well to state them, in order to secure damages, for
unless they be stated in the declaration, the Plt. cannot go in
to the proof of them.

Words actionable in themselves, may be, and fre-
frequently are coupled with other words, which show that the
Plt. did not speak them in their mere legal sense. To say of a
man that he is a thief is actionable; but in order to show in
what sense they were spoken, or meant, to be taken, the whole
of the conversation must be taken together, from which it appears that the Deft. did not understand the expression in the legal sense. For his words seem, I, D. is a thief because he stole my trees; now as felony is not predicable of trees, the words appear not actionable. So, when Sally Stiles sued Tom Barker in slander for calling her a thief, it appeared on trial that she called Sally a thief because she had stolen his heart; from fellow! The suit failed in her action.

But the fact need not be stated in express terms; provided the idea be unequivocally conveyed, it will suffice. As if the Deft. say, 'The Deft. told me that I, D. stole it;' or as if in a significant manner the Deft. ask the witness if he had heard that I, D. stole it, — Be as if the Deft. set the witness to guess who stole, and I, D. name being mentioned, be tells the witness significant to be that he need not guess again. For to convey the idea by words would seem sufficient.

But it would seem that words were absolutely necessary to constitute the offence of personal slander, since when a man found out without speaking a truthful method of convincing all his neighbors that I, D. stole his the Deft.'s word is a suit in slander was brought, the suit failed. This was a conclusion, and not hence to be an enormous one — but on this principle it would seem that a decent man could not be guilty of personal slander.
Private Things.

The words spoken must import some degree of guilt; therefore to say to a man that he would steal, or is inclined to steal, is not actionable; for there are not charges of the commission of any grand fact, but merely an inclination which is not at law actionable.

However words spoken subjectively may be actionable; as if the Deft say "I left my saddle here at dark last night, it's passed by some brute, and this morning my saddle was gone — and you know that I D is a thieves dog." These words taken in their connection are actionable — as they were held to be actionable —

Words not actionable in themselves, by avowal or proof of special damage will support an action.

For if such words do not, except by distant implication affect the character moral character of the man, and be confined to special damage he shall recover. To call a merchant a bankrupt is actionable; but to call an individual not a merchant a bankrupt, which remotely but distinctly affects the moral character of the man, will be a ground of recovery provided special damage be proved. But in all such cases the special damage must be averred in the declaration, for it is the gist of the action.

A review of the preceding remarks with the authorities cited.

The authorities on the subject of slander are more numerous than on any other topic in the law.
Wives charging a woman with adultery, not actionable in
their place. Ewes & Wife vs. Gallippi & Johnson 12, 115—
No action will lie for charging a man with
being the father of an illegitimate child unless
the it be averred that the child has become cha-

10. Sab. 694.

C. J. 114, 12, 12—
Private Things.

At one period of time the governing principles have been what
by supposition to those which governed at an other. At one period
it had become a maxim, that all words should be taken in
severe sense. This was a very easy rule of construction whereby
words were tortured to convey some wrong meanings, that the
party might be subjected. At another period, the rule of construc-
tion was that the words should be taken in literal sense. The con-
squences resulting from this were most perni-
cious.

But the modern rule is, that the words connected with
the circumstances, shall be taken in such a sense, as that, in
which they would be most usually understood by people in gen-
eral, and those who heard them — and the intention of the speaker
is a governing rule. And the question whether the speaker intended
to fix the charge upon the defendant is the most material one.

This last rule without doubt is by far the most rational one, and is really well calculated to accomplish justice.

The law having been so often varied, it is easy to conceive
that the authorities must be or they are irreconcilable.

Restrictive as in the foregoing remarks, it may now be
laid down as a rule, that words charging the defendant with
such crime as is punishable are actionable. Whereas the rule laid down in
the books is, that such wrongs are actionable, or if true would
subject the first to corporal punishment.

The rule as restricted, would stand thus—words which if true, would subject a man to corporal punishment, and words which if true, would subject a man to a fine, being such words as according to the common mode of thinking, would derogate from, or impeach his morality— are actionable.

As it respects this first class of words, namely such as would support an action without proof of special damage, it may be remarked again that the charge which must be upon the party must be of a thing which is a certain and definite crime. Thus to call a man a rascal is not actionable without a proof good. The defamatory damage is because the charge is not of any definite thing—crime.

But where is the difference between calling a man a bad honest; calling him any other thing which imports not a crime in the person slandered? Relative to this part of the subject there has been much contention. We have apprehended the rule to be that where a man unnecessarily, wantonly, i.e., maliciously speaks of and names either a declaration in some degree of integrity or honesty or of monstrosity or any imputation in any degree to repay his debts, or to fulfill his contracts &c. where the person slandered suffer any particular damage (if the words are not actionable in themselves) then it will the words will remain
stain an action—As in the case here put of a bankrupt—pro
granting that there was no implication of want of integrity in the
person, yet as the expression implied an inability to discharge it comes
within the rule—

B. Hence to say of one that he is a liar, just
of itself actionable or that he is a corrupt man is. On the
ground that the law did not recognise adultery or forcible abductive;
to charge one therefore of the commission of either was not action
able—albeit the spiritual court punish the Practice for by pun
ishment in mens temporal punishment. But there is a custom
of the city of London that common prostitute shall be cried
round the city. In London therefore to call a woman a prostitute
is of itself actionable—

So also it is in Law. For it is a rule of the common law that
any case of words which were of themselves actionable on the ground
of the commission of the facts being punishable are no longer action
able when the fact is no longer considered as a crime by the law.
—This rule a common in time, therefore since Adultery in
Law is punishable, it follows that a malicious and false charge
of it is actionable.

It has been remarked that when one accuses another
of a slandering thing, his whole conversation, and the temper of
mind his mind at the time must be reported to—for they may
...sufficient the particular observation made upon it that it will in large
import to be the charge of such a crime or is punishable.

Such words or have a tendency in a direct manner to
effect a man in his trade are actionable, in themselves. Thus, the
jury of a lawyer "he is a knave" is actionable for it will prevent them
from trusting him with their pecuniary concerns, which will
be to take from the lawyer his means of livelihood - "he'll
your peace for you" meaning to convey the idea that he has
charged extravagant fees and such an impression likewise connect
ed likewise with an illusion to a want of honesty perhaps you
directly to take away his business - To say also of a lawyer that
he is a quack lawyer which plainly implies in fullest that he
did not understand his business very well, has been held
often to be actionable, at this a previous decision had determin
ed it not to be actionable - To say of a physician that he
is a quack has been held actionable - To say of a clergyman
that he preaches heretical doctrines, has been held actionable
in Massachusetts. But a difficulty arise (for the latter
justified by binding it to be true) had to ascertain what being
was. In this case Mr. Rawe recommended to the court that a com
mission of clergymen be called of the same sect in religion with
the parish in which the defendant is located, and of the same to which
the defendant pretended to belong, and be requested to form an
Private Wrongs.

determine whether the doctrine of whether the doctrine preached by the
were consistent with the principles professed by the sect,
and of course whether they are theoretical. This method was pursued
and the doctrine to be established. This being accomplished the
case was determined in favor of the 3d.

3d. This class of cases has been sufficiently treated at
These. It may be added that a charge of corruption or want of
integrity is not according to the general rule actionable—but
when spoken of a man in office, in a colloquy respecting him
his office, or him on his office, they are so. But the words must
directly apply to him as an officer, or that he is a prejudiced or corrupt
judge—so it must appear from the conversation that the words
were applied to him as his official capacity. Thus distinguishing
that, as a judge, he said he was a blood sucker—but
not appear proper to him as a judge (which might raise the
idea that he was a cruel, tyrannical & corrupt judge,) it was not held
actionable—for it applied to him only as a ceremonious man.

A distinction has been taken in a case in Rhode, that when
words are used to a person in an office of profit, and when in an
office of credit only—Ex. the officer of profit words, which impugne either
what of understanding, of ability or integrity are actionable.
But in those of credit, words which impugne what of ability only
not actionable; as to say of a justice of the peace, "he is an ass."
in a truth headed judge is not actionable and the reason given was that a man cannot help his want of ability, as he may by want of honesty and that these words import no corruption or dishonesty, but Mr. Revere does not think that this distinction would at present, forever obtain. The case in Bank, ought to have been decided as it was but not because of the proceeding distinction. The words used did not seem to by the case to have been applied to the Dft. in his official situation, it is true the word "justice" was mentioned as descriptive therefore to say of a justice I never got any justice from him but nothing but injustice was held actionable and yet according to the above distinction it probably would not be so considered.

"A last class of words actionable in themselves, are such as tend to exclude a man from society, or charge him with an infectious disease as the leprosy or the plague."

But as to this class the construction is somewhat strict for the words must be in the present tense and import that the Dft. had the disorder at the time of speaking the words. However if the Dft. had used the last tense must it be a cloak to avoid the law, Mr. Revere supposes it would not avail him.

It is on all hands agreed that passion will not justify a slanderous assertion. A proposition is to be found in the books that oppos.
heat of passion may be given in evidence, and will mitigate damages go in
mitigation of damages. Such matter may be set up in mitigation
of the Deft. himself begin the dispute, or in the wrong and without
much provocation amount to himself up into a passion. Then it will rather go in aggravation, than in mitigation of damage.
But if on the other hand the Deft. highly abused the Deft. and pro-
precio'd him to say some intemperate things, then it will go in
mitigation.

The idea has been held up, and generally dwelt upon,
in arguments, that there can be no great crimincality in repeat-
ing a story which the Deft. had heard from others; but this in
consequent idea altogether. Because if a man will wantonly
speak with an other's character, to such a degree as to report
a vile slanderous story above to him, she will show that base
unanimous spirit which is in the gift of this action. City Justice.

It has been strongly contended, that when A. tells B.
that C. him (i.e. A) that D. was a thief, B. might by knowing
this protect himself, because it would be proving the
truth of his assertions. But this it was decided should be no justification; but might under particular circum-
estances go in mitigation.

And indeed the circumstances might have been
so operated as a full excuse and rebut the presumption of
private things— as if the assertion be accompanied with what appears to be fifty convincing proof that the story was true, in such case there can be no harm in repeating it—

So if the words were spoken out of a motive of kindness, and without an intention to defame—privately perhaps, and in confidence, the action is not repugnant— As when a servant brought an action against her former mistress, for saying to a person to a person who came to examine her character that she was very quiet and religious, and often lay out of her own bed, but that she was a clean girl and did her work well. The editor knew that she was not in that sense prevented from getting a place. Yet it is said that matrice was the gist of the action for slander—it does not appear here. This was a confidential declaration and ought not to have been told.

If the words were used in the course of legal proceedings the general rule is, no action will lie—but in such case the words may not be used but as tending to prove some point important in the case—for if it were the case, and they be said in that place merely as a shelter from the law, then the speaker shall be liable for slander—the intention then makes it and perty to lay such a charge as the latter would be the leading point.
giving crime is not sufficient to support an action.

The charge must not only be a particular definite crime, committed, but it must also be definitively charged, against a particular one. Thus, if three persons be present, and it is said of one of them, that he had it in his power to commit the crime, each of the three according to the rule could sue the other, and there can be no joint action, even if the crime were a punishable one, against whom could the prosecution be commenced. Yet Mr. Reeve apprehended that if by averment it could be made out for whom the charge was made, such person ought to maintain his suit, as if the debt had been such things of the Fifth before, or the other had been a personal guaranty between them.

To which Mr. T. said that his son or his wife, his brother (and the right person had been pretty well foregathered, as if the three may by averment show what was meant that himself was intended.

If two persons say the same words of another yet a joint action will not be.

Where the expression is the Boyer (the name of a family) one trivial it is not actionable.

If the intention to charge a particular crime is shown in an appendage, it will suffice - as if it be done by way of question "Have you heard that B. S. state As. house E?"
Private Wrongs

So if the idea be conveyed by way of course this is a
cribment to say 'I quest' or 'I stole.

So where? I can. I know what I am, and I know what I do,
and know that. I mean that. And this expression was held
actionable because the idea was clearly conveyed that I wrote.

So where words are used adjectively - they are least

Of the Readings in Hander

Great strictness formerly prevailed in regard to the
readings in their action - particularly in regard to the declara-
tion. The declaration would fail, for instance, if the precise
words alleged in it were not exactly supported by the evidence.

But of latter years, if the substance be stated, and what
is stated be substantially proved by the evidence, the not in
the very words, yet the declaration is good.

It is usual in the first place, for the Peti. to state
his character to have been in maudate in every respect, that he
was always of good fame & name so particularly mentioning
the frauds even from the abominable vice of stealing (or what
ever the offense may be) Then stating that, the Deponent, having
his good character to, these allegations are not perhaps necessary,
In declaring in slander it is generally and almost universally the practice to allege that the words were spoken "falsely and maliciously." This is said however that it is not necessary to allege if the words are actionable in themselves for the law implies malice in every case or to the principle. Ex. Case of 

When special damage is of the gist of the action e.g.,

Case of Malaga not enough to aver a general loss of

which the loss is by means of the

1 Ch. 1, 2. Jones 118. cit. 2 Co. 499
for they are not proved — however they are usually made. But it
is essential next to state the words spoken and that they were
safely and maliciously spoken — the place and time are not
to be stated and that that they were said in the hearing and
presence of A. B. C. 

When the word maliciously is left out, the declara-
tion has been held good after verdict — But the ground was
that the word “safely” implied the malicious — If such a mean-
ing could be given, it would seem that the declaration was
good on demurrer — However it was in absolutely necessary that
either this construction should be given or that both of these
words should be inserted in the declaration for they are the gist of
the action — 1 Com 195.

It is also necessary that either the words “in
the hearing of A. B. C. or “in the presence of A. B. C.” should be
inserted but it is common to insert both — if it is to be
remarked, that the decisions that either might be left out,
were all bad after verdict — the terms “safely and publicly
should be inserted —

It is necessary also to note that the words were for
then of the “Pst.” But sometimes the declaration may be good
without a direct averment, but by inference as if be said of B,
“you did steal my C.” B. is repeating this in his declaration as

At law, how it is incumbent for the party to give the truth of the words or any other justification in evidence under the general issue. Formly decided that might be for the purpose of mitigating damages the court set out that they cannot be gone into for any purpose—Exp. X 518.

4 Co. 16, 5 Co. 125, Stow 1200 Doug. 323. P.R. 847.

De. Vide Boot vs Tracey, 10 Johnson 416.

Court, equally divided.

Exp. D. The slandering of one's title consists of such words on heir or tender to his disinheritance. Need not be actual damage to owner, to sustain an action. The remote or probable damage sufficient. Exp. say of one heir, "he is illegitimate." See general opinion of Vent contra who says the better opinion is that the owner must assign special damage. 2 John 118 1 Conn. 2 464.
immediately introduce the immende big "meaning the Pfit. be."

It is usual next to state the loss of friends or be, but this cannot be essentially necessary, as it is not such a fact as may be proved.

If the slander were spoken of a man in office, the suit must state in his declaration, that the was in a certain office that he held &c., and that the words were spoken in a colloquium or receiving his office, or of his official standing.

In case the words should be spoken to apply by way of description, as if T. T. says to P. P., "your son is a thief," then the Pfit. must allege that he was the son of P. P., which the Pfit. must.

But where the description is by way of addition or the addition of question of or C & T, &c. the Pfit. need not allege that he is etc.

If the words spoken have relation to the existence of an other fact — as if the oppression were, "I. is a great a thief as any in Eng." the rule requires an allegation that there are thieves in Eng. In this case the principle seems to be extended quite unnecessarly far. There may exist such cases however where the principle may properly apply — as where the words were, "there has not been a robbery in the town of L. for three weeks but which P. P. (the Pfit.) has had a hand in." For in this case the
private things

if 1st may perhaps be compelled to prove there was one or more
but he is never compelled to adduce proof in support of
his allegation, that there are thieves in eng-

again if the words spoken are, 1. poisoned B. the 2nd
must aver and prove that B. is dead, for the expression
has relation to the fact of B's death, and that of course the 2nd
must aver the death of B. but if the expression were that I killed
B. perhaps the rule might be some be supposed to relate to
the fact of B's death and that of course the 2nd must aver
the death of B. but MC roe Scan that such an aver-
ment is wholly unnecessary; for whether B be dead or not
be apprehended to be immaterial, the liability of the deft.
depends more upon the intention & use of the conversation.
This rule took its rise when words were taken favorably
for the deft. in meliorism

where words not acting in themselves, are said in conjunc-
tion with those that are actionable in themselves, as if I call B.
а "hearsay 1 liar & a thief" it is to be observed that when all are
connected & stated in one count, the declaration will be good
after verdict found — for the court will presume that the jury
found their verdict on such as were actionable.

but when words not actionable in themselves (not
being no special damage alleged to have been suffered in con-
Private Things

...nuance of such words) are included in one count, and the words actionable in themselves in an other, the judgment will be rested after verdict; for how can the Court determine whether the jury found their verdict on the words Congress and lies or on the word thief. It is not near the propriety of this distinction. It is hardly susceptible but that the jury will be sufficiently informed by the counsel of the court in the course of the trial which of the words are actionable in themselves, and which not. Let the Def. assume to that count in the declaration which includes the word actionable, and plea the general issue on anything else as to the residue. And if this be not done why not in this as in the former case, presume that the jury found their verdict upon that count which includes the actionable words?

It is a rule, that words actionable in themselves, may be proved on the trial, which are not mentioned in the declaration. But for what purpose? If the words be actionable in themselves, they cannot be introduced to increase the damages, since they may be the foundation of a separate foundation action. But such words are introduced merely for the purpose of proving the most essential allegation in the declaration, viz. the matter. For as the Def. is suffered by extraneous matters to rebut the presumption that the words spoken were maliciously spoken, so may the Plt. to prove this allegation...
Per Kent printed defamation which is regarded in law as the most injurious & aggravated species of slander because it has a wider circulation makes a deeper impression and has a more permanent existence. Pilkington vs. Chatham 2 Johnson 94. Vox emissa votat - litera scripta manet.
but for this purpose only, introduce other words actionable in them

selves.

When the deft means to rely on the truth of the words
spoken, the Ing. rule is always to plead it specially by way
of justification. In law, it may be given in evidence under the
general issue.

Slander, i.e. that is past slander is not by the law
a crime, i.e. it is not punishable criminally or by a civil
action. In law, it has been a crime.

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Written slander is governed by much the same rule
as past slander, considered in a civil point of view.

But when the slander is written, two suits arise out
of it — For as it has in a great degree a tendency to promote
discord and breach of the peace, to excite hatred, dues
or the law had thought it fit that the offense should
be publicly punished.

Paul. Slander, it is true, has the same effect but it is
in a less degree and is not calculated to make so lasting an impression,
it was not thought necessary to make it a public crime.

Whatever would be slander if uttered by hand, may be said...
Hutchins vs. Rothco 1900—held that the Deft. may give in evidence a former publication by Deft., to which the libel was an answer—s
plus the subject matter creation intent to
mitigate of damages—

2° Per Kent C.J. that sending a sealed letter from one party to another is not actionable. He adds that the letter must be presumed to have been sealed until the contrary is shown—Sevington vs. Rogers 1 Coines R.
533.
be slander if written printed, or represented by any improper picture.

Many other things or expressions will amount to slander
by way of libelling, which would not if merely spoken.

For the rule is that every thing which has a tendency to
counteract or ridicule upon one, or which tends to prevent his
being from associating with him, is sufficient to support a private
action equally as well as if the slander had been by word.

By writing therefore, to call a man aascal wittot that be no such
words are actionable without alledgeing special damages. The case
mentioned in Wilson is a leading case, and goes to establish this principle.

But authorities previous to the case in Wilson
recognize different principles.

It was formerly doubted whether the truth could be
given in evidence in an action founded on a written or printed
slander. It appears now settled that it may as in other civil suits
but cannot on criminal prosecution.

Sexatious Suits.

A man by bringing vexatious suits against another
subject to himself to an action to recover damages.

But this cause is not to be ranked with those that
malevolently cause the Priti to be prosecuted criminally.
In the latter case, the loss of reputation, and personal danger, of punishment, are the principal rules of damages. Whereas in an action brought to recover for having been put to expense, &c., by a wrongful suit, that expense, whatever it can be proved to be, is the sole rule of damages.

But in order to entitle the Pll. to recover for this cause, there must be much more in the case than that the Drft. brought his suit against the Pll. and failed.

The following are three sets of cases in which the action may be brought:

I. Where the Drft. brought his suit before a jurisdiction not at all competent to try the case. In such an event, whatever might have been the motives of the Drft. in bringing the suit, the Pll. shall recover of him all the actual expense which he has been put to, as well as for his loss of time in being compelled to attend upon such suit. The question is not here whether whether or not the Drft. brought his suit to vex the Pll.; but whatever might have been his object, cost and damages were incurred by the Pll., and he in return has a right to ample damages.

II. Where a man brings a suit against D. S. knowing perfectly well that he has no right or claim whatever to recover against him merely to plague and vex the D. It S. he (the D. S.) shall recover in this suit.
In this close of cases of..., the very gift of the action is that in the former suit the object of the debt was to vex and spite the Deb. As when a negligent man had been much offended with B, a poor man, and brought suit against him to a very large amount, but confessed that B owed him nothing and that it was merely to vex him.

But it may also be brought thirdly, that the debt had a demand a night of action, and although the suit were brought in the proper court, yet when the Deb had conducted his suit in an improper manner sore maliciously to vex and plague the Deb, as if B, from spite perhaps, sue B, a poor man who owes him $50 and brings his action for $2000 to deprive Deb of procuring bail — or for tripling rent, the Deb distrained all the Deb's personal property, thus depriving him of the power to pleading.

So in cases of the following description, viz. where two merchants both very rich were in partnership, separated and became the most bitter enemies — while one of them was about to ship buying goods, B, the other took his note against him for $500 and went to N.York and caused him to be ejected in the street. This was in order to alarm B's creditors, and bring them upon him, for A was immensely rich at home, but happened to owe largely for goods in N.York. The creditors were alarmed, and were about to procure the most rigid measures, but accidentally discovered that it was all a matter of spite in B. — A afterwards on
Private Wrongs

This return to convinced B. for a vexatious suit — Mr. Neal was of opinion that he ought to have moved but a divided court gave judgment for B. the Deft. Remittably on the ground of pique not wishing to make any rule reflecting the power to go out of the state, since both the parties living in the same state — however this one shows the principle — for the law shall not be made a cloak to cover malius —

This suit cannot be maintained, until the suit claimed to be vexatious has been ended one way or other — either by judgment or retrayet or discontinuance or abatement &c.

So is the action maintainable, except some damages for the return or pecuniary damage has been sustained in consequence of such suit — But for mere trouble and vexation of mind, the action cannot be brought, and sustained —

However if there be any pecuniary damage, this may and trouble will undoubtedly enhance the damages given by the jury, for they are generally in such cases doubled in a tolerable degree.

In sum, the Deft. recover in tractate damages if he maintain the suit — the Deft. also in such case is subjected to a fine —

Malicious Prosecutions

In an action upon the case for a malicious prosecution, the
After prevail it is usual to give very large damages—Not only because
the reparation and the existence of the suhmer may lie at stake,
but because of the bare incidence of the position manifest in the per-
son who procures the prosecution—

The actual expense incurred therefore is not at all the
estimation of damages in the suit—But the particular expense in
sued maybe shown, and will doubtless aggravate them, according to the nature of the case and its circumstances, the jury
bring in as they please—

This prosecution must have been maliciously proc-
sued, and with no probable cause to think a conviction
more—

To assert the prosecution may be malicious—yet if
there existed a probable cause of conviction the action will
not lie—

By probable cause of conviction is meant such a fact
or such a concurrence of circumstances, so that a candid and
innocent man, intent on the good of the public, would be
think that there were such grounds for suspicion at least,
or that he ought to be tried—

It is to be found in the books, that the must have
been a felony committed, (if the case were expecting felony)
or there would not be probable cause—
Private Things

Mr. Reeve thinks that, by far the better opinion is, on this subject, that there need not have been a felony committed, and such has been the decision of the superior court in Ion.

But without making the action, Mr. Reeve thinks most sustainable, but that it is of itself the true malice, particularly of the such malice as the word in its common sense imports, although the no commission of some felony. But perhaps there are doubtful points—

If the Grand Jury had found a bill against the person, the theft proceeded to be prosecuted, then the theft is saved the trouble of proving that there was probable cause. But it then remains for the Plaintiff to make out his malice—

The same also would be the case of a justice other examining officer, conclude there was probable cause and bind over or act as they should—

The only ground there upon, which the Plaintiff has a claim of certainty of gaining, is to prove the malice of the Defendant, and that the Defendant knew that there was no probable cause—

Assault—

An assault is an attempt to offer, with force and violence to do a corporal hurt to another—
It is distinguishable from a battery in that an assault is not the attempt, whereas a battery is the actual commission of hurt.

In an action of trespass to et arms, damage is given, not only for the fear and interruption of business, which it would cause a man, but great consideration will be had for the assault offered.

It is very seldom indeed, that an action of trespass is brought merely for an assault, without a battery, but it may be.

It has been a question whether mere words without a menacing posture or action, would amount to the idea of an assault—

The elementary writers generally agree that they cannot. Mr. Reeve apprehends that no words will entitle to this action i.e., an action for an assault without, attended with an actual attempt or offer to do such corporal hurt—

But Mr. Reeve also thinks that mere words attended with a concurrence of circumstances may give a right to some kind of action as of trespass or the case—

Blair says that the assault must be accompanied with such words and actions, as would put in fear the use of ordinary strength and remorse. Mr. Reeve does not take this rule for that, which would be an interruption in the business of one man, and would occasion in him no disagreeable feelings would be a more serious misfortune to one who did not possess ordinary firmness.
Private Things

What would be actionable therefore in favor of one man, would not
ought not to be actionable in favor of another.

But when the action would be supportable and when not,
would depend upon the relative situation of the parties and
shape their peculiar situation at the time.

We have therefore apprehend that they are on the case,
may under certain circumstances lie for such words— as a man
of ordinary strength of nerves would not mind.

Battery

Battery is the actual exertion of violence, upon the person of an
other. The term however legally includes every injury done to the person of
a man, in an angry, menacing, or rude or resistant or wanton manner.

Where the injury is made accidental, even the action is main
sizable, provided that the fault had been quite of any negligence or
even about unlawful business.

To constitute a battery therefore, there must have been:
in an unlawful act, or an act whether lawful or unlawful, un-
fairly or negligently conducted.

If the business be lawful, yet it must have been
inserted with ordinary care. It is not required that the act be
done with all possible care, but such as men of ordinary carefulness
would be. To this point see Bramwell and criminal law.

In order to constitute the liability, it is not necessary that
the damage be strictly immediate—For if A. strike B. horse
with C. a run over on B. thrown, the action will equally well lie.
The law on this subject has been involved in much obscurity.

But Mr. Denman is of opinion that it a now settled by the celebrated
decision called the Splitt Case—If we were to be governed by
strict logical reasoning, this might appear perhaps, wrongly,
but as no inconvenience can result from this decision it is well it should be settled one way or the other.

It need not therefore be a blow with the fist or any instrument. For if men or boys he at play, as wrestling, snowballing,
or he and one of them throw anything as a snowball in a wanton
manner, and hit another person as he passes, such person may in
a civil suit recover damages for the injury. Or if one spit in
another’s face or throws water be this equally a battery for which
an action may be supported—So if one whip a horse whereby
any injury accrues to the rider, the action will lie, provided
it be done without provocation or solicitation in the rider. As
if it be done merely to see how the horse would take it to
see him run or jump be.

The action with lie when the injury affected, or the
act done is against the inclination or will of the person doing.
Private Things

it: for this of itself does not excuse—

But where no kind of blame whatever can be attached to the doing, the action cannot be supported. The commission of the act must therefore have been in pursuit of some lawful business, and must not have been guilty in any degree of negligence, i.e. that in he must have preserved lawful business with all that reasonable caution which a prudent man would have used. Be where a soldier was performing his exercise and accidentally hurt a man, he was not held liable because he had done it with reasonable caution. So where one man seeing another lie drunk in the street and out of prime philanthropy (not the selling medicine) and to conceal his shame was putting him into a house; and he accidentally got hurt, and then sued the person assisting him, the action would not lie.

So where one was riding a horse, which was not very nervous but ungovernable, but which being suddenly frightened ran away with the rider and broke an other man’s leg; the rider was held not to be liable.

But it has been attempted to show a distinction between a horse wild, and wholly ungovernable; and those which have been broken to service. Some distinction might as well be used in these cases; but if common justice
Private Things

be said, it may, however, be conceded that the one who was responsible for the injury, ought not to be excused if he will not be made to be subject to a penalty such as being driven up horses to be sold, pulled to break them in their own field, and prevented from riding them in the street.

But in no case, if there be any negligence on the part of the defendant, or if he be not in pursuit of lawful and lawful business, the defendant must conduct such lawful business with great caution, lest the damage shall be liable to the thing happen against his will.

But in the case of recreation, wrestling, penning with fault, if the parties mutually agree to it, a due injury occurs, no action will lie, except perhaps there should be found praying.

It is a custom in London, when a master officer is chosen to do him honour, i.e., face him one by one, and fire down from horse to him—our own chosen near Whitefield and in giving him honoursmen, yellow fired so near him as to make his nails broke. He was never seen him than the rest, and appeared to fire no sooner—no wadding or powder hit the officer, and the soldier was not intended to take the shot. But, neither was there the least appearance of fire or smoke, and yet the action brought by the officer against him was sustained by a divided court and against Mr. Reeve's decision on the ground that the officer, in trying to honour his officers at the more than the rest, must have loaded his gun impossibly heavy, (for as to this, there was no positive proof— and that therefore...
The practice was perhaps authorized, by custom, it had not been followed with due caution.

It is laid down in the law books that where two people agree to pursuant and fight, and one sues the other for a hurt given him, the agreement will be of no avail to the plaintiff, such agreement & fighting being unlawful — but Mr. B. has questioned very much the propriety of this principle. On a criminal prosecution there is no question of its correctness, the agreement would be of no avail. But in a civil suit, the injury is purposely done, yet not with what an ill grace. One of the parties come into court and claim damages for the breach of that law, which by express stipulation he agreed to break. Mr. B. thinks it more agreeable to law, to policy, and to reason, that the plaintiff should not recover.

There are many cases wherein a jury upon considering the circumstances do not think that in justice the plaintiff should recover anything at all, and that he had been served right enough. (as when for violent abuse to the wife, the plaintiff was entitled upon a bastard but having received an injury which they find to have been committed, the law obliges them to give some damages as a remedy. But Mr. B. thinks that the jury in such case ought not be compelled to give anything — for if they may whittle it down in this manner, to amount in effect to no compensation, why give nominal damages?
But it is said that the jury ought to give some account of the flagrant breach of the law.

This principle is too often introduced to aggravate the same case; in a civil suit, but it is essentially wrong. If a man has been guilty of an open breach upon the violation of the law, he is not punished for it criminally, or liable to be so punished. If the jury give higher and vindictive damages, any damages at all in the case first, the court inevitably gets punished twice for the same offence—that than which nothing is more contrary to the spirit of the law.

However, there may be some cases wherein the law not having provided for its own vindication it may be proper to introduce the principle, as in the case of slander in Eng—

False Imprisonment

A Battery includes within it an assault of course—A false imprisonment includes within it both a Battery and an assault.

Every restraint of one's power of motion, whether in a prison, in the high way, or anywhere else, is an imprisonment, and if this restraint be without authority, or with authority unlawfully exercised or executed, it is false imprisonment, and actionable.
Private Things

This action may therefore be brought against a justice of the peace, and maliciously and wantonly grant a warrant to assist the plaintiff to serve a man without any information and no crime having been committed — but in such a case bound by the warrant, the imprisonment shall be considered as proceeding from the justice directly. But if an information be laid, an action on the case is the proper remedy.

This action is not usually brought except against sheriff's, where there has been an arrest without probable authority or by authority improperly executed. The action of assault and battery (throwing) (prostituted for where one beats another and puts him down) is in false imprisonment.

If the arrest be an illegal one, the officer may or may not be liable as the case may be.

On this subject, the courts in common and hence there, the U.S. courts have settled an important doctrine, for in the case of books there is a diversity of decisions which make the subject confused.

The sheriff, or other officer in his situation is obliged by the law and is presumed to be well acquainted with the laws of the land. When process is delivered to be served the officer is to examine it, and to compare the law with it, and if on the face of it it appears good, it is enough that he has to execute it, and that...
be illegal, if such illegality proceed from something below, he shall not be made liable.

But if from the face of the process, it appears not to have been properly issued or to have some other patent defect, then the sheriff becomes liable if he executers.

Thus it is a law in some that a justice shall not have cognizance over a particular species of petition or claim, farther than to the extent of $40 not being limited as to claims of an other sort. Now if a justice directs a copy discribed to the sheriff, for a sum to exceed the sum of $40 — the cause of the suit appearing on the face of the suit, to be that wherein the justice is concerned in his jurisdiction, to the sum of $40, and the sheriff, in his suit with or without attaching the defendant's body, then the sheriff is liable for an action of battery or false imprisonment, because he conforms the law with what appears upon the face of the suit. If, however, the justice has no jurisdiction, and of course, that the process is illegal.

But otherwise if the suit were a causa statuta: res judicata, a suit of execution, for that it were for $50 yet it not appear from the face of the instrument that the judgment was rendered on a cause of which the justice had jurisdiction, nor shall the sheriff at any time be compelled to examine the record to ascertain the fact.
Much confusion has on this subject originated from the famous Marshalsea case. The case, not contradicted, is not now considered as the House of Commons to the law. The case cited to support it, and without doubt, good law but certainly they did not establish the point for which they are established cited. As where a sheriff executes a warrant for treason or murder, which issued from the Common Bench, he was held in debt, or must he ought to have been, for by conferring the law of the land with the writ, he would have found the writ void, the Common Bench not having cognizance of criminal cases.

If, from a comparison of the law on the two points, what ever it be, and if such process appear on the face of it to be good, the sheriff must execute it — and at this in fact, the sheriff knew in fact, that in fact the court had no authority to go this not of speaking from a comparison of the law with the face of the proceedings, the officer is not liable and must not execute the process. Thus, however, was but a law, decision, but from the reason of the thing it must concern it to be the thing, law — for if the sheriff, from private notions or private knowledge, could not execute the process or not — a wide door would be opened for corruption.

And in the Eng. law, the Marshalsea case notwithstanding
Illegal Arrests by Sheriffs

It appears by the Common Law that all Judicial acts on Sunday were void.

But this rule did not by the Common Law extend to minor

Arrests: for all service of process on that day was good.

The early however statutes were made making such arrests
The bail given on which the principal is taken, gives no authority of itself, but in many cases, if no right to take and no decree supersede written to the bail may preserve the principal out of the state.

So also a process for contempt issuing from Chancery be served on Sunday. This rule proceeds upon the supposition that the person is in the custody of the court. It is however stretching the principal a great way.

1 Dec. 75.
mod. 95.
made on persons while attending upon public worship on Sunday. And at

Made on persons while attending upon public worship on Sunday. And at

length the stat. 2d E. 2d, enacted that all service on Sunda was pro-

process on Sunday except in cases of felony or breach of the peace, shall be void to all intents and purposes. To arrest a person therefore in a civil suit on Sunday would be false imprisonment—But in criminal cases the Deft. may be arrested on Sunday. So bail on a bail price may be given on Sunday, but this is not the securing of process, for the principal is supposed in the custody of the

Bail—(2)

Out of this statute (2d E. 2d) which has made the foregoing provision and out of this provision has grown a question of much importance—but which the it must frequently have arisen not more have received a judicial decision—Suppose A. be arrested in a civil suit on Sunday and forcibly detained until Monday and then served with another process. On this question there is a direct

site of opinion—some maintain that the first arrest is valid—others hold to the contrary opinion, and the latter opinion is the

Hence—the principle has been decided both ways. In some cases, the
court held that in such cases the second arrest would be good. It
is an illegal act for a sheriff in a civil suit to break open an outer
door to serve process, and if he do he will at the same time subj
himself to an action tho' at the same time the service would be good. 

This decision applies in principle strictly to the case under contemplation — the detention on Sunday is an illegal act — the service being void, and if this decision be law, the arrest on Monday is valid. But Mr. Reese apprehends that the law has under gone an alteration, which is fully proved in the case of Lee vs. Perez. This case did not necessarily decide the point, but the Judges thought the case went upon the supposition that such service as the Officers enabled to make in consequence of an illegal act should be utterly void.

But Mr. Reese thinks it a perversion of reason, justice and policy for a court to suffer any good to arise to a perversion from his breach of the voluntary laws of society when it can be avoided for it is holding up the strongest inducements for their breach. There are cases, however, in which it would not be proper to impose this doctrine on principle. As when A. wrongfully takes B's horse — B seeing him ride him off, forbids it and demands the horse and upon A's refusal to deliver him, strikes him of with a club. Now the law in such case permits B. to retake his horse peacefully but forbids such mere force — but this B is very properly intitled to action for the assault, yet it would be improper to conclude him to retake it to A. the horse. In cases of forcible entry and detention, however even this is done,
Of Justifying Battery or False Imprisonment.

Assault, Battery, or False Imprisonment may be justified—

These being cases where it both allowed and required—

II. As where a person is about to do any mischief it is proper that he should be arrested, or confined; and even if upon that it should appear to the courts that the person was not about to go do the mischief; yet if from circumstances it appear that a person of ordinary sense would probably apprehend mischief, the victim's consent would be justified—

Some cases of the arrest of persons supposed guilty of having committed some crime—If the person arrested should prove guiltless the arrest would or would not be justifiable or the circumstances of the case might be—

A warrant good on the face of it against A. will always justify the sheriff for an assault and taking and imprisoning A.

But it may also justify a warrant beating and wounding—If therefore the A. in his suit states merely the battery of taking and detention, the officer may plead his warrant and it will be sufficient.

But if the A. not only states the battery but continue
complaints of a grievances wounded the officer must give his warrant and also that the mount could not get away or some other thing which will show the necessity in the sheriff to proceed to the extremity he did to do it in the duty of the sheriff to take the man and at all events to keep him — the warrant of itself justify nothing but the taking and does not justify violent beating or ill usage — But if he resist the sheriff must proceed to use forcible means and is justified in proceeding to the last extremity rather than suffer him to go. Nor will the honours of the laws allow of any turbulence or refractoriness in the prisoner.

II.

Self-assault seems to be a common justification. But this never shall be a justification except for mere self-defence; it never shall he a cloak for the gratification of any evil passion or revenge to do or allow the law courts to the man to suffer the weakness of human nature it gives no quarter to the vices.

Here however it is extremely difficult to draw a line. When a person is attacked he must defend himself — but if one be attacked and know his adversary to what extent he is allowed to treat him cannot be determined. He ought not when he has been in his power to be compelled to let him go immediately perhaps, for if he get up he may immediately fall on him again, and kill him. Nor yet is he allowed to give one unnecessary stroke, for it would be extremeargs revenge which
would actuate him — But he is allowed to beat him to such a degree as to incapacitate him from doing further harm injury — This
alone is a matter of judgment in the person assaulted, and to be treated and judged of by the jury from the circumstances.

Then as mother son or wife master father or servant, he would be so composed to the same extrication or if he were himself at

stuck

III.

A battery may be justified by a deponent manner in for

uit for entering the Deft's house etc.

And it is a sufficient justification, provided that the
Deft acted reasonably that the battery be were in defence of
his goods or house — But if the Deft bad once got possession
safeguard of personal goods, he is not allowed to beat and use act
such force to get possession of them again

Many things may be offered in mitigation of damages
in this action — It is frequently said down that the Deft being
in a passion would go in mitigation — This is not strictly true;
a man being in a passion will not of itself be a cause for con

sternating damages, connected however with certain circumst
ers it is — for if the Deft were highly excited or received strong
provocation is always considered a good cause for lessening damage

It is often a sufficient justification that the Deft, in the
same fault or servant of the Deft —
Private Things.

Here also then is required a conscientious exercise of the judgment certain circumstances; this will not be a sufficient justification. The material point in such a case is the motive; for if there were motives it will not excuse or justify. But the defendant is placed in a judicial capacity, what one reasonable man might consider a reasonable motive an other reasonable man would think was too severe. Therefore if the defendant, acting conscientiously and governed himself by what he must from the circumstances, were to judge to have thought was sufficient and right he will not in general be found guilty.

Maggren is but an aggravated batter of threatening some one or more of such members as are absent in fight.

In certain cases of battery the law counts have been to enact damages given in the case. The rule has never been adopted in England and as this seems not proper to the province of the Court the practice has become in England almost obsolete.

If a recovery is made in trespass riot arms for battery, false imprisonment, the recovery will forever after be a subsequent action for the same cause. The rule is often exemplified by the case of a man recovering damages in this action for a battery, but after suit brought the wound received terminated in the loss of his leg a suit was commenced for this.
subsequent injury but the action could not be sustained:

Where a number of persons having been joint trespassers are joined in the suit the damages cannot be severally apportioned. And if the suit be commenced against one only still it will be sufficient that to an action brought against any or all of the others. For where the action is against one only damages are given commensurate with the whole injury.

But if a number be sued, they may plead differently if one plead assault and battery and another some other justificatory notion and a third the general issue. There must of course be three trials, different trials and trials at different times if one joint issue is tried by the jury and on other on demurrer to the court. But the three different persons and different trials get execution goes out only for one sum in damage. The execution goes out against both, if the first prevail against both for that sum which was first awarded. So the second cannot recover such damages only as were first given up till the plaintiff are liable to him for that one sum and he may cause his execution to be seized upon anyone or all of them as he chooses. Thus A. sues B. & C. in trespass, suit annex assault battery & B. demurrer to the declaration. C. pleads

The general issue C. is tried first and judgment given for $500—afterwards B. fails in his demurrer and judgment goes for the same.
sum ($300) in favor of A, execution then goes out against both for the same sum of $300, and may be levied on A or B, or both, but only one can be recovered —

The rule would be the same if B had pleaded non assumpsit or any other good plea and C had pleaded a different plea or the general issue, or had made default; but in none these cases can the Pmt. cause execution to be levied except for the one sum if the cause however he may compound B to pay $400, and C $400.

If two, B & C. be guilty of telling and they both begin an action for it and they both give in the same plea: the jury sometimes thought proper to render and apportion the damages between them. They may bring in therefore that B $300, and C $40.

In such case the verdict is bad, if B. elect to take it as bad and set it aside, but the judge is bound by it if the Pmt. chooses to treat it as good. But in such case the execution can go out for only one of these sums. A may therefore take out execution for $300, and since it has a right to look to both or either for its reimbursement, the execution goes out against both, and as in the former case may be levied on both or one — only at the election of the Pmt. Thus A, who was awarded to pay only $40, may be compelled to pay the whole $30. But if the Pmt. object to the verdict the court will not accept it and the jury will be sent out again —

In few cases where that kind of suit can be
Private Things

argued why execution should not be taken out for the whole aggregate sum of $90, but so the rule is—

So if B. make defendant and C. appear, in tried and convicted and $50 damages given, while the execution which goes out is against both may be levied altogether upon B. — but if B. is tried and acquitted whereas C. is found guilty, then execution can go only against C.

The time is immaterial in trespass so if one time he stated or other may be proved. It must appear however from the face of the declaration that the time is within the stat. of limitations.

The construction of the action of trespass is peculiar in this respect viz. that a number of distinct batteries upon the same man by different defets may be joined in one action against all. The jury having found the different times when the different batteries or different trespasses were committed may proceed to apportion the damage between each.

If the deft. in the civil suit had been previously found guilty in a criminal prosecution, the verdict shall not be taken advantage of in the civil suit; and particularly because perhaps the very verdict was procured by the deft.'s own oath. Nor on the other hand shall the verdict in a civil suit be given in evidence in the criminal one for this.
This action is to redress a private wrong to the property of the plaintiff, by an immediate and direct invasion of it.

The word "replevin" is interpreted to signify the substitution of one pledge in the room of another.

II. The writ is brought in Eng. for two causes. 1st. Where property is distrained for rent. 2d. Where cattle are distrained for damages for rent.

Before this writ was given, the law of nations was very great in respect to distresses for rent. But the most oppression of feudal tenures.

III. In Com. the whole of the Eng. law respecting distresses for rent is excluded.

This writ adjoins secondly to cases of distraining cattle.

In common cases of any motion of injure done to property there is no other remedy than to bring suit and wait the tardy motions of a court, but in this case the cattle which do the injury may be taken for the injury done, and if the owner of the cattle will bring replevin and change the security he is allowed to get possession again of the cattle—in the mean time the person injured
Private Things

Keep the security until the debt is paid —

The suit of replevin does not therefore in these cases deprive the person of his security but merely exchanges it — being compelled before he can get back the cattle or other thing distrained to prove the bond of some secure and unexceptionable person, that what issues damages are should be ascertained by the jury should be paid or the cattle returned — as if in the prosecution of the action for the trespass judgment be recovered and the execution prove ineffectual then the bond will be forfeited and the Deft might come upon the security

III. But there is another class of cases wherein this suit of a seaman suit applies in Conn. but not in Eng. viz. where the debt is attached by his property to a woman rent to cases suit brought against him — Property then attached must be considered by the Con. law or in the custody of the officer or of the Know stilt judgment — But the Con. law has given in this case the suit of replevin — whereby the Deft. may retain his property by an exchange of the security as in the preceding cases.

1. Most of the cases which occur wherein the suit of replevin is used are cases of distress for rent

The Con. law of Eng. was originally regardless of the rights and privileges of all others than the Nobility and greatmen of the time — this disposition to favor exclusively the
rich and great, was peculiarly manifested in the law of landlord
and tenant. Whether rent was really due or not, the landlord to
grant his tyrannical disposition or to fill his purse, would de-
strain perhaps one half of what he is worth. His tenant was with
and if the sum demanded was not paid in a short time would
sell the property and raise the money. He had the tenantry
relief but in the slow process of a lawsuit—

To correct so great a grievance, the writ of seisin
was given. This enabled the tenant to redeem his property
by giving good security that what was due should be paid
or the property distraint delivered. And no man of a
mannor was surrounded by others who were his rivals or vi-
unct enemies. Perhaps the tenant was not difficult to
move yet the requisite security. After distress and explain
the course was for the tenant to summon the Lord as a
trespasser at the succeeding court. If at the trial the Land
Lord show that rent was due, then when ascertained the
tenant is awarded to pray— and thus at the Pli, in the e.
judgment will be against him as if he was Deft. But if no
rent be proved to be due judgment goes against the Deft.
precisely as in the case of a common trespass, common
action of trespass, the jury awarding such damages as they
may think proper—
This court for this purpose is wholly excluded in cases and very little used in the U. States.

The second case for which this writ issues in England is common use once the U. States.

Whoever finds in his fields, horses, cows, or other animals doing mischief has two remedies whereby to remunerate himself for the damage done to him; he may commence a suit for the trespass and wait the determination of the suit at a court of justice, or he may immediately arrest and confine them both that they may not break in again and as security for the damage done --- for while in ground the cattle are considered in the custody of the landlord, and must thence remain as security for the damage unless the parties compromise or unless they be reprieved.

If the parties can agree as to the quantum of damage done and whether the fence was good or not, and they come to a compromise, the keeper of the ground will be compelled to deliver up the property. If the object cannot be accomplished by this mode, a writ of reprieve must be sued out and a bond substituted in the room of the cattle.

When the writ is obtained, the plaintiff in reprieve must summon the defendant distinguished to appear at court as a trespasser; the amount of damage if any are now assessed by a jury and as in the other case judgment will go to the
Private Things

Depts. who will receive damages of the Dept. and as if Dept. mention will go against him—

But if the Dept. fence was not a good one i.e. not a lawful one, judgment will go against him the injur'd one not with standing and he will be compell'd to pay as a trespass for confining the cattle whatever the jury may say—

In law and in most of the states the law has ever—

stained what shall be considered a legal fence; in Eng. the point is left to the jury—

But if the cattle entered the land over a fence bounded by the highway the law may be essentially different for the law is that provided the fence bounded the highway and if the cattle entering were not commonable trespass they should be distrained and the distrainer should recover damages at the fence was bad—Thus if hogs get over a fence from the highway which is a bad fence and do injury the owner shall be liable and the animals impounded; for hogs are not commonable animals—

There is a statute in law allowing the several town to make by-laws in order to regulate such and other subjects—the town of—made a law that hogs if ringed might run in the high way. Before this and at one law if anyone found a hog in the street he might cause it to be impounded—
This law prevented the hogs from being their enforcers. But a question arose whether the owner was not liable to pay for all damages they committed, this law notwithstanding, if they entered and smelt field provided that the fence was bad or wanting there was none. After many decisions that he was and that they were detiable, the question was taken up by the Supreme Court — it was then decided that this being the law, hogs were on the same footing with cows and were detiable whether there was any plaintiff forgotten in the lot of an owner man.

In respect to poachers, gorses, turkeys, or the law recants have made no provision — if they enter the lot or pasture, goods of another,所有权 has had doubt whether they may not be treated as animals just nature liable or treated as the owner or person of the land may think proper — lawyer on this subject had different decisions — but of one would see another for his house which were doing injury in a pasture garden, A thinks nothing would be recovered.

The following case occurred in Enn. Some speculator A had taken B's cattle damage per cent and imprisoned them. B, replied them ad and brought this suit as for trespass against A. Before a justice the cattle had done mischief to the amount of $30, the justice's jurisdiction extended only to $14. The bond which was given as a security in exchange for the cattle was in the
the custom is for all the damages - as the justice had no juris-
diction over so large a sum as 70s, which the deft proved to be due.
how then done, the case must of course be discharged. The question
then was whether the bond was not discharged since the judge
rendered no judgment - and the case was destroyed - the person
injured was then an entitled or retained wholly of his security. But the
question did not receive an ultimate decision and Mr. Rice is of opinion
that the bond may be immediately sued upon.

The action brought by the person in whose cattle have been
distained is in form, and if no damage be proved, in the sense (of
being between neighbour and neighbour) he proved to be an illeg-
ral one it is in substance a mere action of trespass committed
the 755. making this point as above - otherwise the action must be
reduced are somewhat different -

If the sheriff or keeper of the bound should suffer
the cattle to escape, an action on the case for an escape will be
as in cases of escape of human persons from the office.

III. The suit of Replevin will lie in the third place, in
cases of process by attaching the deft. goods to compel him to
appear in court - this is extremely beneficial rule, but
is entirely unknown to the English law. But whenever the
benefit of the suit of Replevin is extended to this class of
cases, it becomes the most important decision deviating from
the
Private Things

Where the benefit of this suit is extended to this class of cases, a creditor may for a trifling suit attach and take away all the prospects of the indigent debtor, even of his last cow—and then deprive him of all means of subsistence until the taxing order of a court of justice has decided upon the claim.

But in law, when a debtor's goods have been attached, if he can procure good security in lieu of them, may reprieve and hold possession until the determination of the suit; but in this case the security must be most ample so it would be wrong to deprive the creditor of his pledge for his debt without repleting another at least as good as the bond of a man in good security or circumstances would be.

The reprieve in this case is not an adversary suit, it is not such a suit as action against, but the suit is one to bring back the property and to lay a foundation for a subsequent action on the bond. The suit therefore is merely entered on the docket—called. In the event of the suit being determined in favor of the plaintiff and upon operation, the suit may be immediately brought upon the bond.

A question somewhat different of retention has been raised under this case. How if a creditor brings a suit against
Private Things

Where the benefit of this suit is extended to the case of cases a creditor may for a trifling suit attach and take away all the property of the indigent debtor even of his true core and thereby deprive him of all means of subsistence until the tenancy continues or a court of justice has decided upon the claim.

But in case when a debtor's goods have been attached, if he can produce good security or none of their own they may seize and hold possession until the determination of the suit, but in this case the security must be most ample for it would be wrong to deprive the creditor of his pledge for his debt without substituting another at least as good as the bond of a man in good preceding circumstances would be.

The possession in this case is not an adversary suit as it is not such a suit a suit against another is now to be tried but the object of it is merely to get back the property and to lay a foundation for a subsequent action on the bond.

The suit therefore is merely entered on the docket of the court but not placed on the docket or called — In the event of the suit being determined in favor of the plaintiff and upon execution not being returned or if in other respects it be ineffectual, suit may be immediately brought upon the bond.

A question somewhat difficult of solution has been raised under this common law — if a creditor brings a suit against
a debtor stating the damages very high and all the property attached
is one case A. gives a bond in the common form as security and
the course explained. The question is does the obligor of the bond
become liable to pay all which should become due the creditor or
is the bond merely to pay the value of the cow according to
the letter of the law and according to the letter literal with con
struction of the instrument A. is no doubt bound to pay the old
debt. But it must be conceived that such ought not to be the con
struction the object of the statute we should consider is merely
to place in the hands of the creditor a good a security as that
which is taken from him and to place the parties in a
relative situation much the same as that in which they knew

The case is certainly in analogy to that of giving a bail
bond and the rule ought to be the same.

A. says B. C. gives a bond for B's appearance at the
trial B. does not appear judgment goes by de fault. In this
case if A. surrender up B. any time before a non est is as
stated his bond is discharged and yet the bond is consti
tually forfeited. But according to the construction given this
is no forfeiture and the reason is the object of the law as al
lowed is merely to place the parties in the same situation as
the body of the debt had not been released and if before a
If the sheriff have a suit against A. at the suit of B, and being in A’s possession, the sheriff attach the goods of B, can C. repaly them? This question must be answered in the negative. The reason is the want of sufficient cause upon an existing suit between the person replying and the person at whose house suit the goods were attached in the case put there in none. Therefore suit at armes but replevin will not.

A question has been raised from hence to corrobbero the P.P.J. that might not be compelled to take bond if the defendant himself were, when the goods are reprieved, the court or justice thinking a perfectly good security. This however will not answer, since the P.P.J. for it would be turning a process by attach into an issue to naune summons. It was however decided that the purpose of the law were sufficiently well secured in this way and that the justice who took the bond such a bond acted judicially and that acting in a judicial capacity he could not be made liable if he did see or from error in judgment. This decision was reversed and the law settled another, both for the reasons then given and because the justice did not act judicially but ministerially or in a
Private Things

Parallel case the sheriff or other officer acts maliciously when he
makes bail. This is in degree matter of judgment, but still if the
sheriff takes insufficient pledge he is liable.

PROC. &c.

This is perhaps the most extensive of all remedies in cases of

The one obtained

Tort, and not the thing sued for in the action.

In what case made the theft; really come by the goods, where

or the state, them or found them, or were given to him without restoring

or in what case other made they might have been acquired the

Theft in his declaration states that this came by theft, and

and that he connected them to this owner.

The scope of this action appears not to be very ancient;

but it has now become so general that except in some few cases to

be hereafter mentioned, it is impossible to conceive of a case wherein

it will not be.

There are three different classes of cases in which this

action may be brought.

I. Where the theft came wrongfully by the possession of

the goods.

II. Where the theft has come by rightful.
but has exercised some act of ownership over it.

III. Where the dept. has come by it rightfully enough and
where no act of ownership has been proved but where the dept.
merely refuses to deliver it on demand.

In the two first of these classes of cases, no demand
previous to bringing suit is necessary to be proved.

But in the last case, which is where within the dept.
can neither prove that the dept. came by the property wrongfully
of that the dept. had sold it, burned or consumed any other act of own-
nership over it becomes necessary to prove a demand or refusal.

This demand and refusal is evidence in most cases
of a conversion; but not always that at the same time the refusal
shall be not accompanied with any claim of title or right.

The following example is an exception where the refusal
is not accompanied with any appearance of a conversion of the
property to the dept.'s own use — i.e. where A finds a watch in the street
and B a stranger to him comes and demands it without showing
sufficient proof that it is his here then is no manifestation on the
part of A. of an intention to convert it to his own use. Wherein
therefore this intention to convert is not sufficiently manifested
unless the case fall within the two first classes of cases, nor
is not the proper action.

Hence it is that if the jury find the facts specially
stating the refusal to deliver be without without finding a conviction, the court cannot give judgment.

The action of trover is solely confined in its application to personal property: therefore if one take growing corn at some town will not lie for it.

This action is in many cases concurrent with trespass with seizure of trust in all cases where there is a tortious taking except in some few cases arising under Parliament.

Where the delivery of the property is recovered by part and for the purpose of abusing trust the taking in tortious and trespass will lie.

But trespass is the only action where the taking is accompanied with the immediate destruction of the article.

But if the Def. had taken home and then destroyed it, or if he had moved it a rod and then destroyed it, trespass will lie for then the property may be said to be converted. If a shoot 13' long in the field trespass is the only action but if he lead him out and then take him home is concurrent with trespass.

In this action the Plf. should state in the first place that he has a property in the thing and that he (Plf.) had the possession then that it came to the Def. by finding and partly the conversion but the evidence of the conversion he need not state. Hence arises the rule that the Plf. need not
Private Wrongs.

A demand and refusal for there are only evidences of the conversion.

Whereas in A demand must be stated for without a demand in many instances there can be no demand. A demand — the essential point, therefore, for the right to state are his property, his possession at and before the taking — theft — finding and subsequent conversion.

The conversion may be proved in either of these different modes as the facts happen to be — 1. By a wrongful taking which in itself evidence of a conversion — 2. By a rightful taking perhaps, but accompanied by a fraudulent sale or other actual exercise of ownership over the property and 3. If the possession be acquired rightfully and no disquestion of it, such as would best state an exercise of ownership since it can be proved, then by proving a demand and ownership refusal.

But an actual possession in the book is not necessary to the state since the action is not merely for an invasion of possession but property; therefore if property be stated and proofs the constructive or implied possession is sufficient.

The effect of judgment for right in trespass is to vest the property of the thing sued for in the Deft. Because in this action as in almost all others concerning personal property, damages and not the specific thing are awarded and awarded as an
That appears true with the after the thing found
is returned to the owner.
equivalent for the thing itself.

If two persons take and convey the property and only one be sued, the property becomes vested in that one who is sued, just as he who gives equivalent damages for it.

But the case is otherwise if either before or after the commencement of the suit, the property for the taking and conveyance of which the suit was brought, like removal to the Pst. for in such case the title—(the property of the goods still continues in the Pst., who recovers damages only for the taking in the value of the goods not being taken the account with the jury in making up the damages.)

If the Pst. have only a special property in the thing taken, it will be sufficient and he will recover damages for the whole value. But in such case the man who has the general property also may bring the action; but both cannot bring it. But the one who shall commence his suit the first shall bring the action.

Thus an ordinary Bailee as well as the Bailor may bring the action against one who has acquired possession when it was in the Bailee—for the Bailee has a special property, but a mere naked depository is not entitled to it in his own name at the time. In some cases wherein he has brought it—But in those cases the question was never—
decided that he could, but it passed without.

There is a rule that the bailee cannot bring action against the bailee in any case, tho' he might bring trespass on the case, as where A. hires B. a spoke of iron upon hire for a month and B. takes the iron before the moult, to wit, in three days after the moult.

Mr. Punch doth not see the propriety of this rule but states, that in this case trespass will not lie in behalf of the bailee, but that mischief of trespass on the case will.

If the property come to the possession and be conveyed by many the part may bring his action against anyone of them. As if A. hires B. for rent and sells him to C. who disposes of him to D. B. may bring his action either against A. C. or D. at his election.

For at this in this case C. and D. are innocent and have equal equity with B. yet B. has a legal right, and an equity of longer standing and quiet title in trespass notice est in jure.

And whereon is sued in the action, of the three, in him in the property by the action vested.

But if the suit be in A. against A. et al. the property vested in him by the suit, yet he is entitled by his sale to B. from taking it from him by the suit, or enforcing his claim against any of the subsequent holders of the property.

The maxim however, that qui prior est in tempore, potest est in jure, does not always hold good; for if the person
Private Wrongs.

whose property was taken was deceived and thus suffered himself to contribute in any degree to C. of B. or D. getting possession of the goods, then C. or B. to the house or other thing is paramount in right for it should not have so considered conducted or have suffered himself to be so defrauded.

A distinction is made between cattelar articles and money — For this reason will lie for money in a bag, or any money which will be specified if brought the first time, yet it will not lie against any other person to whom possession the money subsequently came — This rule is founded in policy merely & applies only to such money as is current.

Bank's bills however and negotiable notes tho' not money are placed on the same footing with money.

An inspection executed or judgment against one of a number who have recovered property will be a complete bar to any other action brought against any other of the wrongdoers for the same cause.

For this rule there are two reasons first because this action is founded upon tort, and in all torts a judgment merely is a complete satisfaction; att' this execution be taken out upon a judgment — But the position is not meant to establish the point that no suit or recovery can subsequently be had on such judgment; for this may be done.
No plea is allowed in torts but that to the general plea of not guilty—on the special plea of a release—no other than these are allowed. The reason of this rule is not discoverable and is not adopted in law, where other things may be plead—

In some cases, the property which is the subject of the action, may according to the principles of the law, belong brought into court and will go in mitigation of damages i.e. the Plaintiff will retake his property and receive all such damages besides as the Plaintiff will give him—

But no very bulky article as a piece of wine can be thus tendered. Nor will the Plaintiff be compelled to accept the article if injured materially. This rule seems to have been found with a view to cases of actions brought for family pictures and things of that sort—

Where property is held in common partly or in common—one tenant cannot bring trouble against the other—

To this rule there appears one exception—whenever it turns out in proof that the tenant who was sued by his companion has destroyed or sold the article which is the subject of the action, or caused it to be so—then their action will lie as between them—

In other cases, there was formerly no relief in such other cases when their action would not lie—But the action of
account was afterwards given in Eng. to one part tenant or tenant in common.

But if for the omission of the profits of the partnership,

only one of the tenants brings the suit without joining the other, the

deficit may close the suit:—But there is no such mode whereby the

deficit may advantage of the defect.

It has been made a question whether if wine (or other

thing of the kind) be taken out of a prize and the rest injured by

putting water to it— the action could be brought for the whole

including that which was injured, or whether trespass would lie

for that only which was taken out— Or when it delivered to 13

cask of 100 gallons of wine as bailie to carry 13 took out ten gallons

for his own use and filled up the cask with water whereby that

which remained was injured.

Tourn in the foregoing case was decided to be for the

whole of the wine delivered:—a trespass for the ten gallon and

trepass on the case for the cestui— To permit trespass to be brought

for that which was never taken away but which might

have been delivered or directed:—however to extend the principle

a great way.

A rule is to be met with in the books that if account

commit trespass by his master's command, the master only is to be sued.

This position is too broad to be correct. Better in his Inquiries a gloss.
Private Wrongs

The fact on the subject seems to be that the servent is considered in both cases only, when the property came not to the hands of the master or servant to literally, and in consequence thereto, whenever the property is concurrent with that of the servent commit the trespass by the command of his master, or under the same circumstances he shall be liable to the command of his master or in the same circumstances would not occur if some vicarious had been thought.

If the property of a person be taken or bound before marriage, but not converted as to after marriage, the husband may join his wife in an action for it if he choses or he may bring the action in his own name merely. As to this point however much contrary opinion exists, Mr. G. thinks that the wife ought not to be joined because as until a conversion occurs the action to recover the property, it cannot be called a show in action, and as it is not a show in action the whole must pass to the husband by the intermarriage.

The Act is required to be nuncupate than to prove his possession, until or until the Act proceed to dispose of the Act's property for the possession itself in writing being evidence of property. If the Act then repute their submission, the Act must support it by proof that he had a property in the thing.
Private Things

The executor may bring power against an executor de vent
for goods or property which an executor he has been possessed of. He
can such executor be content make no sound defence but if he has
paid out such property for debts, this matter would go in mitigation
of damages.

Trespass vi et armis

So far as relates to injuries to the person of the PLL, as for
assault battery to this action has already been treated of.
But we are now to treat of it as it relates to injuries
done to the personal goods and chattels of the PLL.

This action will be in all cases where the PLL has taken
the personal goods of the PLL and is therefore a very extensive
remedy.

It is laid down whatsoever that whoever has the possession
of the things on which the act was done may bring the action of
trespass vi et armis. But this is not an accurate way mode of
viewing the subject. It is indeed an action for an injury done
to the possession and sometimes to the possession independent of
the property. As in the case of a naked bailor the principle in
this action in case is that a naked bailor cannot maintain
this action unless he be liable to the bailor for the property.
There are many cases put by Bacon where in trespass will lie which are not in the cases of charity or neco-2690
orous kindness where man intermeddles with the property of another merely in order to preserve it, and out of mere goodwill, but for a long time no cases of this description appear in the books, and Mr. Blacke apprehends that they would not be considered as law at the present day and Conyers (who is a good authority on this) distinctly denies them to be law now. 2691

That a man may for such purposes intermediate with his neighbour's property —

Trespass is not against the name of a trespasser, but of trespass which is brought against the first taker —

Trespass will not lie against a sheriff who seizes, for not taking sufficient bail when tendered; for this is more than possession. But in such case trespass on the case will lie. But the rule in law will be rejected, where trespass will come with the —

Trespass must arise will not lie for consequences that damages, A person may do such an act (unlawful act) as will materially injure another, and without understanding will support notion of trespass will arise. As if a man turn water by a spout from his house.
Private Things

upon his neighbour's to his great damage; or if he overflow his
neighbour's land by turning a water course upon it—

For trespass an act done does not lie in such cases because
the injury does not immediately proceed from the very act of
putting up a spout, or digging a canal and these abstractly con
sidered, being done on the Defin's own premises are not unlaw
ful but become so by the consequent injury.

A trespass which amounts to theft cannot it is said be
used for a trespass — because of the merger — But as the rea
son of this rule has ceased so ought the rule —

A man may drive off his cattle from his fields with
a dog not subject or capable to do great injury, reflecting the
cattle to go out in any direction that they will, and the owner,
or curator of the field shall not be liable for any thing which
should befall them — But it is to be remarked that the owner
may not chase them with a fierce or powerful dog or a
bull dog nor is he allowed to turn out the cattle into the
highway where they may probably get lost, by taking down
the bar of a fence — But if they being driven jump into
the highway it is well for the now will presume that they
got out where they got in —
as the bailee cannot judge precisely under what particular circumstances he will be liable, it is holden that in all cases he may have the action.

No one however, is entitled to this action in the ground of his having had the possession of the thing, if under no circumstances he could be made liable to the person who owns the property.

Neither can one who steals goods without this action against one who took them from him for the plaintiff must have a possession lawfully gained—all but yet if the possession was acquired and maintained under a false claim of title, the defendant eventually found to have been in the wrong and not to have had a legal title may not withstanding support the action.

Where a license is given by law and that is abused the original license will not shelter the defendant but he is a trespasser ab initio. As where one enters a tavern wherein there is an implied license for every one to enter and for every one to call for wine and after some time falls to breaking plates and glasses etc., this is a manifest abuse of the license.

The defendant therefore shall be considered a trespasser ab initio.

But a mere presence is not such an abuse of the license as will constitute the defendant a trespasser ab initio. As if the defendant after drinking the wine and merely stopped...
to pay his bill.

There is one case however which is contended of prejudice the section that a mere nonfeasance will be never be considered and an abuse of a licence as to constitute the delict trespass ab intitu.

For the case of a sheriff or other officer neglecting to return his writ after having made an arrest — in such case the officer not to the officer would be liable — having abused his authority in not returning the writ, which says who opposes this doctrine is mere nonfeasance.

But Mr. Paine views the sheriff as having been guilty of an actual misfeasance — for without a return of the writ the sheriff has no proof that he had one. The law in such cases being that the record itself shall be the only evidence that there was a writ. If there were no writ the sheriff was of course guilty of a misfeasance. (a)

But a material difference is to be noted between a licence given and or implied by the law and one expressly given by the party.

(a) If then the issuing of such writ is a fact provable only by the record and on the sheriff can prove no authority except by proving this fact, it will follow that the arrest is a misfeasance.

For where the licence is given by the party subsequent
abuse of that license will not under the law, a trespasser at will. On when it shall be shown that the custody of sheep, falls to the one the action of trespass will proceeds will not be because the sheep were delivered to them and he had an express license to take care of them.

But a distinction here prevails, namely the reason of which Mr. Renou does not clearly understand to be correct or sound.

When one has authority to do a particular act, a thing and that authority becomes afterwards vacated; in this case the sheriff and all events that if on the face of it, the process be good. If it be pronounced the judgment by fraudulent practices it cannot rise by a summary mode of proceeding; then is liable in this action. But if for some cause it was vacated by wit of error, then it is not liable.

If an authority be given by statute, that authority must be strictly pursued or as the case might be the person authorized becomes a trespasser. In example, the law authorizes a man to take the cattle damage permit but directs when it should be given notice should be given to the adverse party. This provision must be strictly complied with; for if the adverse party had notice and although it be a fact which the dishearten can prove, yet or he did not in pursuance of the statute give notice himself he shall be held a trespasser.
Trespass on the case

for

injuries to the person or personal property arising out of

This action lies in three classes of cases. To.

I. For wrongs not accompanied with force.

II. For consequential injuries occasioned by acts accompanied with force.

III. For injuries arising from culpable omissions.

In these views it will appear that the action is treated of now as arising ex delicto.

I. The action lies for injuries not accompanied with force. As for slander — Defamatory language — Malpractice of a physician. Power might here lie, but that, the tort is in the form of action waived.

II. The action lies for a consequential injury resulting from acts accompanied with force. As where P.S. beats my servant for good service rendered, which, to me, is a quasi-innominal consequential injury.

III. The action lies for wrongs occasioned by culpable omissions. As where some public agent neglects to do his duty, whereby P.S. is very much injured.
There are actions generally founded upon the equity of the
stat. of 1872 (19 id.5): it was known however in one or two instances
at Com. law—previous to this time the only formal actions founded on
contract were Debt, Covenant, and account; they on tis were
Trespass Replevin Detinue and Reple

The action on the case therefore is scarcely known. It
would be however in two or three cases: as in the case of an escape—
it would be in favor of a sheriff—

In Com. distinction has obtained between an action of
Trespass on the case, and an action on the case, the former which
it is holden is founded on that, the latter on the case, but the dis-

But between Trespass vicit armis and Trespass see
case there is a material difference—

These exist at the present day strong reasons in Eng.
that the line of distinction between these two actions should be
strictly adhered to— And at all these reasons, do not at least
exist in Com. yet Viz. Q. concurs it highly important that it
should be strictly regarded here—

When the action of trespass vicit armis was brought in
Eng. the Fines if the failure was compelled to pay a fine for the
public i.e. the King—

But when Trespass on the case was brought there

*private things*
Private Things.

was no fine for the King but merely an amplification proclamation
or notice which in case the Dep't prevailed went to the Dep't. And
although other species of fine and commutation are in fact disre
soured, yet the judgment still continues the same with them and
unless the form be adhered judgment will even be accented in Eng.

Within a few years past however a statute has been enacted abolishing to a degree the distinction between judgments
where formerly there must have been a capiatis prohibitis or an ame
amendment.

But however this statute may affect the form of the
judgment it may not be material as to this question; for whereas these
actions succeed the rules obtain that actions on the case
principles of equity rule as to the recovery or quantum of dam
ages; whereas in trespass vicet-armis great strictness in the
onial remedy are thought essential to be adhered to-

And again it is necessary to keep up the distinction on
account of the great confusion which would be immediately resutt
from their confounding actions-

It is material therefore to mark the line of distinct
ion between trespass vicet-armis and trespass in ease

All injuries accompanied with force and which are
immediately injurious to the subject are the subjects of trespass
vicet-armis.
But if the original act producing the injury was accompanied with force, still the damage on the case may be brought in many cases; the course of the former rule being true, viz., that when the injury produced by the forcible act be merely consequent and not the immediate effect of the force, the force on the case will lie.

If D. P. had thrown a log into the street, if the log while still influenced by the force hit T. R., the action will be trespass vi et armis for the injury is the immediate consequence of the force.

But if after the log was at rest in the street, T. R. should fall over it and hurt his shin, if he would sue D. P. for having let it there the log there he must bring trespass vi et armis for the seasonable given.

By this rule all the cases are governed; it is however extremely difficult to its nicety always to draw the instance of a man's using one who beat his servant whereby he lost the use of his servant is a good case to examine of by the rule— the act was committed with force it was directly and immediately consequent to the servant and therefore he shall have trespass vi et armis— But to the extent it is only consequent to the eventual hope of service.

But what is the meaning of the time immediately
Private Things

then the person of whom would not be against the first action, but if any action would be. The person on the case is the proper one.

But the person giving the first impetus is still liable to be taken as the agent of the original force or in the self-taught spirit case reported by Bowdler. When the Rept. threw a spirit upon the state of a meet relief in the market in this case in order to preserve himself the vendor of viands brushed it off onto an other state and the same of this onto an other state some until in the event it went off and put out the eye of the Rept. The Rept. who had first put the spirit in motion was sued in trespass of it ensuing and it was holden that it was to

Whenever therefore an instrument of mischief is put in motion the person doing it will be liable so long as its original force continued unless some national agent gives the instrument a new direction. In this case the agent must have acted voluntarily and with some being compelled by his own particular situation when therefore the spirit was thrown amongst a crowd each person would count by necessity to keep it from himself and therefore could not be considered as a voluntary agent, it may be compared to the case of the bounding of the foot ball.

So by it is good law that if one let loose a mad ox
Private Wrongs

...one who is the victim in trespass will recover for the injury which he may sustain in entering upon an instrument of mischief; and on this ground the case may be distinguished from that of trespass to a hive by one neighbor, and was answered so that trespassing a space for in there, since trespass on the case is the only question.

When a man rode into another man's field and his horse ran away from him and did injury, the action of trespass on the case was lost, and a recovery had because the act of taking the horse there was unlawful; that trespass at arms would not in that case, because the act of the horse "going into the crowd" was not a voluntary act in the sense but one which he could not continue, yet Chief Justice Gray speaking of the case supposed to be trespass at arms and said it was properly decided. The action on the case thought was certainly trespass on the case and as such was properly decided.

But when the person is literally the agent, it matters not in fact whether the act really concurs with his will or not, if the act be attended with force; this being for the purpose of an action against the master.

When however the person is agent only by implication of law the will must concurs—such as case the case of a master who expressly commands. A servant or animal to do the forcible act, which produces the injury—then trespass.
But if a servant does an act attended by force and also slowed by injury, but without an express command, the master is not liable in trespass or at common law. But as every man is obliged to have none but direct command, he shall for this act, be liable in trespass on the case, and so he did not expressly command his servant to do the very act, the implication of law his servant is his agent, but that implied agency will not subject him.

When therefore a servant being in the service of his master, committed, without an express command, a treasonable or mischievous act, whereby he immediately injures the party to whom the service is due. Then, when a servant will be against the servant on the case against the master. For the master should not have employed negligent a servant, and the same may be said of a dog which is prone to do mischief, the peace on the case will lie against the owner for mischievous, if a special damage or injury result. And in particular instances, the master in it service would also lie, as if he had notice that he was used to be in people, and notwithstanding the fact, he never, for the thing would be done in (spelled incorrectly to command).

If he wilfully does his service against his and injury.
But if A. does not take proper care and due negligence or 13° carriage to be in liable in trespass on the case only; for in the latter case, he neither does the injury by striking with his own hand, nor voluntary or wilfully redirecting it to be done, norshops him purposely clearing his vessel against 13°. But merely there criminal negligence suffices the act to be done and there shall be liable in trespass on the case.

Of the Cases in which Trespass on the case will lie.

It is not meant here to enumerate all the particular cases in which actions on the case would lie. This indeed would be impossible. It is only meant to mention such classes of cases alone in which is an injury to the person or to the personal property which are not to be found under the latter.

The action will lie in case of a criminal neglect on the ground of delictum. But in these cases, the neglect must be of a duty imposed by law; not of one which is founded in contract merely. Thus the law imposes upon the finder of goods an obligation to keep with care and order many diligence but if he do not whereby the goods are lost or injured this action will lie.
So any officer in the law whose damage has arisen from a criminal neglect of his duty as an officer. Thus a sheriff is liable to the P.P. of a suit, if he neglect to return the suit—

Attempts have been made to draw a distinction between the case of a sheriff employing a deputy and other cases. But has been decided that sheriffs, like other masters or principals, are liable in tort for the acts of their servants, the deputies.

Indeed the rule is almost universal, that any one whose duty it is to do business for another in the line of his profession may render himself liable to this action.

But if the business undertaken be not of the profession of the P.P. he shall not be liable for want of skill merely undertaken in an express agreement to do the work well. But for negligence he shall in all cases be liable.

For example, if a cooper agree with P.P. to make him a cask—now a cooper cannot be supposed to understand the mode of making casks—and so there was no special agreement to make it well—the cooper cannot by any means of want of skill subject himself to this action. But for great negligence he shall be liable.

In the profession of physic or surgery a practitioner shall not be liable even for neglect negligence provided that physic or surgery (as the case may be) be not his profession.
business: for if he does not expressly agree that he will perform without neglect,

This rule is founded rather in policy than in reason,

And in general, this action lies against anyone by whose act the health of the Plee is injured or against a seller of bad wines. But can it be upon principle can a seller of bad wines be liable unless he knows the wine to be bad? For such is the case, Blackstone says he is liable because there is always an implied contract or warranty that provision be good.

This action of warranty is treated as arising ex dicto, but it arises or would seem to arise in this as in some other cases ex contractio.

This rule or laid down by Black, seems to be founded in reason, but is not to be met with in terms in any other of the Eng. books.

But in every other case except in the implied warranty of ownership, when one sells a thing the maxim Caveat Emptor applies — the exceptions which obtain in the case of the sale of provisions, for in these cases a neglect cannot well be imputed to the vendor.

This action of Trespass on the case lies also where the owners animal being addicted to late go at, to other injury of the like sort do an injury to another. But in this case he
there must have been sufficient notice given to the owner that his animal was addicted to such kind of injury that sued for. But if the owner have notice of the species of injury done it is sufficient.

It is said down in the books that a scienter is not traversable. The rule thus laid down is apt to mislead it means nearly that the scienter cannot be traversed by pleading it may be disproved under the general issue. It may surely be denied under the general issue for it is the very gist of the action. But the rule is that by a traverse or plea it cannot.

But if the injury was done by animals feeders notice no notice to the owner is necessary for the presuming law is that the owner of an animal feeders nature must be known as a matter of course that the animal was addicted to doing injury.

This pass on the case also lies on the for a disturbance i.e. the interruption of the free enjoyment of one's right.

The right may be something corporeal or something incorporeal or for instance a right of Common.

So that the diverting of a water course may more properly be called a disturbance than a nuisance.

This action lies also for an escape against a sheriff or other officer whether the fault was on misuse of or fault from
Private Wrongs

And this case is almost the only one where an action would lie at law, i.e., before the statute of Westminster 2.

That this action would lie at law, was apparent from this circumstance, viz., that there was no formal action which would apply. An amendment by which the P.P. would have been reconstituted applied only where the sheriff had returned a Capitular.

But the statute of Richard I. gave whereby the action of Debt in the sheriff’s court was on final process.

Then for this purpose, the action of Debt is brought the whole amount of the judgment recovered against the escape must now be recovered against the sheriff—And although the more modern doctrine, less than need for the general rule be recovered yet in this case the old rule is adhered to and the former judgment must the rule of damages.

But if the P.P. prefer to bring an action on the case the jury in their discretion may give more or less or the same sum or nothing.

It is stat. 3 Edw. 3 has obliged the jury, tho’ the action were case (the escape being voluntary) to give in damages the whole amount of the former judgment.

As to the subject of the non-ability of officers...
Private Things.

...tion is to be taken between process.

If the process be merely pend on the paper of it, the sheriff
shall be liable to the debtor for the escape.

But if the process be mere evidence, the sheriff or
other officer shall be liable to the full amount of the judgment
received at detention of the arrest, or on revenue process. If a
final process the tenor or the case be brought the damage
will be at the discretion of the court. For the reason
of this is that an erroneous process is considered good till its
clents and its former until regularly impeached and relisted
in the process was until their debt will lie for it cannot be
reached by any collateral action.

Tenders on the case in case of revenue, interest, whether
the arrest be on revenue or final process.

But the law is not the same in case of a revenue on
revenue process as if the revenue were on final process.

In the former case on revenue process the original debt, may
see the debt, interest. But he could not as in the case of the sheriff.

If the arrest were on revenue because the sheriff (provided
he did not collude) was deemed guilty of no breach of duty—be may
return a negative and the return will be good because in arrest on
mime process the sheriff is not supposed to have the prononomaties
with him. And hence whether the sheriff may rise the process.
In this action then brought by the original P'tor. against the original screwed - the judge are not confined alleging damages to the sum originally sued for but may according to the circumstances give more or less than the original debt sued for.

In order to reduce the damages below the sum originally sued for, thereceiver may prove the original debtor was not solvent and able to pay anything - but they may show that he is now within the reach of process and may easily be taken again - but if they do not make out facts like these the jury will probably give the whole of the debt

It follows then of course as a good rule of practice that the P'tor. prove or be prepared to prove that the original P'tor. is not able to pay him or is not within the reach of process. This is an expedient rule of practice but not necessarily necessary absolutely in order toprocure a recovery.

If the P'tor. or his assign or in this case the proper action be brought by the original P't. against the receiver but trespass is known trespass on the one and not on the other might be supposed trespass with notice. If the receiver be on final process within the original P't. or the Sheriff may maintain an action.

The Sheriff may sue because in case of an arrest on final process no return of a recovery is not a good return for it
rendered liable to the original party, he is subjected to their action in
behalf of the sheriff.

But if the rescuer or under sheriff voluntarily effects the
rescue, question if the high sheriff could sue the rescuer, unless
such case he is surely liable to the original party?

But the under sheriff cannot in any case being suit a
amount against the rescuer, in his own name and character as de
puty sheriff, even after he has paid over the debt existing
to the high sheriff. The law does not recognize a duty sheri
iff as such, but he is liable over to the sheriff merely on the
ground of contract and not because the law recognizes such
a relationship as because the law will imply a contract be
ween them.

But for a voluntarily rescue, the under sheriff as well
as the high sheriff is liable to the original party.

In con. the under sheriff may probably sue the es
eeper; so much force would not probably be given to the De
that he was parties crimini.

However, the under sheriff in Eng. may sue in the high
sheriff's name which is the usual course — unless the high
sheriff had already sued the under sheriff or escaper; for
in case he had thus sued the deputy sheriff — his name
could not again be made use of in suit for
Attorneys are also liable in this action for neglect or mismanagement or misconduct.

But for mere ignorance, or want of skill in managing a case, an attorney is not liable—altho' for negligence it is presumed that for negligence he is liable.

But why it may be asked is there a difference between this and cases of other professional characters? I do not conceive of no reason other than that which arises from the intricacy and gloom of the uncertainties of the law— for if the ablest judge mistake the rule it is not to be expected that an attorney would be always correct.

Attorneys may also make themselves liable in this action even to the annoyance of his client. Say, they found, or the consumable practice— or whenever an attorney procured an assurance of a monopson schemer on whom he took out judgment, for his client, here the attorney was holding liable to the person against whom he procured judgment to be taken and so the attorney had been guilty of malpractice— the rule applied that he should not take advantage of the law in a case wherein he had broken it hence he could not recover back the money from his client.

These are but some cases on the care on the care will also lie against
a Justice of the Peace or other magistrate or minister of the law for a neglect of duty — for refusing to do that which the law requires of him in his public capacity to be performed by him individually. The P.C. be damified or injured by such neglect.

As if the Justice were to accept of good bail when tendered to sign or acknowledge a deed when required of him — be as if an recorder of deeds were to refuse to record one when required to be — whence the P.C. was damified.

But the action will not lie against a Judge for a neglect of this sort unless the act required of him was a ministerial one.

A Judicial act as contrasted with a Ministerial act consists in hearing, judging and determining. And as all ministerial acts require some exercise of judgment yet they are each distinguishable from Judicial ones if this definition be kept in view — Thus a Judge may have in his own mind doubts as to what he ought to take certain bail or not take in certain cases yet this is much a ministerial act in him as it is in the sheriff and he decides it his peril

Breach on the case, the law also for a breach of trust in a bail: indeed it lies in all cases of bailment when property is injured for the want of that degree of care and diligence which the law requires of bailors — and in these cases it is
ounded in negligence and of detrito and not ex contractio.

It will lie for example against the owner of a vessel for goods lost; third there negligence of that of their owners. It may for that purpose be brought against any one or number of the owners, or against the master alone for goods lost; as in

opposed in this manner, this is now well settled: the it was for

ently otherwise and it is now settled of course, that the act

ion in this instance does not arise of quasi contractio.

Yet a postmaster is not liable for letters—deeds—

letters, notes, or money lost, and the negligence of the sub-

agents—both because Dr. Holt says this establishment is for

conveying news and not for carrying letters or any things

ing letters or other things. And because all the postmasters

collectively might not be able to respect to their pecuniary

 circumstanciess. And again because there is no contract ex-

press or implied between the postmaster and the person

who sends his money or letters in the mail. A postmaster

is the agent of the government, he receives no compensation

from government, such individual but from government.

But if the postmaster commit a fault himself

or in quality of a negligence, he shall be liable in this action

as if he requested or to make provision for sending the

which is put into the mail. So in this case the law has
been made it his duty to forward it; and if the neglect to perform
that which is by law required to be performed, whereby an indi-
vidual is injured he shall pay the damage.

But even in this instance his liability does not proceed on the ground of contract.


drawers are liable for the loss of any property left in the inn to their charge— if the loss be owing to the want of that care which they ought to take, and tho' the goods be left by a stranger, still the innkeeper stands.

In many respects they are co-bailors of such property. But on this subject the following directions are to be remembered— to wit—

If the theft were committed or the injury or loss be-
stained by the means of the guest's servant or companion, or by the public enemies, then the innkeeper is not liable.

And in order to subject the innkeeper to such an action, the owner of the goods must have been a traveller and received as a guest: for if a neighbour called at an inn and happened to lodge all the night, the innkeeper shall not be liable for such loss or injury of his goods.

But quae whether a traveller under such circumstances can testify as to the quantity or value of the goods other than?
Private Wrongs

But again, an Innkeeper is not liable when he receive some profit from the guest or his goods or depository, however he shall be liable for when the rule says an Innkeeper shall not be liable it means that an Innkeeper he shall not be. But surely as a depositor or naked bailor he must be liable.

But if a person not a guest leave goods at an inn or, if having been a guest he goes off and no longer continues to be one he shall not charge the Innkeeper as such for this. Unless the goods be of such a nature as that the Innkeeper derives some profit from the custody of them. If, for example, they consist of a trunk containing & with the property contained in them, the Innkeeper cannot be said to derive any benefit from the keeping. But if a horse were left in the custody of an Innkeeper, for the stable and food of which the Innkeeper receives a profit, he shall he chargeable in the same manner as if the owner had been or had continued to be a guest.

As the Innkeeper is chargeable on the ground of the profit which he derives from his guest or goods. Where there is no profit to the Innkeeper there shall be no charge.

Therefore if a guest comes to an inn and departs leaving his goods, telling the Innkeeper that he shall be back
in a few days and during his absence his goods he lost, the innkeeper shall not be charged for he has no profit or gain from the keeping of such goods; dead goods.

But every temporary absence will not remove this liability of the innkeeper — be it the guest go out in the mornings, return at night, a damage having happened to his goods in the intermediate time, the liability of the innkeeper still continues.

Sickness or worse, sence memory is no excuse to an innkeeper whereas he is used on such an occasion. In this respect therefore he differs from other Bailies — the reason is that it is not of necessity for people to stop at inns, and the innkeeper must at his
great expense that goods can be taken of his guests and their goods — and if the landlord he seek his servants must excuse their care. Such a plea as this was therefore declared bad on demurrer.

But the innkeeper is not liable for any harm or injury done to the person of the guest as a battery false imprisonment must be. The innkeeper quasi a baillee of the goods, but not of the person.

Trespass on the case lies against an innkeeper for refusing to take in a guest, unless he assign some good reason for refusing him as that his wife or servant wa
Private Wrongs

rich De - for an innkeeper is not allowed from mere apiece to

This action also lies for deceit in the sale of the proper-

But when there is an express warranty the action

In cases of false affirmation, there must have

It does not, however, lie against the vendor for

this false warranty or false affirmation if the vendor has

been guilty of any negligence - for caveat emptor - If the vendor

warrant that the house has two cells where in fact

the house sold was absent and without the reach of inspec-

tion, or unless the vendee were by reason of his peculiar

ation incapacitated to discover the defect, or if he was

So if I say to A, to whom I am about to sell a res
"I will give me $200 for him." The warranty or false affirmation shall avail nothing, for I may enquire of B. himself: and exact

The general rule is that the vendor must look to all

able defects himself.

But if the horse have a wind gale or tremor upon
any part of him and the vendor say the will do so much service
or if that thine was not there" the vendor will be liable in this
action, if it be found that he would not

There is a decision in Sale that where the jury
had given a verdict for the Fifth, on a general warranty,
whereby the assessor had engaged that the horse was sound
and he proved to have but one eye out of which he could
see, the verdict was good—for it should be intended that the
defect was such as was visible without the exercise of skill.
And this judgment was not meant to vary the rule.

The point on the case lies against a vendor for an art
ful concealing or concealment of a defect in the thing sold
which is a kind of fraud—

The courts of law have decided that when a man
sold a round piece for a thing it shall be presumed even
contrary to evidence that a warranty was implied.

If applied merely to the sale of provisions
Private Things

might be agreeable to English principles; but if extended to all
manner of sales, the case of all manner of sales is considered
by some, it surely cannot be.

But upon Eng. principles also, there is also another
exception to the rules laid down above respecting warranties.
In the case of goods purchased of a merchant for him
there is always an implied warranty that the goods are was
merchantable.

In all sales of personal property also there is an im-
plicated warranty that the thing sold is the property of the vendor.

But a rule is laid down that if the vendor falsly
affirm the title to be in him; the action will lie not lies unless
there be a scienter in the false affirmation.

This proposition Mr. G. cannot acknowledge as good
law. It must be truth be intended to have been restricted
to the action founded on fraud. In such ease therefore Mr. G.
apprehends the law to be that, without which a recovery the
vendor is not liable in fraud, but is liable on the implied
warranty that the possessor was his own. And possession
in such sales of personal property is always sufficient evidence
of property to raise this warranty.

So this action lies for any false affirmation
made for the purpose of deceiving another at the perr
making it had no intent in the transactions or in forgiving the
fraud. The principle here is, has been settled but very recently’s
for it was before thought, that in order to maintain the action as
against such person he must have had some interest to be effect
ed by it.

In point of the case here also for any injuries by cheating or
false pretensions — as if one should assume the name of another
and then by false pretences receive money which was due to the
person he pretended to be.

So, in cheating a person with false ends as one of a man of
money this action will lie —

Whenever public right is violated or obstructed to the inju-
ying of an individual, he may have the action of trespass on the
case and shall recover the special damages which he might have
received — But in such case the plaintiff particularly
state his special damages and indeed this is usually required
in their action —

This action also in a vast variety of other cases not
enumerated. As for a legal voter if he offer his vote in the
regular mode to the proper officer and such officer refuse to ac-
cept the vote. In this case the voter may have in trespass on
and will recover —

So a candidate for an elective office may bring the
action against an officer for refusing such vote as for making false
return to the damage or prejudice of such candidate—

But it has been determined in Eng. that such an
candidate cannot bring his action until the question is previously
determined by parliament that the return is a wrongful
one, if the officer voted for he or a seat there, for say they. the
parliament alone shall be a judge or to these matters, un
less such question cannot be so determined as if there be a
dissolution—

But this decision has been very strongly and very
property opposed. Ed. Hott says that he will always bring
a question and maintain the action which ever way the common
may decide—

This is clearly upon principle a violation of private
right, and therefore the court ought and are bound to de
side upon it— and this even after a determination of the com
mons.

A further remedy is now given by statute of 2. Geo.
where the returning officer has made a false return, the
person who should have been returned shall recover dou-
ble damages and costs of such officer—

This action will also lie to be brought against an officer,
corporation, or other inferior court of justice for making a
[Illegible text]

Sat return to a mandamus.

So at common law an author may have this action against anyone who may publish his work without his consent. And now the action would probably be founded upon the equity of the statute of limitations. And in the U.S. it would be founded upon the statute enacted by Congress.

And hence whether a proper subject of the work would not fall under the protection of the same law.

So also in this action anyone who employs either in his service is liable for his acts as agent or servant.

If an officer of the law qualified to serve process be prevented by a stranger or if the stranger conspired away off the goods or person upon which the process was to have been served or as if such stranger should porter the door of the house into which the officer would have entered for this officewon process this action will lie.

In declaring in this action no precise form is requisite or in the specified specific specifically found actions.

For this purpose however see the title pleadings and the pleadings in that part commended.

The other actions treated of.

Mandamus.
Private Wrongs.

These will remain to be treated of, certain species of private wrongs, which none of the actions hitherto will of themselves complete to redress.

We shall therefore in the next place treat of the two prerogative writs which are calculated calculated with that to prevent a failure of justice. There are the writs of mandamus of prohibition and of habeas corpus.

The writ of mandamus is a prerogative writ issuing from the court of king's bench in England and success in some degree to a bill in chancery, its effect is somewhat similar.

It would seem also that a court of chancery is empowered to issue this writ but it is a right long since acquired and not now issues almost only from the king.

The object of this writ is to restore to the party to some right of which he has been deprived or reduced. It is granted in those cases only which relate to government or to the public and only in those cases where without it there would be a failure of justice.

If the applicant prevails he is again restored to the admission of some corporate or other franchise which at first might concern the public office and of which he is deprived or kept out by some by some public office.

This writ therefore never issues in case
of a mere private right and wherein an individual is commanded to do or act (in his individual capacity) commanded to do or act; but it lies merely to compel the performance of the public or corporate duty, or against a corporation — inferior court — or public officer.

A corporation may be said to regard the government because it is essentially concerned with the administration of the public duties or is affected by the charter power. The being a supreme power of the state —

This writ is one remediable of common right by any individual and the court is not authorized to impose any terms or conditions upon the party applying, or in analogy to the power in granting new trials, and in other cases where the court has a discretionary power.

A mandamus that has been observed will lie against public officers — corporations — inferior justices —

By it, a meeting of the members of a corporation may be compelled, or on election of their officers, may be compelled. Here — and if an officer should refuse to perform the duties imposed upon him by the laws of the corporation, this writ lies to compel him to perform it.

This is to enforce the admission or restoration of a person entitled to a corporate office when kept out of it —
the members of the corporation would not suffer the officer to act
or refuse to give such person the sum due or commission of his of-
cion — which may happen in the election of a town clerk or select
man —

It issues to compel persons in authority to do their duty,
or to compel a court of justice to grant letters of administration.

It would issue to a clerk of a corporation to deliver over
the books, the papers, and records of the office, to his successor.

It is not settled by any determinate rule what office
concerns the public —

But it would seem that every office of the law
properly so called holds an office which concerns the public —

Every office is an office of the law, but such as are
appointed and constituted by some private association: as when
a number of gentlemen unite in an association for a circulating library, for with such as a corporate society the law has
nothing to do. The clerk therefore of such an association is not
a subject of this suit —

According to the foregoing rule it appears that the suit
will lie to restore an attorney to his office as such — when none
had only expelled or kept out by the court below —

But this suit will not lie to restore a suit to an office unless that office be of a certain period
court nature.

Hence it is an office appointed by a voluntary sub-

ception cannot be a subject of the suit.

This rule however means no more than that the suit

will not issue the office be ordained or recognized by law

as in the instance above part of the office of a clerk to a circuit

station library or others where the members are not republic

ated by law.

For by a lucrative office is by no means a feoff

office — and Gould sees no reason why the suit may not

in all cases issue, whatever be the length of time for which

the office be appointed, if they be appointed under the su-

tority of the law and agreeable to its provisions.

It will be against a town treasurer to compel

him to lay out money to a creditor of a town — It will issue

against justice to compel them (the law being null) to lay a

town tax against the select men to compel them to make

provision for the poor.

But the stewardship of a court baron has been

held to be of a private nature, for the court baron baron

has been held to be an institution of a private nature.

It never issues against a magistrate or officer to

command an act to be done if it be uncertain and uncer-
determined whether it be his duty to do it such magistrate or officer has a right to do the act or if it be undetermined whether it be his duty to do it - But when the question is determined the writ may of course issue -

If never issues except to prevent a failure of Justice for whenever there is another legal or equitable remedy which shall be adequate to the injury done, the writ will not issue.

Dr where theearlier if an incorporated bank refuse to convert an individual member his bank stock; The suit person may bring two cases on the same against him and recover adequate damages - or if he prefers he may file a bill in Chancery for the specific transfer -

If never issues if the thing which the complaint wishes to recover have been one directionary in the person or against whom the suit would have the writ issue -

If several persons apparently under the same circumstances be kept out or prevented the enjoyment of the office, they must have several writs; for they may be vested for different reasons; and it is a wrongful act to conspire mutually -

Of the mode of issuing the writ of mandamus.

It is not usual for this writ to be granted unless
Jutate Things

But a previous motion is first made that the Deft. show cause why a precatory mandamus should not issue.

For it is common for the court to grant such motion unless the Deft. file sufficient affidavit that the facts on which the suit is true.

But under special circumstances particularly such as require an immediate interposition of the courts, the writ will issue instantly. Or where those whose duty it might be, or justice refuse to make out a poor list, whereby those who are entitled are suffering for its want.

This writ never issues except where the Deft. has been guilty of a positive omission, or of the commission of a fault or a mandamus is not like some others a preventive remedy. And the court will never presume that an officer will omit to do his duty until the fact has actually happened.

It issues against no other than the particular person who has himself been rendered liable, or whom may have made default. It will therefore, not issue against a superior who might have ordered the offender to have done the act.

But when the act should have been done by,
on oath of a corporation agitate the suit may issue against the whole
 corporation or against that particular fact, whose duty it works to
 the act.

 If an ir common cause a rule to show cause be granted
 and sufficient cause be not shown, the premotory mandate issue
 - at first in the alternative viz, that the party to the thing reje
 ced or show sufficient why he does not.

 If the party return remarks which on the face of them entitle
 the court will according to the common law proceed no further than the
 event the facts alleged be found untrue - for at common law the
 facts thus returned are not traversable, but by by bringing an
 action on the case against the Deft. for a false return, when if the
 Deft. prevailed damages would be recovered and premonitory mon
 damages also issue.

 But by statute, if these return or statement of facts
 may be traversed when the return is made. Since this statute
 the party has two remedies viz an action on the case for false
 return or to traverse the facts alleged and if he succeed
 to have a premonitory mandate.

 When the truth of the facts alleged in the return
 is denied a jury must be called to try and determine their truth.

 If the suit be directed against renewal and a false
 return be made by them, the suit may there be joint in
trespass on the case, not his election he may sue either of them for
the action being founded on tort will lie against anyone of them.

But if any one of the letters to the writ, it had as
member of the corporation voted against. The false return the
action will not lie against him individually, and of the acc
sion were brought against all in their corporate capacity.
recovery could be had against such individual it the ma
ority of the corporation caused the deposition to be of no effect,
for if under such circumstances a false return was made
to a summary mandamus the jury would not find such an
individual guilty of having made a false return.

If the parties or parties who made the false return
be sued in trespass on the case, in the same court but which
issued the mandamus on the case to show cause more
recovery he had a summary mandamus will issue but if
the suit be commenced in an other suit in inferior court a summary
mandamus will not issue for the superior will take no
notice of the record of the court below.

If a person against whom a mandamus issues makes
return, an attachment or for a contempt for such.

It is laid down in Stran. that in such case at the same if the mem-
bers of a corporation voted for making a false return and were overruled,
just that the attachment for a contempt should go out against all
Private Wrongs

This seems rather consistent to the principle of a proceeding such as a 

in a contempt, the refusal to make a return injurious or irreparable by corporal punishment— as imprisonment or by mulct.

II. Prohibitions.

The writ of prohibition is also a prerogative writ issuing generally from the King's Bench.

The object of the writ is to prevent an inferior court from deciding cases not in fact within their jurisdiction, or which such inferior court cannot take cognizance of.

But the writ generally issues from the court of King's Bench, yet it may issue from any of the superior courts of West Hall.

The writ of prohibition issues both against the inferior court and the judge in that inferior court. It is founded on a suggestion that the cause the cause itself or some collateral question which has arisen in it is not within the jurisdiction of the court.

The mode of obtaining this writ is much the same as that of obtaining the mandamus.

And when by the declaration or some other of the said
proceedings it does not appear that the cause itself or the collateral question was without the jurisdiction of the court, this must be shown by affidavit i.e., the facts must be thus shown from which it will appear that the court has no jurisdiction.

There is a controversy in the books as to the question whether the issuing of the writ is a matter which of right any one may procure or whether the court at their discretion may grant or refuse? The latter opinion would seem to be that it is not a thing of debito jure, but that it issues at the discretion of the court.

The writ of prohibition generally issues from no other cause than to prevent an inferior court from exercising jurisdiction over the subject matter of the dispute between the parties. But it issues also in cases where the subject matter is of right jurisdiction over the subject matter, yet in a particular mode of proceeding in the case having been prescribed by statute, the inferior court refuses to follow that mode. If such will then deviate from the prescribed mode of proceeding issues ordine, either in the pruning or in the statutary matter the court of prohibition will issue.

As in issuing a mandamus or in proceeding pro prohibition if sufficient cause be not shown on the rule to show cause or on exemporatory prohibition issues when in the
court below & is prohibited to hold cognizance of the suit & if you
seek and for being the Pst. apply such suit to prosecute any
further — This prohibition is accompanied with both

which the proceedings in the court below are always taken
to the court above when adjudications had upon the suits.

But if cause be shown and it be demonstrated whether
such cause be sufficient — and it be a question of difficult
resolution, the court will direct the person applying for the
writ to declare in prosection i.e. to file a declaration
against the Pst. in the suit below as is a civil suit
— This declaration is founded upon a petition not traversable
that a prohibition has issued against the Pst. in the court
below from the Pst. and against the inferior court and that
this writ notwithstanding the Pst. above had proceeded
against him &

If upon this trial the Pst. do not succeed the cause
shown being found upon cause, the writ of prohibition will not
issue & the Pst. to pay his cost.

But the declaration must come upon the original
cause or ground of issuing the writ which the Pst. urged
not upon any other or new cause — & the Pst. succeeded and
the cause shown by the Pst. be found insufficient, none
and damages are given and the writ issues —
Private Things

When the Rf. is the party in suit to a suit of consultation is awarded by which the cause is remitted to the home court to be there determined.

This suit of consultation is sometimes granted, whereas a prohibition has previously issued; as where the Rf. below sat a declaration in the name of the Deft. below (ie. the Rf. above) and pursuing the suggestion thereof the fact upon which the prohibition is founded.

So also the court on mere motion may of itself do the same and issue a suit of consultation.

A disobedience to the suit of prohibition is punish able or for a contempt.

The commencement of an other suit for the same thing in the same inferior court or court after a prohibition in that very case is also a contempt. And when the plaintiff is imprisoned for a contempt the court will not set him out until he has remunerated the deft. below for all the expense he shall have been put to.

The law on this subject is the same with the Eng. law.

Habeas corpus

The third species of prerogative writ is the.
Busbee enforces of which there are various kinds—

By this suit any one may be restrained of his liberty to may be brought the superior Court—

It issues at the instance of the party confined or from one who may have a right that he should there be brought to face such a tribunal—

II. The first kind is of habeas corpus ad respondendum. This suit is for the purpose of removing a person confined within the prison of a superior court, that he may be there discharged with another suit—

III. The second kind is the habeas corpus ad satisfaciendum. This suit lies to re-issuance of execution upon one confined under the process of an inferior court by a writ of execution arising from a judgment rendered in a court above—

III. The third kind is the habeas corpus ad praesidiendum et recipiendum—This kind lies where one is to be removed by a confinement by process of an superior court that the cause may be heard and determined by the court above. The body is removed by this procedure by the writ, and the proceeding by a writ of habeas—This species of the habeas corpus is in demandable of common right and without any previous motion—

And so soon as this writ issues any to further
+ the cost of the of non-determinism
proceedings which may be had in the court below are common

judicæ.

A rule is laid down in the books, that this suit shall
not lie if by it a right full suit be abated in the court below.

The rule is not properly explained. When the case
is removed into the court above, the proceedings in the case begin
or de novo. The rule alluded to is meant to extend only to such a
case as where a full suit is sued and confined, but after the
original suit out gets married, according to the rule of law
court time by marriage, had after the commencement of
a suit cannot be pleaded in abatement to that suit, but as
the proceedings commence de novo in the court above,
it might be then pleaded. But this, the rule above laid down
stands in against. And with one further restriction the rule
is correct. These three kinds of habeas corpus are not in
use in Can.

IV.

The fourth species of habeas corpus is that of testimonial
remission. This lies when a person wishes to subrogate a petitioner
as a witness.

In this writ effects a temporary release of the person
from his confinement; it was once questioned who the
suit did not amount to an escape via a sheriff. This idea
was demonstrably disapproved, and it was fully settled that
that it did not; provided the prisoner was not allowed any
due privileges, and was duly demanded—

But if necessary liberty was given him it will amount to
more than he can have in the sheriff—be it as he goes
about with his jenison that he may transact his business
or see his friends; or as if he take a circuitous route
only for amusement or other cause—

Besides these four kinds of habeas corpus there
are some others of little use for the in account of
which see Bacon or other writers—But the most important
part of this kind is

V.  

The habeas corpus ad subjiciendum: This writ
is designedly considered by the king subject to their greatest
security—

It is directed to any person whatever who might
may have an order in his custody commanding him to bring
before the court the body of the prisoner forthwith, that he
may abide by what the court judged in the premises.

This writ is universal remedy for every
illegal confinement whatever:—for if even the King
himself were to confine one illegally this writ will lie to
retrieve the prisoner—But a person committed by either
house of parliament cannot be relieved by this writ.
At Law. How this writ issued from the King's Bench and from Ch. and in some cases and in some cases from the Common Bench.

It never issued from the Common Bench under the provision was on by fiction was supposed to be a privileged person on account of this being an officer of such court—And not even in this case would the common Bench issue this writ; if the person were convicted for a crime or within the Common Bench could not in such case discharge the person or let him to bail.

It has been made a question whether at any time this writ could issue from Ch. during its vacation time (for as to most purposes Ch. may be said to have a vacation) Ed. Nottingham refused to grant it; for as there was no precedent he would not make one—But either if the Judges might, and indeed were obliged by the law to grant it during vacation—

If the person in whose favor the writ issue he receive the writ issue of course to the party, or if the person be committed, in any other mode, whoever it may be, because the confinement is order to produce the body to suit course of his confinement. If good and legal cause of the confinement be shown the body to the person is retried or remanded.
If the return shows a legal commitment, the prisoner is remanded. The prisoner is to be committed under due course of law. If a sufficient cause for commitment is shown from the place, in which he is committed, is inquired for, the cause will be discharged by power. On every cause of such things is done by the court either to discharge him or retain him or remand him or bail him or remand him.

If the cause shown to the court shows no legal cause of commitment, he is released. If there is shown a good cause of commitment, but the place is illegal, the court will discharge him. If the cause of commitment is sufficient and the place is proven, yet if it appears, that there is now no cause of detention, the court will discharge him.

In case of an execution paid up, it may be that the cause shown is good, the place illegal, and no cause of detention. If it appears that there is now no cause of detention, the court may release him.

If the cause of commitment and detention are sufficient and the place proven, the court must proceed. If the cause of commitment and detention are sufficient and the cause proven, the court may release him.
for if the commitment were legal, it is sufficient for the main or the cause cannot be gone into under the writ and the prisoner must of course be remanded. Unless indeed it appear that the offence was bailable and that good bail was offered and refused because in such an event and if good bail be again tendered, it shall be accepted.

This writ issues both where the commitment was illegal and where at the the commitment was legal the subsequent imprisonment was illegal.

But the provisions of the Car. law have been frequently evaded, particularly by the family of the Stuarts, the Stat. 32. Ch. III was made which more fully the benefits of this writ — and in commemoration of the great event of the passage of this stat, it is called the second Magna Carta.

This statute did little else than moreover than merely to confirm the old common law — it enabled any of the 12 superior judges to issue the writ at any time and if the court were not in session the judge who issued the writ was authorized to hear and decide while at his chamber.

This writ will be in favor of children abused by a restraint or confinement by their parents — It will lie...
The cause shown is sufficient and the law formen urges that something has taken place that renders it so proper to confine them as in the case of the present complaint that is not inherent and a matter arising to be the person, who confines to make restitution as to this. In case of offering the endorsed or confessing as to the proceedings of the court; but if they make self-inference they are liable to the person concerned.

If the complaint is proved for confinement by a person or a private capacity of the cause of commission is shown by the complainant then is it summary proceeding by the court to

confinement upon a speech to a sufficient return unless thealand that he may committed on demand since the discharge confinement one of judgment in a case not the cause sufficient it shows it appears to the judgment.
Private Things

in favor of wards, their unjustifiably treated by their guardians, or of wives their abused by their husbands...

Any relation or friend may demand this writ, and even if it be not especially authorized by the person conjoined such friend, instituted in his own name, but in behalf of the person conjoined to have this writ.

If the person to whom the writ is directed do not comply with it— he is liable as well to be punished as for a contempt.

__

powers of

where persons claim some dominion or right by implied expressions of any kind in writing bearings pecuniary services he shall in case of applications to any

judges

April 28

July 171
d shall 2o5

C. E. 2. 7

2d of May 1641— present of a grand jury summoned by their corporal name of a grand

juror— referring against unlawful practice 27

June 1639— if wanted at the time the coming

left undetermined of the only— if the public peace

might first say public of may that rest be made 2o

far above 1st Tab 176. at least 28.
This is a handwritten page from a document. The handwriting is difficult to read, but it appears to be a legal or formal text, possibly discussing legal matters such as court proceedings or legal disputes. The text is not fully legible due to the handwriting style and the condition of the paper.
Lex Mucatioria.

as delivered by W. Rawl.

This as its name designates, designates it as the law regulating commercial concerns which is adopted by its good provisions by all commercial nations, qualified and modified by their various customs and ordinances.

230. It has been termed the custom of merchants, but the word custom is not here used with legal propriety; for the merchantile general, it is not to be found in particular customs, but has within itself particular customs, which must be moved in the manners or those at common law.

It is not exclusively by the law of merchants, but regulates all mercantile matters; and it stands in the same relation, with regard to commercial concerns as the common law does to all other transactions.
 ruining called Hugh - we set 6-7-8 years 26-7-8, 8-9-10 years 26-7-8, the head of the
12 deep, in 12 deep, 16 deep, 8 deep, 12 deep, a 12 deep, and one 12 deep.
the order of 12 deep, 8 deep, 12 deep, 12 deep, a 12 deep, and one 12 deep.
the order of 12 deep, 8 deep, 12 deep, 12 deep, a 12 deep, and one 12 deep.
the order of 12 deep, 8 deep, 12 deep, 12 deep, a 12 deep, and one 12 deep.
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the order of 12 deep, 8 deep, 12 deep, 12 deep, a 12 deep, and one 12 deep.
the order of 12 deep, 8 deep, 12 deep, 12 deep, a 12 deep, and one 12 deep.
the order of 12 deep, 8 deep, 12 deep, 12 deep, a 12 deep, and one 12 deep.
Bills of Exchange are regulated by this Law. Foreign Bills are always regulated by it, in all countries, and inland Bills are by the special ordinances of most commercial countries, regulated by it, as are Promissory notes of certain description.

Policies of Insurance, Charter Parties, Bottomry or Respondentia Bonds, Bills of Lading, Laws of Navigation, and Factorage are all branches of this Mercantile Law.

The variance between the Comm. Law & this Law.

I. At Comm. Law, choses in action were not assignable, so as to vest the property in the assignee. Such assignment was a species of offence termed Maintenance. But Courts of Equity in England soon began to infringe on this rule, which it was found difficult to preserve in a commercial country, and compelled the debtor to pay the money to the assignee. Since that, this has been collateral, recognized by Courts of Law, tho' they still retain the form of bringing the
the last such the question valuable order must be inserted in the uniformy subsequently is the first

A memory liens for lay endorsement to himself being

under for the uniform by means of a receiptable

the court hand writing in 1842. Canceling 316 by having

3 Douglas Appended
action in the name of the original obligee. A promise by the debtor to pay the money note to the promisee is held good in law. So also, they have in certain cases made an assigned note a set off, to a claim brought by the obligee against the obligee assignee; so that all remaining of the old law note is the formality of bringing the action, in the name of the original obligee.

But by the Law Merchant, such negotiable note is one within its cognizance, one vested immediately in the assignee, both as to the legal & equitable interest, & without any privity of contract, the Law raises an agreement between the drawer and drawer, the payee & the person holding the note.

II. Again, At Com Law, that species of contracts, termed Specialties are so privileged, that no enquiry can be gone into, to prove the want of a consideration.

By the Law Merchant, all negotiable instruments, after having been negotiated, are equally privileged, as Specialties, but before they are negotiated, they stand on exactly the same ground as other instruments.
at Common Law.

III. Again. Some e漠uautute contracts are validate
there is no legal consideration, but merely that of honor.
For instance, A, draws a bill on B, in favor of D.
For B to accept it, B an old acquaintance standing by,
honours it voluntarily, without any consideration
actual or presumed, now by the Law & Merchant,
B, may maintain his action against A, for the amount
of the bill, that accepted, not withstanding there
is no privicy of contract between them.

IV. Again. By the Law of Eng. fraud in
the consideration of a contract does not render
it void, tho the party injured has his remedy in
damages, but a fraud in the execution, always
voids Contracts.

The e漠uautute Law destroys a contract
together, for a fraud, however minute in the
consideration. It requires an unrighteouness of heart
such as the keenest moral sense, & most deli-
eterminate integrity would dictate, & the heart, trick, equiva-
lation, deceit or concealment of facts, destroys the
contract forever. This however cannot extend to
the concealment of private speculative opinions.
or suminister.

In Connecticut, by the rule of Comp. Law, when the fraud is complete even in the consideration, it renders the contract void.

V. Again. At Comp. Law, if execution is obtained on a judgment against more than one of the parties, who is exonerated from confinement, or otherwise discharged, this is a discharge to all, without a ratification, and often without a rational presumption of payment, although the law proceeds upon the ground of a presumed ratification.

But by the Mercantile Law, a discharge of one does not at all exonerate the remaining debtor.

VI. Again. By a general rule of the Comp. Law, contracts by which property is agreed to be transferred, and a consideration for it paid for it, are considered as executed, and the property vested.

But by the L. M., if property be bought by one, and payment made by note, or book charged, if the person of whom the goods were bought discover that the purchaser was a bankrupt, or even in failing circumstances, he may stop the goods in transitus & take them back into his own
or servidor.

In Connecticut, by the rule of common law, when the fraud is complete even in the consideration, it renders the contract void.

V. Again, at common law, if execution is obtained on a judgment against more than one, one party being excused from confinement, or otherwise discharged, this is a discharge to all, without a satisfaction, and often without a rational presumption of payment, although the law proceeds upon the ground of a presumed satisfaction.

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But by the L. M. if property be bought on payment made by note, or book charged, if the person of whom the goods were bought discover that the purchaser was a bankrupt, or even in failing circumstances, he may seize the goods, in manuscript to take them back into his own
VII. Again, Con Lawsnonths are reckon as lunar months, by the L. E. L. U. e Calendar months.

VIII. Again, an instrument at Con. Law, to commence, its operation from the date, would exclude the day on which it is made, but if from the day of the date, excludes it, The Law Mercia, excludes it in both instances.

IX. The Law Merchant does not at all recognize the quorum necessary of joint tenancy.

Of Bills of Exchange

A bill of Exchange has been defined Robes, in open letter from one man to one other, requesting him to pay a sum of money to a third person, or his order.

There are three characters concerned in a bill of exchange:

1. The drawer, who makes the bill.
2. The payer, being the person in whose favor it is.
3. The drawee, or person to whom it is directed, and by whom it is to be paid.
A bill of Exh. in the hands of the payee answers the purposes of money, for he may assign or indorse it over which instantaneously the property in the indorsee.

The indorse of a bill may indorse it, his indorsee may subindorse it & so on indefinitely.

Every indorsee is quasi the drawer, subject to the same liabilities as the drawer.

If a drawer refuses to accept a bill, or having excepted to pay it, the indorsee must sue the drawer or anyone of the indorsers at his option.

The last person to whom the bill was negotiated is termed the holder.

These bills after having been once indorsed need not again be indorsed, at the same may be indefinitely transferred, but if the bill after such indorsement be even so often transferred by two or more, no one can be sued except those who are parties to the bill or the payee of it.

These bills payable to bearer, or to A. or B. or C. may always be transferred without indorsement, & when transferred by delivery they are as fully the property of the transferee as if they had been indorsed.
Sex Merca.

The law merchant always throughout proceeds upon the presumption that the drawee, effects in his hands of the drawer, to the amount of the sum mentioned in the bill. A bill of Exch is never received as payment, until the amount is actually paid. When a man purchases a bill, it is not as if he purchases an horse, for if the bill is left in the hands of the payer, the drawer becomes his debtor as to the amount of it.

Promissory Notes payable to J. D. or order only, the Stat 4 & 5. Anp, placed on the footing of bills of Exch. The distinction between notes of hand and bills of Exch, is sometimes difficult of perception.

The word "Drawer" of a Note & "Drawer" of a bill of Exch are sometimes ignorantly used as synchronous, but they mean very different things, for the Drawer of a Note is exactly on the same footing of an acceptor of a bill of Exch. The word "Maker" of a note recently used avoids this confusion.

Checks or draughts on Banks are regulated by the E. C. U. There are payable to bearer & always on demand, but of these & Prom. notes Plur. ultra.

Bills of Exchange are drawn various ways.
sometimes payable at sight, sometimes at a certain period after sight, and sometimes so long after date.

The term 'distance' made use of by merchants has been construed into various meanings, so that experience seems to require that it be expunged.

The term is applied to the time in which a bill is to be paid to the time agreed to by the various customers of different places. In England, bills made payable at distance are payable within one month. Sometimes bills are made payable at double distance.

It is a general rule of merchants to add some days after the expiration of the time at which the bill is to be paid, or offered for payment. These are termed 'Days of Grace.'

In almost all countries, three days are allowed. When a bill is payable at sight, no days of grace are allowed. This seems perfectly more requisite than in any other case.

Irish bills of exchange were not at all governed by the law of merchants, until by an English statute (the provisions of which have been copied by most of the states in the Union) they were placed...
on the same footing as foreign bills of Exch.

Bills of Exch. between persons of the same state are not it seems governed by the Mercantile Law, tho' bills between different states undoubtedly are.

It has been much disputed in Eng. whether promissory notes made payable to J.S. or order were negotiable, i.e. whether the maker of such a note promised to pay anyone appointed by the payee & as soon as he appoints.

Mr. Bovee believes this to be clearly the case at Com. Law, but on account of the great dispute, they were expressly made negotiable by the Stat of Ann, and as soon as the note is passed from the payee to an other person, there is debt immediately created between the drawer & such person &

Who may draw Bills of Exch.

Any persons able to make any valid contract may draw Bills of Exchange & bind themselves thereby.
Infants may bind themselves for necessities, but not by bond or bill of Exch.

But if an infant give a bill, which is negotiable, the person negotiating it is as much bound as if it had been given by an adult.

A note payable to the order of J. S. is as much negotiable as if made payable to J. S. or order, doth a bill. A bill payable to bearer is clearly negotiable.

When there are more hands forming a company, the act of one binds the rest in all commercial concerns. It was formerly a question whether one of the partners could bind the other or others, by drawing or accepting a bill of Exch. The transactions in which bills of Exch. are said to have been determined to be commercial, therefore when one of the partners draws or accepts a bill of Exch., in the name of the firm, it will be always binding on all.

But in cases of making title or in any transaction not commercial one partner cannot bind another or other partners, although he does it in the name of the firm, unless by special power given him by
2 June 1777.
3 July 1778.

1 July, 1778.
20 Aug. 1778.

T. Frey 7 D. B.
the other partners—

Suppose however it was a man own individual Commercial concern, his separate interest, the being a partner should either draw or accept a bill would it bind the Company? It was at first determined that it would not. But now even if it he a separate individual concern, other persons not knowing it to be so it will bind the Company, for they holding themselves out to be a firm for very many purposes, it would be hard that strangers should be deceived by insinuating the responsibility to be attached to one person only when they supposed it to belong to the firm.

Suppose a bill of exchange was drawn by several persons, a person employed by several persons as a factor, whose only who assign the bill, will be liable or bound by the act of the factor; but if a Company having joint interest authorize a man as their factor, he draws a bill of Exch. they will certainly be bound.

It is not necessary that a Merchant sign a bill himself to render him liable—
a signing by his Clerk who has been in the habit of doing business of this kind for his employer he has no right

The next case to be considered is when A B B not Merchante draw a Bill on C in favor of them selves i.e. payable as their order own order C accepts the Bill and A one of the drawers endorses the Bill to B another of the Drawers, C this Bill well endorsed so that C can be sued upon it, A B B not being partners, C should both witness to render it good that is the endorsement good Lord Mansfield let in a Merchante to prove the Custom, although it was governed by the general law and therefore not required to be proved, B the Jury found it not properly endorsed. It has cannot reconcile this proceeding of Lord Mansfield with the rule that the Laws Merchant cannot be proved by Merchante let in as witnesses, it appears that this did not depend upon special custom, for where a particular custom is challenged, proof is always admissible to prove the custom and the case will be governed by it.

The fact was that Lord Mansfield this a great genius and a very learned man Claren
t. this will not appear applicable to move

copy put in your collection of the

rule.

of the governing ushers' fees, $2.57 monthly

post in (B renmg?

2.3 so much out of the money of increased

proportion to your hands

D. sell a pair out of Warren's money

not an account of freight &

1/2. 45. 487.

2. $5. 458

3. $5. 313.

2. 26. 1271.

10. 60. 291.

20. 80. 316.

5. 60. 591.

2. 3. 982.

12. 12.
Lex Mea.

Temenistile monem was not a technical man, and often passed the boundaries of technical propriety to give place to substantivist justice. His edict in this case did not show the general custom.

Bills of Exch. (as has been observed) are privileged or specialties. They have also the peculiar quality of vesting the property immediately in the transferee.

The properties or qualities of Bills of Exch. & Promoks.

1. Every letter of request from one man to another desiring him to do a particular thing, is not a Bill of Exch. And it might be a valid contract; for

2. The first quality of a Bill of Exch is, that it is always for money. Known for any collateral thing.

3. It must carry a personal credit with it, not depending on any particular fund or Bank for when a man sends an order a letter a letter to pay a sum out of any particular fund or Bank, then it's a good contract between the parties. But it is not a Bill of Exch. For it does not make the
There is no cost of this mode being applied to bills, except flat.

1st pay out of 2nd payment when it becomes due 2d to pay on under the body of this pay if does not 3dly. To pay for any days after marriage 2d Aug. 1481. 5th year.

2d Aug. 1485.

2s. 1r. 6d. 1/2.
2s. 2r. 2d. 2d.
2d. Aug. 13 32.
1 19 7.
8 9d. 26d.
2d. Aug. 15 62.
1s. 3d. 3d.

Stone. 10 17.
Burns. 2 17...
Drawn invariably generally.

A Bill of Exchange may appear to be payable out of a particular fund and yet the drawer to be liable generally. As a Bill dated March 5th in the words: Please to pay £50 of my half pay in one month which will be due next Sept. Now by the half pay here nothing can be intended, but to inform the drawer how he will get paid as it is but a request to pay the Payee £50.

It is remarkable there is not a single instance in which notes of hand, whether payable out of a particular fund or otherwise are not considered negotiable. The reason of the distinction between Notes and Bills of Exchange cannot easily be

In the third quality of Bills and notes is that they must be paid at all events not depending on any contingency whatever.

There is a number of cases in which there is a certainty, that the contingency or contingency will happen, but an uncertainty with respect to the time at which they will happen.

Of this kind there are no cases of Bills of Exchange
It is not necessary that the certainty should be a physical certainty; moral certainty will be sufficient to render the Bill negotiable.
be bound, but there are many cases of notes in this
kindment, which are allowed to be good, as pro-
mere to pay so much money on the death of a.

(a) An other distinction is made, it is said that
when the time of payment is physically certain
i.e. uncertain from the nature and constitu-
tion of things, notes will not be negotiable, but
when the time is only morally uncertain they
will be good as a moral. Uncertainty does
not imply an impossibility, but what has happened
may again take place.

In all the cases before mentioned, the con-
tracts would be good as between the parties,
but not being negotiable, would not partake
of the quality and nature of bills of exchange
or promissory notes.

Much has been said in the books as to the
necessity of the words "Value received" in bills
and notes. It is certain that they are generally
used, but not that they are absolutely neces-
sary. There have been many dissenting opinions
that they are not necessary in bills or notes
which are negotiable instruments, for as soon
as they are transferred, they have every quality of
specialties and therefore a consideration will
dways be presumed I never suffered the to begin
into. There has been one case in which the word
have been decided not to be necessary

It might, says that they are not necessary to
be inserted, but that it is best to insert, for
otherwise damages cannot be recovered if the
bill is not accepted, or if accepted and not paid.

As the word "Order" necessary? from deter-
minations in York, Mays, & Conn, it is nec-
essary and Mr. Leeve thinks the word "Order"
a necessary and constituent part of a Bill of
Exche, otherwise their negotiability would be
defeated & they would be mere letters of requ-
est between the parties.

Before a bill of Exche is negotiated the want of con-
 sideration may be enquired into, as between the
parties, but after assignment this enquiry is for
seen precluded; for as has been remarked above
assignment gives to a Bill of Exche all the privileges
of a specialty.

It is entirely immaterial whether the
Indorse knew that there was no consideration between the parties or not; in either case the bill is good in his hands.

**Illegal Consideration**

At common law, the illegality or testitude of a consideration is a matter open to enquiry. In these mercantile transactions the law is somewhat different for in some cases the illegality does in others does not affect the bill in the hands of the holder.

Ordinarily, that which is at common law an illegal consideration does not affect the bill in the hands of the holder if he be an innocent bona fide holder.

But when the holder knows the consideration to be illegal between the parties at the time of receiving the bill, he is participator in the same and not an innocent holder, and the security is not good in his hands.

If, however, he transfers it to an innocent bona fide purchaser, the reason of the rule ceases.
sex amicorum.

But, when these specialties have by statute been decided to be "void to all intents and purposes" in some instances, they have, the courts have as the last of two evils chosen to fulfill the requisition of the statute, and render them void in favor of the hands of recent holders.

Of the state of the parties, & of the acceptor and the doctrine of acceptance

Under this head, the doctrine of promissory notes cannot properly be considered for the maker of a note is also the acceptor.

The acceptance is an engagement to pay the note to the holder.

A man who previously engages to accept a bill on its being presented, does by such engagement actually accept it.

It may either before or after it becomes due.

The most usual mode of acceptance is according to the tenor of the bill, but this is not invariably requisite.

It may be by writing or by plural in totto.
which cases it is good both as to foreign & inland bills

On the ground of fraud & the state of fraud
& prejudice paid acceptances have been objected to
but ineffectually for the presumption of law
is always that the drawer has effect to the drawee in his hands.

This acceptance need not necessarily be made
to the holder at the it usually is, & to whomver it
is made, it is obligatory on the acceptor, binding
him to every previous indorsee & subsequent
holder.

So a letter from the drawer to the drawer that
he will accept the bill, is a good acceptance; but
then may be equitable circumstances which as
between the drawer and drawer, may exonerate
the latter.

A bill may be accepted in part in which
case it is good against. It may be accepted
payable at a different time from that men-
tioned on the bill & as has been observed in many
ways unident from the tenor, but in all these
cases it is at the option of the holder to receive
such acceptance or resort to his remedy against
the Drawer or previous Indorers of any.

A conditional acceptance where the conditions are complied with is binding on the acceptor.

What constitutes an Acceptance.

Almost anything which can import an acceptance will bind the Drawer as writing “accepted” or “presented” on the Bill. So also when it was

leave it with me & I will accept it for holder.

good acceptance; So also a direction by the Drawer to a third person to pay the bill has been

holder a good acceptance.

An acceptance is an engagement not only
to pay the holder but any subsequent Indorers.

The Drawer is rendered liable by a subsequent protest, may recover from the Drawer if at the time of drawing the bill he had in
his hands sufficient of the Drawers effects to discharge the bill.

An acceptance better’s the situation of
the holder, by giving him an additional secu-

ritv.
must be accepted in 24 hours
if moved away only if absconded on
more credit

may be accepted by agent
personal appearance and to pay at different
sum on the account
may be lands of some community be executed
the holder may by some to execute the account
agent to confirm acceptance at an and Dec 25th
making good and take a promissory note
enlargement on alteration by letter
Of the Negotiation of Bills of Exch. & Notes

If made payable "to bearer" a bill may be transferred by delivery; but if "to order" it must be by endorsement. There endorsement, one ordinarily blank & after a blank endorsement, such a bill may pass by delivery, but if the blank be filled up, it must be again endorsed blank before it can pass by delivery.

Of Endorsements.

Whenever a bill or note passes by delivery and the party receiving it, is a stranger to the bill on the face of it he cannot sue or in case of non-acceptance maintain his action against the blank bill by law mutual parties; but he may resort to his common law remedy against the person transferring it to him.

The Indorsee may at any time make himself a party to the bill, when the endorsement is blank by filling it up with his own name. This may be done by the Indorsee in two
ways, 1. By filling it up as being vested in himself, or 2. By filling in a power of attorney to himself to receive the money of the Indorser.

In short anything respecting the bill may be written over a blank indorsement.

There is implied in the contract arising from the bill a bill of Exchange, an engagement to pay not only the Payee and his Indorser but every subsequent indorser.

The Indorser holds the bill with the same privileges against the Drawer as the Payee did, together with an additional security against the Payee and in all cases, with the same privileges against the Drawer that the Payee would have if there were a valuable consideration.

It is laid down as an universal rule that whenever the Indorser has received a valuable consideration from the Indorser, he cannot indorse it or to prevent or restrain the Indorser from negotiating it, negotiating it.

But when the Indorser is only agent for the indorser a restrictive indorsement may be made, so as to be payable to a certain designated person.
undertook blank. He had been told up as he pleased for the sake of
procuring it by means of Alden.

To let or lend in the same way is the
same as lend in the same way.

Then, in whole."

The testimony of witness as to
usage,

mutative cases or piece to piece
as one journey to another
as when rejoins another
that it is entitled to a third
year for.

A witness, blank, at work.

When blank. At this time.

May see. I on 13
of the latter. To most tell both. Up to this
hour only we stake and the whole and lay
B to heap itself up the undetermined of 13 &

To begin to have and this may be done at the
need to have and this may be done at the
bear.
The words "or order" are not necessary to be used in the endorsement to render bills or notes negotiable to any extent; for the Endorsee holds the bill with all the privileges of the Payee by the words "or order" in the bill. The Payee has a right to negotiate - infra.

When the transfer is by delivery, the Bona Fide holder has a right to recover it against the Drawer this immediately it was obtained by fraud or theft. Now at Com. Law in every case except that of money, if a thief sell my property to a bona fide purchaser I do not lose my right to it, for prior ni tempore potior est in jure. The difference between money and collateral articles is made on a principle of policy, not to impede the circulation of the medium of the Country. The law Merchant on the same ground extends this exemption to bills of exchange and also to a common draught on one's private Banker.

When two or more partners are joint payees of a bill, of endorsement or Endorsement by one is binding upon all, but when a bill is made
A bill payable to A B C be made payable 13 or order payable by endorsement at the option of theendorsement to the first end be endorsed to the second by endorsement in the hand of A B C by delivering or endorsement R E M O V E.

121 13. 1 6. 6 there was an blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, blank, 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ank,blank,blank,blank,blank,blank,blank,blank,blank,blank,blank,blank,blank,blank,blank,blank,blank,blank,blank,blank,blank,blank,blank,blank,blank,blank,blank,blank,blank,bl
payable to two or more persons who are not parties
ever. Quod hujus, it is said to be determined that
to convey the property all must indorse
	some persons are under certain circumstances
der empowered by law to indorse; as when a free
wife who is a payer marries, her husband may indorse
without her.

So the assignee of a banknote may indorse.
So also may executor of a lost will and last
testament,

So to a trustee may indorse for the certain
quittance.

A bill cannot be so divided by partitio in
adversions as to render the Drawer liable in more
than one action.

Neither can it be so divided as to subject
the acceptor in more than one suit, unless when
accepted it was previously indorsed over in par
cells: but if it were indorsed over in parcels, he
is liable in as many actions as there were separate
indorsements.

If the Drawee pays a part of the bill, and
it is indorsed over for the remainder, the Drawee
Lex Mecca.

In one case only, suit only.

Let us now come to the engagement of the drawer.

The drawer engages to say the payer that the drawer is capable of binding himself. II. That he is to be found at the place where he is described. III. That he will accept the bill & in default of any of these, he becomes liable to the payer and his assigns at discretion, they performing the requisite duties on their part.

In case of non acceptance he is also liable for the interest on the bill & the damages ensuing to the holder & from the non payment.

The damages allowed differ according to the variant customs of merchants. The mercantile law in different places.

Before the revolution 20 1/4 cent on the amount of the bill was recoverable over all the colonies. In cases of bills between American & English but different customs have now grown up in different parts of the Union.

A man may render himself liable without actually drawing a bill, as when a man writes
his name blank on a piece of paper & deliver it to a third person with power to draw a bill on it.

Formerly it was disputed whether the drawer having become liable by the non acceptance of a bill, could be sued before the bill became due: It is now settled that the drawer's liability commences instantaneously on the non acceptance; one of his duties having failed of being performed.

The Indorser's Engagement

He is as to all parties subsequent to him, self quasi a new drawer, and liable to them equally with the original drawer.

Nothing will discharge the Indorser except what will also discharge the drawer viz. the payment of the money, for an ineffectual judgment against one of the Indorsers or the Drawer, after the holder has made his election, is no satisfaction. This principle is known to the Common Law.

Even an ineffectual Exequitur which does not raise the money is not a satisfaction by the
by the law Merchant a discharge of one taken on an execution is no discharge to the rest contrary to the rule of the common law. And by the law, the same person may be retaken after having been discharged.

The Holder's Duty

All the liabilities of the of the parties before mentioned proceed on the ground that the holder do his duty.

A bill becoming due a certain time before after sight must be shown to the drawer within a reasonable time and without unnecessary delay, if such delay intervene a consequent loss must the negligent party must bear it.

If payable at a certain time after date it is held that the holder discharges his duty by presenting at such time & on the day on which it falls due.

If on being presented it is refused to be honoured by the drawer, the holder must give
Notice to all those against whom he intends to proceed & those parties not notified are not liable.

This notice must inform the party notified, that it is the holder's duty, intention to render him responsible.

The reasons for giving notice--

It is very important for the drawer to be notified, that he may adjust his accounts with the drawee & obtain from him the property which the law presumes him to have of the drawee & also that he may make provision for the payment of the bill.

The endorser will also have all of his remedies against some person they therefore must be notified that they may pursue their remedies & secure themselves.

If the drawee accept a bill varient from the tenor of it notice must be given to the drawee and endorser as before.

Whether accepted or not, the drawee holder must present the bill for payment & this within the time at which it was to be paid, including the
the days of grace: for the law presumes that the
drawer will pay, or at least affords him a long
pretext to an opportunity to pay.

The time of giving notice.

Notice of non-acceptance of all foreign bills
must be given by the first post, and after pre-
sentment presentation for payment by the first post
afterwards, that it is not paid.

Where there are no posts, the first oppor-
tunity must be improved.

On inland bills, if receive repays the
same rule prevails. When the parties are near
neighbours the first opportunity must be em-
braced.

If the drawer have no effects of the draw-
er in his hands, the holder may sue the drawer
without notice.

Whether the holder has properly done his
duty is a question of law arising from the
facts, and is to be tried by the court.

When there are no effects of the drawer.
in the hands of the Drawer, no notice is requested
requisite to the Drawer; the Endorsers to be made
liable, must be notified-

The manner of giving Notice.

On inland bills no particular form is necessi-
sed, or requisition on the payee, nor in a bank-

In foreign bills the mode prescribed by the
law must be precisely pursued, and any devia-
tion from it destroys the claim of the holder.

The Holder calls upon the Drawer & presents
the bill for acceptance; the Drawer refuses to
accept it: he must then apply to a Notary Pub-
lic, who takes the bill & simply caries and pre-
sents it to the drawer for acceptance. The No-

The Notaries then minuter upon the bill the time
of his procedure, which is termed making min-
istering the bill; the then draws up in his official
capacity, a solemn declaration, stating the facts
as they happened & this declaration is a protest
for non-acceptance. All this must be done with
in the regular hours for doing business.
This protest, thus made out, must be sent away by the next post to the party concerned. A copy of duplicate of it taken of it by the Notary, if left in the possession of the Holder, is the evidence on which he is to recover, if is admissible as such in all Courts of Justice. The Holder can adduce no other evidence.

After this at the ultimate period of the bill being payable, the Holder must go to the Drawer again & demand payment; on the refusal of which the same formalities are again to be acted over, and a protest is to be obtained for non-payment.

The bill itself, together with the protest, is then to be sent back to the Drawer by the first Post, and this is the necessary notice.

A copy of the bill taken by the Notary is sufficient on the protest for non-acceptance.

If the Drawer is incapable to contract a protest is made by a Notary in a similar manner.

When the Drawer accepts a variant from the tenor of the bill, a protest for non-acceptance must be entered & also for non-payment, in case he will not pay the whole bill; but if the holder agree to accept of collateral articles, in lieu of cash, no fine.
text is necessary

If the Holder have his Bill accepted, suspect the Drawer to be in failing circumstances, he must for the benefit of the Drawer demand of the Drawee better security. On a refusal to find such security, he must protest on that ground.

The effect of Notice.

This has been in a great measure anticipated by what has already been observed—

After the Holder has complied with the requisitions of the law, he is entitled to recover his money, the interest, his costs & damages.

At Law, damages are recoverable only for detention, which is supplied by Interest.

Originally, there were damages by the L. M. since uncertain, but the ascertaining them in each particular case, was a matter of so much perplexity that a definite sum is now given in lieu varying according to the different customs of different places.

These is one species of bills, which Mr. Reeve has properly avoided mentioning until now viz.
Bills drawn to be accepted on the account of another person who is indebted to the drawer: As if A. in N. York draw in favor of B. a bill of exchange on C. in London on the account of D. in London who is indebted to A. In this case no contract is raised between the Drawer & Drawer. It is in fact a bill drawn to be accepted on a certain condition which the Drawer at his option may accept or refuse.

But my man what person may accept a bill in honor of the Drawer in which case a contract is raised between the Drawer & Acceptor: So also any person may accept on account of any or all of the Endorsers.

In all these cases the Acceptor must get the bill protested & give notice to the Drawer or Endorser.

When a third person accepts in honor of the drawer or Endorser on refusal of the of the Drawer, the Holder gets it protested & the acceptor goes also before a Notary & subscribes a declaration in writing that he accepts it in honor of the Drawer or Endorser to whom all these proceedings are sent & the notice thereon given.
sires a contract between the Drawer & Acceptee.

If the Acceptee has in the interim received from
the Drawer any assurance of his acquiescence in the
acceptance, he may pay it, without giving notice
to the Drawer; otherwise he must give notice pro
forma prescripta. Then, when accepted in honor
of an Indorser.

The presumption of law is that the acceptor
is indebted to the Drawer until this presumption
is removed; therefore, he is liable to the Drawer
for not paying a bill which he has accepted.

If the Drawer pays the bill pays the bill
having no effect of the Drawer in his hands, the
latter certainly becomes his Debtor, he may sues
and be recovered; but is his remedy by the Mer-
cantile law; or must he resort to his Common Law?
The former is limited to a few cases, remedy
medically, at the he has been no decided cases on this
point. Sed tamen quia

It is a general rule of the mercantile
law, that an acceptance once made cannot
be revoked—

The holder however may discharge the
acceptance not only by writing, of which no
of the exchange of his securities.

A 3s C 267. 1500 and 267.

For 127, 267, 267.

A 127, 267, 267.
doubt could exist, but also by formal declaration, acts equivalent to such declaration.

- As length of time short of the statute limitations discharges the acceptor of a bill, nor does a receipt from the drawer, payee or any indorser of part of the amount of the bill discharge him from his liability to pay the remainder.

A written promise on the bill by the drawer that he will pay it, only adds a collateral security to that already existing by the signature, but does not at all exonerate the drawer.

The principles of the instruments govern in bills of exchange.

When the bill is accepted, the indorser, from the tenor of it (as for part of the same) the holder may receive such part as the drawer will pay for the benefit of the drawer, but must protest the bill for the whole.

A receipt of part of the money from an indorser does not discharge the drawer. The drawer says, "I receive", does not a receipt of part from the drawer discharge the liability of the first indorser, and all those previous to the holder & does not the
The balance of a bill entitled the Assay, be drawn at the rate and subject to any
interest for the time being the under

Bank of the Province of Canada, in

October 1st, 1824.

This note is drawn on the Bank of Canada on account

of remittance over and above the balance due the Bank.

Dated at Montreal, 1824.

Wills 188, 189.
same reason apply mutatis mutandis to the case above.

Formerly it was held that the process
be served to be done the paper could be sued.
but this rule the attended with the serious con-
veniency of avoiding circuit of action is now abol-
ed.

Of Mr. Remedies

When there is a necessity of contract exists between
the parties, the Com. Law remedy may be availed

But the e. meantime has given a special act-
ion on the case, founded on the custom of mer-
chants & understood to the Com. Law. PLEADING.

Formerly in setting out the custom it was
usual to begin by defining precisely what the cus-

of the ground of a Com. Law particularly is
usual only to allude to it, but not formerly to
its provisions in detail.

—END—
which pagan to leave

in the end of it still reside to be

proposed to be raised by trees

an as signed by one jointly a severely corporal

2d May 1543 - Johnson

severely signed by the master.
To give a right of recovery the case must be stated with all its circumstances of protest, notice, &c.

In all cases the following circumstances must be stated with all its circumstances: That the drawer made his bill of exchange, directed it to the drawee, requesting him to pay the payee or order a certain sum & that the bill was delivered from the drawer to the payee.

The time at which it was made need not necessarily be stated although it might be useful to state it in particular cases (as in disputes or the statute of limitations).

A signing of the bill by the maker of it need not be stated. Suppose the suit is to be brought against the acceptor by the payee, over and above what is mentioned above an acceptance must be stated, which implies a presentation.

The manner of acceptance need not be stated, contrary to the general principle of the common law which requires a statement of the cause of quittance as well as the quittance.
that the court accepted what I wanna do is the same, I think for underrate and try to get it by doing the other hand, when Samuel's up against dream on End on the Money

low end, demand or word at zero, and try

worth the words and it seems that the con

sequence was used to late demand of dreamer

who the underfar is used

ST 150

of the opening of 12 - 13 days to D and G

D to E and far, the date at the court was at

1853 8687

underfar another which to pay for the negotiable

words again and

ST 18 - 13 days a bill in favor of B, not going to pay DC 83 D and G to be

pretended to E for anyone who accepts the goods that

pay expenses I pray that G was prepared for new

pregnant and retained to the who had wrote

had to say sorry to someone few know how to state

ST 18 far, some dream what done is the 33rd 87

ST 87 - 12 13 days a bill can't the

greatly

due in all paid, and given to an evidence

after purchasing only evidence of money bound by

page to dreamer
It may not be amiss to remark here the nature
digressive that evidence of acceptance after time
of payment is good.

If the Endorsee bring the action against
the Acceptee, this more is necessary to be said; that
an Endorsement was made—

... If the endosments in immediate (suppose
any) between the payee & endorser were blank,
the endorsee may declare the endorsement to have
been immediately from the payee to himself.
If they are filled up they must be stated from
beginning in order.

An Endorsement without a written assign
ment & delivery, which therefore by the L.R.
need not be specially stated—

If a bill is made payable to Bearer it isn't
necessary any endorsement unless there hav
ing been an actual endorsement you wish to
use the Endorser—

Suppose the action is brought by an
Endorsee who has paid the bill against the
drawer, it must further be stated that he has
had the money to pay, in consequence of the
bills not having been paid.

It is of opinion that it is not necessary to state a promise to pay, in the bill, but merely the facts which render him liable e.g., the delivery of the bill is avowed, & the bill imports a promise.

It is now an established principle that an In

 daher or Payee may pursue all his remedies alone he may have have suits against the Drawee, Re-
 ceptor and all his Indorsers at the same time; he may recover Judgment and take out Execution against all of them on a Common law Principle as well as a principle of Equity he can recover but one satisfaction yet he may recover costs against each.

Suppose when all are sued, one chooses to put a complete stop to the proceedings he must pay the debt and all the costs in all the actions; But if he pay the Debt and his own costs, it stops further proceedings against him & the other parties by ten
dering each respectively respectively his costs and pleading full payment by the party whose may stop the proceedings.
Sex Nereia.

If however judgment proceed against all and against each for the whole sum, yet the plaintiff can take but one satisfaction of the costs from the other parties. If he do take more than one satisfaction he is punishable for a Contempt of Court.

So if the parties after judgment tender the debt and all the costs, the taking out Execution is a contempt.

What must be proved.

All the necessary allegations which have before been mentioned must be proved.

The acceptance itself is evidence of the Bills being the act and deed of the Drawer & the acceptor cannot allege it to be a forgery; Of course in an action against the Act acceptor the honor writing of the Drawer need not be proved.

But if the acceptor honoured the Bill without seeing it the rule does not hold for essante &c.

The acceptor's hand writing, is the proof of the when the acceptance is in writing, is the proof.
of the acceptance in other cases it may be proved by

If the action is brought against the acceptor
by the holder of a bill payable to order, the hand
writing of the indorser must also be proved, for the
acceptance does not go to prove the handwriting
of the indorser.

When there are several blank indorsements,
the handwriting of the first indorser need only
be proved; but if the indorsements are filled the
handwriting of each indorser must be proved.

When the acceptance was upon condition,
the condition must be proved to have happened.

In an action brought by the indorser aga
inst the drawer, or a non-payment of the draw
the handwriting of the drawer & payer who
is the original indorser must be proved, and this
is insufficient unless there are intermediate se
rial indorsements, in which case as has been ob
served, the handwriting of each individual
special indorser must be proved.

If the bill is payable to & or bearer, no in-
dorse is made need be proved, nor the hand
writing of any person but A. if no bearer no drawer need be proved.

In an action Indorsees v. Indorsee; it is sufficient to prove the handwriting of the Indorsee, who is guarantors drawer 8 neither the original drawer writing nor that of the intermediate blank endorsers need be proved but the handwriting of all intermediate, special endorsers must be proved.

In an action Drawee v. Acceptee. The drawee must prove the acceptance (by the handwriting of the Acceptee); demand of payment & show that it was not paid by the ordinary evidence of a return of the bill with a protest.

It is not necessary to prove that there were effects of the drawee in the possession of the drawee for the law presumes this, & the onus pro bande is on the drawee. See the case Lawrence.

Suppose the action is brought by an endorser who has not been dammified, but notified, and consequently has himself paid it. (Take the words of the above) he must prove
that the money was paid.

In the case above it has been decided that the payment by Endorsement is sufficient: The best decision certainly does not symmetrise with the principles of the N.B. generally is disapproved by Mr. Reeve.

Drawer vs. Drawer: The Drawer must prove that he made the bill: & that he paid the money. Having no effects of the Drawer in his hands.

_A Protest is prima facie evidence of itself_ requires nothing to substantiate it unless the other party attempt to prove it forgery & even in this case it is not necessary to prove the handwriting of the Notary, but merely to procure a certificate from the Executive or proper officer to certify that D. L. is a Notary Public.

When the Deft. has suffered a Defeaut it is not necessary to prove the handwriting of a note the proof to be merely an accommodation note not given in consequence of any indebtedness, & when in course of cir-
This rule could not with propriety be adopted here in the present state of our banking system.
Sent to our friends in the prosecution of their business.

A. B. 1869

Bank Notes

Are substantially the same as Bills payable to order to bearer, and they are considered for most purposes as money. Bennett G. says, "The court has never yet determined that a tender of Bank notes is at all events a good tender but if they have been offered and no objection made on that account, the court has considered it a good tender." I again say, "We have always been accustomed to consider them as money."

Checks Bankers or Goldsmith's Notes.

Are always accounted among Merchants as nearly cash. They are drawn on a certain description of persons termed Bankers & made payable within its bearer or to B.B. or order.
court that company left 17th 1816
shortly around 9 o'clock sent in the morn-
ing left them called in the evening 1st
next around
note moved on Saturday location from
morning the court thought it too
long 1st the 550
note 12 five miles both at 1st gave by
summer with other miles in morning
called at them. breakfast gone called at
lunch & slept they went 21st the 718-
note of burns 1st 1st 1st 1st 1st 1st 1st
day no Lashle 21st the 1268
note after dinner 1st gave by
next day dinner near Lashle
slim 11th
note received an order to report
on Tuesday at Supper from Lashle they
18th

Hopkins vs
Geo
1st Ann B.P.
Quaker Hill
17th M. 1—
A demand must be made immediately or within a reasonable time, at the instance of the holder.

If the Goldsmith alias Barker fail, he who delivers the note will not be charged, as the bearer of a bill of Exch. would; but the receiver is supposed to give credit to the Banker: the note being a demand on ready money payable immediately, it is optional with him to accept or reject; he takes it, if at all on his peril.

But if the party to whom the Note is given demand the money within a reasonable time, and the Banker or Goldsmith refuses to pay, this charge is given of the note.

A Goldsmith's note indorsed, is a bill of Exch. against the Endorser.

As to what shall be esteemed a reasonable time, the decisions seem to vary. It must at all events be money very soon after the note is received.

A received a Goldsmith's note at two o'clock P.M. and presented it the next morning, the Banker had stopped payment 2/4 of an Indorsement.
Money on board may also be issued Star 416.
416.
440.
910.
1175.
1248.

2 32. 1. 463.
433.
Policy what.

3 Dec. 1894.
and this was held to be a reasonable time and Wilkes says that it will will always be time enough provided that the presentation of the bill is not deferred till the afternoon. The distinction taken in Sir, 416 is not satisfactory to myself.

Policies of Insurance

A policy of Insurance is a contract between the parties, that upon the paying a premium equivalent to the hazard run by, will indemnify or insure him against a particular event. What may be insured and who may Insure

The whole vessel, whole cargo, whole freight may be insured or either or any part of them at the discretion of the owners and this against any casualty.

The benefit of policies is not confined to navigation nor exclusively to mercantile laws. Transactions, for any property may be insured against any casualty. As lives, houses, and many contingent events...
* Transfers of reassurances come under the discretion of one allowable only in special circumstances as when the financier is insolvent or dead.

Stat. 19 Geo. II. c. 37

Stat. 19 Geo. II. c. 460.

wagering policy

what
This kind of contract must be in writing and the writing is termed a Policy; the insurers are generally called the underwriters & the sum given for Insurance the Premium which is paid in advance.

An extravagance of premium can amount to usury.

It is a general rule that no person not interested in the thing insured shall recover upon the policy: There was formerly some doubt respecting this until it was settled by statute.

But Act 15 Geo. supposes the statute to be merely an appearance of the law; for it is entirely contrary to the whole tenor and spirit of the Statute. It is no encouragement to commerce and upbringant even to the genius of the law. Law which discourages gaming policies therefore says well which were not allowable even at law.

A wagering policy is then void at the presentation of interest stipulation of interest or no interest be invented; neither can property
he owned for more than its value or more than the
quantity of interest had in it. B. V. D. 660.

Money lent on Respondent's or Bottom
egan bonds, may be secured.

Bottomry is in the nature of a mortgage
of a ship when the owner takes up money to
enable him to pursue his voyage & pledge the
Bottom or Keel of the vessel (part借此)
as a security for the repayment. Here if the
ship be lost the lender looses his money, if it re-
turns in safety he receives it again with the
premium agreed upon.

This originated from the power of the
master to hypothecate the ship in a foreign
country for the purpose of raising money to repair.
In this case the ship & tackle as well as the pro-
cess of the borrower are liable personally to
Respondent's bonds which differ from both.
In this, that the merchandise and goods
are bound and pledged for the payment of
the principal with the premium on the
safe return of the ship, in stead of the ship
itself.
Now the lender of the money having this interest in the ship, may get it insured, signifying particularly that the interest he has in the ship insuring it at the correspondent or Bottomry.

If property is overvalued to any unreasonable degree & this can be proved, the policy may be avoided. It has been decided that East India Bonds could be insured as money.

If Goods are insured they must be so under the denomination of Goods & no other.

A Reassurance is a contract of Indemnity, made between the original & collateral insurer & is allowable only when there is danger of Bankruptcy or Death of the Assurn. The only stat. provision 19 Q. 2 c 87.-Sure is that considered as made in appearance of the Law.

Law?

Nothing can be governed by the Mercantile Law of Insurances, unless the thing insured be of a commercial nature nature;

A fort insured in the East Indies was held to come within the L. M. or being the property of Merchants.
The Modes of Insurance.

One of the most usual methods is for each insuree to subscribe individually as much as they choose, until the Policy is filled, after which time additional subscriptions are void.

Sometimes vessels are insured lost or not lost by which is meant that if a vessel having been some time lost at sea unheared of, is insured after the date of such insurance is lost, the underwriters are liable, but if found to have been lost after the date of the Policy, the insurers will recover the premium only if the underwriters are discharged.

Vessels are sometimes insured at any from a place certain place, in which case the underwriters are liable for any loss or detention in Port, unless such detention or loss arise from the negligence of the owner. But if the accident causing such loss or damage might have been prevented by the exercise of due diligence in the owners, the underwriters retain...
are released, so also if the voyage is laid a ride

If the ship and cargo are insured at & from, and before the cargo is put on board, the ship is lost, the underwriters are liable for the ship only.

If a vessel be insured from a place the

vastity commences from the time of setting sail.

Insurance may be made against any and every casualty. In the perils of the sea capture, the

mismangement of the mariners or Captain (who are generally considered as the agents of the owner)

for whom misconduct they Insurers are not liable unless by special agreement) which is construed to extend to Pirates only & of the

Insurances are sometimes made upon

express condition, as that the vessel shall carry

a certain number of guns; shall depart with

convoys and other things of a similar nature.

That in these cases if the condition is not complied with the Insurers shall be bound.

In the case of convoy it is held not suffi

cient to depart with the convoy only, the

convoys being bound to a different point but

cage must be made in company with
the convoy unless unavoidable accidents separate them.

In the case it has been decided that the insurers were liable for the vessel and property conveyed, from the time that it left the port of its arrival at its usual place for taking convoy, contrary to the opinion of Bott.

If the ship is separated by some unavoidable accident from the convoy, the underwriters are liable, otherwise if separated by any wilful default or negligence.

If the vessel does not depart with the convoy, the insurers are to restore the premium for there is no voyage made. But suppose a vessel is necessitated to go from one coast to the other to meet the convoy, before she arrived the convoy had sailed, how shall the premium be retained? The general rule is that the insurers shall keep the premium if the voyage has commenced, but shall the whole premium be retained? This is still unsettled.
Lex: Anea.

It would be endless to particularize all the various modes of Insurance, indeed two or three
senses rarely agree in all particulars — Let us then proceed to consider —

What discharges the Parties.

This has been in a considerable degree antici-
pated by what has been mentioned under the preceding heads —

Fraud in any shape whatever will enti-
ye destroy a contract under the Mercantile law. Any false
representation or concealment of facts, which if
known might tend to operate upon the minds of the Insurers, so as to induce them to enhance
the premium or any collusion to induce the under-
writers will certainly vitiate & nullify the insurance.

If the fact not mentioned were one of
general and public notoriety, such a one as the un-
derwriter must be supposed to know, such as a
declaration of war etc. the omission to mention it,
will not vitiate the evidence.

Neither is it necessary for the party applying to reveal to the underwriters his number of speculations arising from fact or not exclusively within his own knowledge, even if such opinions be sound and natural.

Most elementary writers lay it down that a Policy of Insurance, is not much higher in its nature than verbal evidence, which may be explained, attired & rendered void by proof. They have founded their opinions upon an authority of a case in Salkeld 445.

Mr. Beeve knows of no decisions recognizing this principle but the one in Salk. & one in Deringer. He conceives the authority in Salk. not to be true for it is opposed by the spirit of the Common Law, & tends to pernicious consequences.

Willful mismanagement of the life or Mariner's discharges the underwriters from their liability. As a deviation from their course without any apparent necessity or good reason. which amounts to baratgyca
change of voyage be

Passing from one port to another within the vicinity is not considered as a change of voyage, if one after the vessel has made her destined port, another considerable deviation previously to that would.

A deviation which does not arise from the fault of the agent of the vessel, however, but from unavoidable necessity or accident, such as a deviation in search of convoy after separation, or in consequence of want of weather does not discharge the underwriters.

Where there is manifestly an intention to deviate, but the intention is not executed, it does not discharge the insurers.

If a vessel deviates, the underwriters are liable to so far as to the deviating point at which the vessel leaves the course it leaves the course to the place where it is insured, and if the intention of the owners was known to the underwriters before the sailing of the vessel.

But if a vessel insured for a certain voyage voyage actually sails upon an other port is lost before she arrives at the deviating point.
at which the vessel leaves the course to the place where
she is insured, even the insurers are discharged.

This rule at first glance appears not to be
reconcilable with the rule that an intention
to deviate does not discharge the underwriters.

But the difference in the cases consists in this:
In one instance the vessel was cleared out for
the same port to which she was insured, with
actually intending to go to a different one; hence
when she was lost before she arrived at the point
of deviation, the underwriters were held liable.
In the other instance she was not cleared out
for the same port to which she was insured
& the insurers were held liable to hold her not
liable.

Where a man has procured his vessel
insured twice only one of the Policies is valid
& the party must take his election which
discharges the other who is bound to return
the premium.

But this can only happen when the
first insurers have or are likely to become
Bankrupt.
When the owner is sued against the barcarary of the Master, & the Master for the interest of the owner deviates from the course, the underwriters; for barataray is a wilful and criminal mismanagement or deviation.

But if the Master had deviated to gratify his own feelings, or interest it would have been barataray.

When the crew compel the captain to alter his course it is not barataray in time.

Vessels are sometimes insured "until they arrive" at a certain time, which is commonly specified as being part of the voyage and in most countries is limited to 24 hours, within which period if any accident happen, the underwriters are liable.

A vessel insured in this manner arrives in port & before she has been there 24 hours is ordered to go back a certain distance and perform a quarantine; while performing it, she is lost; the underwriters are liable.

Sometimes vessels are insured until they arrive and are discharged the word.
discharged is now settled to mean unloaded landed, and therefore, when a ship arrives, the underwriters, to see the goods unloaded, if the owner of goods, charter employs lighters or other boats to convey the goods ashore, & after they are taken from the ship, an accident happens to them by which they are damaged or destroyed, it is no charge upon the Insurer; But if the goods had been sent ashore by the boat, which is considered as part of the ship's voyage, it would have been otherwise.

Insurance against the perils of the sea includes all damages from winds, waves, tempests, lightning, etc.

If a vessel is not heard of within a reasonable time, she is considered to be found at sea. In the case cited from Strange, in a voyage from Carolina to England, when the ship had not been heard of in 4 years, it was assumed a reasonable time. Mr.erve thinks a much shorter time would be held as reasonable.
Underwriters are liable in case of damage or a detention of any kind by a foreign power unless it arise from mal conduct of the master or marines, or an attempt to evade the duties.

**Lofs is total or partial & average**

The word "total" issued in the mercantile law does not mean the same thing as total in common parlance: A loss less than total may be a... total by the I. M.

Whenever there is a total loss the insurer must abandon the property saved to the insured and the property is turned the salvage.

Generally if a ship be captured by an enemy & afterwards re-captured the loss is considered total.

Where the salvage falls short of the freight the loss is total.

When the salvage amounts to more than the freight it is an average loss. I generally an average loss is any loss less than a total loss.

The insured may abandon in the following case: 1. When the salvage does not exceed the freight 2. In case of capture.
as soon as the owner hears of the capture may abandon; but if he do not at that time abandon, the capture should only prove a hindrance, it may be a partial loss.

In case of recapture, the recapturer generally have a reward for it which is termed "Salvage".

If a vessel is also recaptured & proceeds on her port of delivery, before abandonment, the loss is average if the abandonment is before her arrival at such port the loss it total.

The ship "Success" being surrendered from London to Carolina was taken by a Spanish privateer and afterwards re-taken by an English vessel and carried into Boston where no person appearing to give security she was condemned & sold by the Court of Admiralty; the recaptors had their moiety and the remainder remained with the Officers of the Court it was held that the loss be a total one and the money go to the underwriters.

Where there has been an immediate loss, it is an average loss.
At the close of the revolutionary war a teacher of Marque sailed from Nycnya and took a valuable prize soon after which she was lost. The owners not knowing that she had taken a prize, abandoned, and the next day the prize arrived which was much more valuable than the vessel insured. The ship was considered total and the prize the property of the underwriters, belonging to the latter of Marque.

A declaration formed to recover upon a total loss, is good to recover upon a partial or average loss if a plaint fail in his action upon a total loss, she may upon the declaration recover upon an average loss.

**Charter Parties.**

When a merchant agrees with the Master of a vessel to take goods to A, or to B, and to bring others back, he is said to charter the vessel, and the written instrument containing the agreement is called the Charter Party. This is either a certain rate per ton or for an agreed sum in gross.
Tereks are said to be chartered, either outward or inward, for an inward or outward and inward voyage, or outward and inward.

What is peculiar in this species of contract is that if the vessel is lost before she reaches her port of delivery, provided she is chartered for her outward voyage, the charterer pays nothing. If she is chartered outward and inward and arrives safely at port of delivery, but is lost on returning, only the inward freightage is lost. If she is chartered inward only and lost, the freighter pays nothing. If chartered for the outward voyage and lost going or returning nothing is paid.

If the vessel is chartered out for cargo, delivers the cargo and per default of the Factor takes none on the return, the freighter pays as much as if she had brought his goods. But if it is by default of the Master, that she did not bring the freighter's goods - the freighter is only liable for the outward voyage.

If the Master imprudently and contrary to usual
storm, or hail, or a storm, or up a river or other dangerous
without a pilot and any damage issue there from the owner
and Master are held liable.

Though if the Master choose he may abandon
by relinquishing his goods and relieve himself from the
freightage— but he must abandon his whole interest or none at all.

If the vessel be disabled without the fault of the owner, the may neglect, if he can do it, within a short time, or he may be entitled to full freightage.

So if the vessel be captured and recaptured or consumed, or if it be disabled and the freighter— there to take the goods anywhere except at the port of delivery, he shall pay a real rateable proportion of the freight—if when the accident happened, the vessel had performed one half of her voyage, one half of the freight shall be paid.

Merchants sometimes freight vessels without putting their agreements in writing. This is not a correct or safe mode of doing business, but it is recognized by the Law Merchant, and has this peculiarity in it, viz. If the factor freightor from any cause choose to rescind from his bargain, he may do it at any time before the loading is commenced by relinquishing to the Master the earnest money, which is a sum always paid by the freighter to the Master and necessary to render the contract binding.

The Master may also rescind from his bargain by paying back double the earnest money i.e. by paying
the merchant, the exact money advanced by him to such man.

But by the common law of Eng. the party diminished
may bring his action on the case and recover all damages
arising from the breach of the agreement.

When a merchant frits a ship, but does
not hire her (as when the owners supply every thing for
the voyaage and receive the goods at a certain pre
mium) this is termed freighted freighting without Charter
Party.

When any injury happens to the property of
the perilous third the misconduct of the master, whether
it be omission of duty, or commission of wrong, he must
be answerable; but injuries arising from no defect
or misconduct, but from inevitable accident, subject
neither the master nor owners. Quod Mirum!

A special contract between the master and
owners that the former shall have the benefit of the
freight, does not affect the freightors, nor any wise
after the liability attached to the owners in case of a mis
conduct or neglect of the master; for the freightors are
not supposed to be privity to the special contract.

Sometimes a special contract is made be-
tween the freightors & owners. This subjects the ow-
In case the vessel so hired and the owners have nothing to do with the appointment of the master, then what is said with regard to the responsibility of the owners for masters fault falls in the general case.
more no farther than the law itself would subject them except that if there be a penalty annexed to the agreement, that is suspected also, it may deserve to show some to show that the freights are to look exclusively to the owners to whom the master is in turn responsible.

Embezzlement, or anything of the kind, either in the master or mariners subjects the owners to the whole extent of the embezzlement.

It is a general principle that persons employed to convey property from one port or harbour to another, as packet masters, masters of the same passages, common carriers, are liable not only for neglect but at all events, except in cases of inevitable accident or the acts of Providence.

If a freighted ship is at sea and an accident happens which ordinary care could not have prevented, the owner and master are excusable but if a loss happens in port, they are governed by the law of COMMON CARRIERS.

The mercantile law gives to all masters of vessels when aboard the power to contract for necessaries without the owners; having furnished the master with such money for such purpose does not discharge the owners, for the
Master is to be credited as their servant; for whose contracts they are liable. He may even pawn the ship for necessaries. The master is also personally liable in their care.

An owner of a vessel cannot get rid of his liability to persons furnishing provisions, or necessaries for it, where an owner leaves his vessel for any number of months or years, and within that period it becomes necessary to finish the vessel; furnish the vessel with tackle, or provisions, the owner who he may not know where the vessel is, and may have no interest in the freight, is still liable in default of the master. This is founded on Law principles, for such owner it is said is not liable for the fault of the master; and the master tho' the contract of agent for another, is also contrary to the Law, rule, holder bound.

When there are joint owners of a vessel, the majority of such owners in interest shall direct its course and destination, but cannot compel the minority to assist in fitting for the voyage. But tho' they may do this without the consent and contrary to the wishes of the minority in interest, yet it cannot be done without their consent.

If the voyage is a profitable one, the gains shall be equally divided among all proportionally to their several interests, and the minority shall become
liable to pay their respective shares, proportional share of all expenses and disbursements.

But if the majority choose, they can take all the profits of the voyage to themselves, by giving sufficient security in the courts of admiralty to make up all losses to those of the owners who do not consent.

Indeed the minority may by applying to the court of admiralty compel the majority to give security for the safe return of the vessel, and the recompense is suing in the admiralty courts.

But where two joint owners sent out a vessel without the consent of the third, and she was lost, the third was obliged to bear his portion of the loss, because had there been a profit in the voyage he would have been entitled to his share; but in this case there had been no application to the admiralty courts, or their ought to have been.

The account of the voyage settled by a majority of the owners binds the rest.

When a loss happens at sea in consequence of stress of weather danger of shipwreck be it in a principle of the law merchant to equalize the loss among as possible among all the owners and freights of a ship.
for it would be extremely unjust that the whole weight of loss should fall on the person whose goods are sacrificed in extreme danger of extreme danger for the preservation of the rest.

In such case, the laws of Eton (which are the founda-
tion of the laws Mercantile law of Europe,) make it the duty of the master first to throw overboard the heaviest articles and those of the least value; and the oath of the mariners that the property was thrown over for the preservation of the vessel discharges the master.

So also goods damaged, according to the laws of Eton are cleared by the oath of the master and mariners.

This principle which uniformly governs in an averageing those losses is that they are to be averaged only when the loss of the property sacrificed contributed to the pres-
ervation of the remainder.

There has been a decision which does not pre-
shape entirely quadrate with this principle viz. where a master took in more freight; than he agreed to do in consequence of which part of which the goods were thrown overaward, the loss was not considered average.

In. Would not the master in this case be liable?

Where goods are taken away by Eater, the loss says Mr. Reeve, must be borne exclusively by those whose
goods are taken; but in this case might not the giving up of a part of the goods preserve the rest from plunder and so contribute to their preservation?

A vessel was loaded with silk and oil. The silk belonged to one person and the oil to another; she was carried by a privateer and run into port. The master fearing she was not safe, got out the silk and threw it on shore where it was saved; but the bulk of the oil precluded the possibility of landing it and it was taken. The owner of the oil filed a bill in chancery to compel the owner of the silk to average the loss, but the court refused. For the saving of the silk did not contribute to the loss of the oil, nor did the loss of the oil to the saving of the silk.

By the Common Law the master of a ship could not impound the ship or goods, for there was not in him no property on either general or special and no such power given to him by constituting him master.

Yet the Common Law has extended the law of the seamen reasonable which empowered the master to impound or hypothecate the ship for necessaries.

It is laid down that a hypothecation by the master where no real necessity exists, for such hypothecation subjects the owners equally as one made upon
the most absolute necessity, for he is the confidential agent of his employer and the person to whom the vessel in the first instance, not to judge whether or not there be any necessity for it. But the owners are left to their remedy against the Master.

Of Bottomny Bonds.

Bottomny bonds agree in many particulars with hypothecation, for in bottomny bonds the ship is taken, or pledged as a collateral security for money lent, although the obligation in case of a safe return is personally liable.

A bottomny bond may be defined to be an instrument, by which the owner of a ship pledges his ship, and is likewise personally bound for the repayment of money lent, depending upon the contingency of his making a safe return or otherwise. If the ship is lost, so also is the money of the lender; but if it perform the voyage in safety he receives back his principal, together with the premium agreed upon, which no extinguishment in the rate can render increase. For the extraordinary hazard encountered by the lender, balances the extraordinary interest which he may receive and render the contract receivable.

In this species of contract the tackle as well
as the ship (if brought with home) is liable as well as the person of the Borrower.

But if the money be borrowed upon the goods and merchandise only, the Borrower is liable personally for the contract, and is said to make the money at respondentia.

The general nature of a respondentia bond is this: the Borrower binds himself in a large penal bond, sum, upon condition that the obligation shall be void if he repay the tender under the sum borrowed, and compound five months from the date of the bond, till the ship arrives at a certain port or is lost or captured in the voyage. The respondentia interest is often from 40 or 60 per cent.

The Law of Partnership

To render a man liable as a partner there must be either a contract between him and the co-partner, or to share jointly in the profit and loss; or he must have permitted the other to use of his credit and to hold him out as jointly liable with himself.

Merchants trading in partnership are at tenure in common, for the law merchant does not recognize the jus recessendi of servinanship incident to joint tenancy.
The property of a deceased partner vests in the hands of the executors, but the surviving partner has the right of being substituted to collect such of the joint property as is not in possession, he has the right, however, under a responsibility to account with the executors of the deceased partner.

A surviving partner may join in the administration of a demand accruing to him as survivor, and a demand accruing to him in his individual capacity.

Survivors of Merchants in partnership must sue and be sued by themselves, that is, the executors of the deceased partner must not be joined with them in the suit.

The survivor must account with the executors of the deceased partner and pay him his proportional share of the partnership property. He has been content to take all the goods and account for one-half of their value (in the case of equal quotas of interest between the partners) or take only one-half of the goods. Mr. Serres thinks that he should take one-half of the goods.

It has been said that the surviving partner has the absolute control of the joint property. This idea Mr. Serres considers as being very inaccurate; for an absolute control seems to be equivalent to a complete owner.
The true rule seems to be that the property vests in the devisee. By reason of the inconvenience of joining the survivor and devisee in an action (since in this case one would sue in his own right and would be liable to costs &c.; the other in the right of another and would not be liable) the former is vested with the power of collecting so much of the joint property as is in action.

The joint property of the partners is always liable for partnerships' debts and so long as it continues solvent, for the private debts of each other partner.

The private property of each partner is liable for the debts of the firm provided it exceeded the private debts of the joint partners.

While the partnership continues solvent any person may have execution on the goods of the partnership for a debt of either of the partners; may sell the whole of the property on which he has levied execution, and remit to the other partner or partners his or their proportional share of the averm (in which case it is usual to levy on a much larger quantity of property than is sufficient to pay the debt) so he may have only one enough to pay the debt; if it does exceed the proportional share of the joint tenants, joint holders.
B. & C. merchants and partnerships insolvent partner ship. Debts $1000. merchantship effect $250. the aggrieved to partnersships debts pay 50 on the proceeds 13 minus his personal capacity $1000. dollar is his personal effects amount to $1250. his personal debts are paid in full to the success, as applied to the company debts a copy of on the ground to personal Debts one $1000 dollars his personal debts amount to $1500. in this case....
in which case it might be better to levy on the whole and remit the unsatisfied to the other joint partners.

But if the partnership be insolvent, the private estate of each partner is just liable for his private debts, and the survivors of any then dead go to pay the partnership debts. For the case may be a private creditor may receive 2d. on the pound and a partnership creditor only 1/12.

Each partner is not bound for the private debts of the other; for if one of the partners becomes insolvent, the partnership is dissolved and the company funds are divided among the proprietors.

Therefore full both partners are liable for the same debts and for the whole of it, but the company is not liable for the private debts unless the partnership debts are first discharged by it. In this rule there is some latitude.

Although the estate of the deceased partner cannot on a principle of convenience join or be joined in a suit brought by or against the partnership concern;

yet he is involved with every other partner which the surviving partners himself possesses.

If the surviving partner is unable to respond the damages which may be recovered against the firm the estate of the deceased person is liable. In this case the
creditors having obtained a judgment against the surviving partner, which is insufficient to obtain satisfaction, may bring an action of Debt on the judgment against the estate.

In Eng. this action is customarily brought in a court of Equity att'd in the apprehension of the Decease unnecessarily. In Can. it is brought in a court of Law.

Money may be paid to the Ex. of a deceased partner and can reasonably be the Decease might discover the surviving partner to be in failure circumstances, in which case he could have no remedy, and as the creditor would eventually come upon him, it is reasonable that he be secured.

If A & B. transact business even in separate houses, under an agreement to share in each other's fate; each is liable so far as it relates to the rights of third persons, for the other's losses att'd there be an express stipulation to the contrary.

If one partner be charged beyond his proportion, equity gives him a lien upon the partnership effects.

When partners in trade become bankrupts, the mode of settling the estate is to apply the joint property to the payment of the company debts, and the private estates of the failing partners (in the first instance).
pay of their respective debts: If there be a surplus of private property it is applicable for the debts of the Company.

If there be a surplus of the joint property and a deficiency of the private: so much of the former as belongs to any one of the partners may be applied to the payment of his private debts, but not to the payment of the private debts of any other partner.

If one of the parties be insolvent, the other solvents are entitled to a surplus of the joint property; the surplus is divided, one proportional part being applicable to pay the debts of the insolvent partner, and the remainder to be divided among the remaining partners.

Before either of the partners became bankrupt, the foregoing principles are not applicable: for this property both joint and several is liable indiscriminately for every debt, joint or private, and a levy may be made upon the estate of either or both upon the partnership property or upon the private effects.

But when they are incapable of proving incapable of paying their debts, the before mentioned principles apply.

However when A. one of the firm owes a private debt, no execution can be levied upon the private effects.
of B. an other partner; A's the company property may be levied upon; but in this case the property of B. who never condescended to pay the debt of A. is taken away and to remedy this defect or injustice two modes have been devised. I. When the goods of A and B. merchants in company are attached for the private debt of either, only one moiety of them is sold as where a levy was made upon two hogsheads of flour one only must be sold and if it is not sufficient to discharge the debt two more must be levied upon and one sold and so on until the debt be discharged. II. But the mode which has been found most convenient is to levy upon and sell property to twice the amount of the debt and return a moiety a proportional part of the money to the private estate of the other partner.

For the difference between a partnership and a debt contract vide 16th. 11th. 37.

The partner cannot receive in Indebtedness amount out a sum of money received by the other on the partnership account unless there be a balance struck. Either if the money received is partnership property.

After the dissolution of a partnership, the partner authorized to receive and pay the debts, cannot bind the others by giving a security in the name of the firm.
Six Africa.

If one of several partners contract as for himself i.e. without disclosing disclosing the partnership; still if the contract be in fact made for the partnership, proof of this fact (altho' at the time of making the contract it was unknown to the party contracting with the partner) will render all the parties liable.

A contract made by one of several partners relating to the partnership business, binds the rest. And unafter the partnership is ended or dissolved, a contract thus made will bind unless public notice of the dissolution be given.

Factorage.

A factor is one employed by a merchant in one country to transact business for him in another.

This factor acts under a COMMISSION from his principal, principal to the terms of which he must strictly adhere, and the authority of which he cannot transgress.

COMMISSION is either general or special, a general commission of which the essential words are "buy and sell as your own" invests the factor with a discretionary power and renders him liable only for gross ignorance, neglect or
mismanagement.

A special commission in which the important word
"sell and dispose" does not give a discretionary power,
he cannot as under a general commission sell the goods
or credit unless at his own risk. For in the due exercise
of his authority he ought to receive a quiet possession
of the one to receive the other.

The remedy against the factor was formerly, by
way of account and is now, so here, but in Eng."r.
ery is obtained by an application to Chancery.

One and the same factor may act as agent
for several Merchants, who tho' they may be strangers
to each other must run the joint risk of his action:
As if five Merchants should entrust to one factor five
distinct wares of goods and the factor makes a joint-sal
of them to one man who is to pay one moiety down and
the remainder at 6 months, if the vendeed fails before the
second payment, each man must bear an equal share
of the loss and be contented with the dividend his divi-
dend of the money received.

But it has been decided that if such a factor
draws a bill of exchange on all of these five merchants and one
acceptor of them accepts, the other shall not be obliged to
make good the payment. Est tamen quene de noe.

Fidelity, diligence and honesty is expected from the factor and nothing further and he is not liable for damages occasioned by inobservance of accident or even for those which extraordinary diligence might have prevented or theft and the like-

And so on the other hand the same thing as required in the principal - for if a merchant by fraudulent representations of his goods or other fraud cause any damage to the factor he shall not only make it good but render satisfaction to the party damaged by purchasing under such false representation -

It has been decided that where a factor has fraudulently engaged in the customs by running goods in which he encountered the hazard of a capital punishment, still not being discovered he was allowed to charge the duties on his principal and recover. Mr. Neeve thinks that this to be in the teeth of every rational idea and principle and abominable practice but is entirely of the opinion in cognizance of the act done by the factor being for in running goods to pay the duties; for in running the goods pecuniary sum was the security of his life but a contract with factor to run the goods...
not be binding.

The statute of frauds requires that such a deed be in writing and signed by the party to be charged with the deed. The principal will bind the principal. But a factor cannot pledge them for his own debt.

When a factor is known to be such and can be bound by his commission, the goods and provisions to pay them, the principal is bound. For it is not reasonable that everyone dealing with a factor who is the accredited agent of his employer is to examine into the extent of this commission. But then the principal has his remedy against the factor.

If the factor does not follow his commission he not only lays himself open to damages but infringes his commission itself, and his pay, which at law he would not.

Where a factor was directed to ensure, and neglected to do it, he was held liable.

When the factor is known to be such as factor the principal may if he apprehends the factor to be unsafe notify his debtors not to pay due to the factor as factor; and if afterwards they do pay him it is at their own issue. This applies only to pub-

It is a private agent who sells.
merchandise as on his own account, the person dealing with him is not at all accountable to his principal, more than to any indifferent person.

Factors have a lien not only for their commissions, but for the general balance of their in their hands.

It is important in the law of factorage that the factor is sometimes obliged to take better care of this principal's interest than of his own; as where he sells the principal's goods and his own together, he must apply the money first received to the payment of the debts of the principal, his principal.

If the factor having property of his principal in his possession dies or becomes bankrupt, his debts or assignees have nothing to do with the principal's goods, but (if the money is so separated and marked that it can be distinguished to be the property of the principal) the factor is not in that case considered as the principal's debtor, but as his agent.

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The stopping of goods in transitus.

This stopping of goods in transitus is a creature of the Mercantile law, for at common law if a man sells his
null
property it absolutely vests in the vendee at the time of making the contract, at the time sold may remain in the possession of the vendor; but according to the law merchant when goods sold are delivered to the order of the vendee, they may be stopped in transitu, that is before they come to the actual possession of the vendee.

But this stopping in transitu is never allowed unless the vendee is either a bankrupt or supposed to be in failing circumstances, and is intended to secure merchants in their property.

The transitu ends when the goods or any part of them are actually delivered to the vendee, or to his agent, provided it be at the agent's place of residence.

Suppose a bill of lading has been consigned or delivered over to the agent of the bankrupt, and he for a valuable consideration assigns it over to a third person. If the bill of lading is negotiable, the assignee of the consignee will have a vested property, and neither the assignee or consignee or vendee can reclaim the goods.
Of Mariners.

The contract which seamen enter into is voluntary, and every thing respecting it is regulated by the Law Merchant.

When there is no special agreement to the contrary, seamen are entitled to their wages at the port of delivery.

If a vessel is lost on an outward bound voyage, they may receive their wages for the outward bound voyage not notwithstanding they may have contracted not to receive their wages until their return home.

Indeed, the Law has restrained Mariners from contracting so as to lose their wages; for if a seaman contracts not to receive any wages until the vessel return home shall have returned home, and the vessel in returning is lost, he loses his wages only from the last port left.

Interest is due on the wages of seamen from the time of the vessel's arrival at the port of delivery.

Seaman took their wages by making a disturbance on board the vessel in which case the Captain confined, or put them on shore; by rebeling against the master unless they reasonably repent; by wilful absence which occasion delay, and in all cases by leaving the vessel.
before she is discharged of her loading.

A seaman disabled by accident to perform the whole voyage, is entitled to wages for the whole voyage.

Omitted and desultory rules examples &c.

At common law whenever there is a time stated, with in which any act is to be performed, and the day of the expiration of the period falls on any day or some noted feast day, the act may be done after; by the law merchant it must be done the day before.

Also when any number of days are allowed for the performance of any act: the common law computes from the expiration of the day on which the instrument is dated to the completion of the last day allowed. For instance the common law would make a bill payable on the fourth day when by the law merchant it was required would be required to be paid before the expiration of the third day. of the days of grace.

Mr. Viner has never found a case in which it was decided that days of grace are allowable in promissory notes; but at 8% seems to imagine that it has been settled that they shall be allowed in the cases quoted with.


At law, any right of action once accrued cannot be
given up by fraud, without a valuable consideration, but it may
be discharged by the mere acceptance of a bill
or note, or of the indorsement of a breach of
contract. It is to be noticed, that such
endorsement of a bill or note on the
holder's cheque to hold responsible, must have
notice given to them, or is required to be given to the draw-
ner in case of protest.

The last rule is not to be understood as applying
to a person not interested in the bill to the full extent
to its full extent, for this a stranger may be bound to the
holder's endorsement and liable to the endorsee, yet
it will not render the note assignable.

It is said that if the agent of the drawee
has the power of attorney, the
endorsement is not sufficient, and the
endorsee must consent to his acceptance of the bill.

If a bill is good in the hands of an innocent
holder, though it may have been acquired
by fraud or even theft, see Bruce, 482.

When a bill by some unavoidable accident, or
contrary winds, is detained until the time of payment
is passed, the holder must nevertheless present it for ac-
cptance and payment and get it protested if not accept-
End or paid, and the parties shall be bound, as in other cases.

If after acceptance the drawer absconds, proof being made of it by the protest of a stator. The drawer may be compelled to give better security—

Protest was not required for inland bills till 1834. 9 & 10 Will. 3 Cap. 17; nor does the want of it since that statute destroy the holder's remedy at common law to recover all interest and costs—Protest is not necessary for stators—

If the drawer pay a part of the bill it shall be allowed in favor of the acceptor. So if the drawer pay the whole, the acceptor is discharged—
Public Wrongs.

amounts to a fine, yet only in the former is the punishment capital.

Of Burglary.

Burglary is defined to be the breaking and entering a man[ion]
house in the night season with an intent to commit felony. It must be in the night. A[nciently the night was]
considered as commencing at Sun set and ending at Sun rise;
but it is now settled that if the act is committed
when there is daylight enough to see a man's face, it is
not burglary. This does not extend to moon light; the rule there is this,
that it must be so dark as to prevent a man from distinguish
ing or recognizing objects with certainty. 4 Co. 6. 24. Moore 660. 1 Hawk. 562. 9 Co. 66.

As to the place. The act to constitute burglary must
be committed in a Man[ion house. Ld. Coke also adds that
the breaking open a Church is burglary for he views it
as "Homo[s] man[ionalis di]" 1 Hawk. 162. 3.

The breaking of a house which is dwelt in but half of
the year, amounts to burglary, even tho' the offence be com-
mitted during the time the house is object.
Public Wrongs

We never think that breaking at out house within the
condemned Curteiage amounts to Burglary.

But if a shop in which no person dwelle be broken open, it is
not burglary. It must therefore be a dwelling house 4 to 10.

Keeling 27, 52, Poth. 42.

As to the manner of committing burglary, there must
be both a breaking and an entering. By this must not be
understood merely a legal breaking to take away, but something
more, for if a man's door or window is already opened to entice
therein would be a mere trap and not a burglary. If however
a door or window should be entered although not fastened it
will be breaking. 1 Haw. 163.

The case of a man's descending a chimney is considered
a breaking. Keeling 27, 52, Poth. 40, Cor. 8, 825.

So also to knock at a door and upon its being opened rush
in with a felonious intent will be a breaking.

So also to procure admittance to the influence
of a constable, in order to search for Traitors, and then
to bind the constable and rob the house.

As to what is an entry, it is considered that any
half way partial entering will amount to it. As with
any part of the body, or with an instrument of me-
from held in the hand. So to step over the threshold, to
to put a hand or hook into the window, to draw out goods or a pint to demand money at the ungrateful entries; Keplig by Hawks.

Again a man who keeps watch for another to enter in another's stead or having entered himself "nec qui pocet vel alium post periculum factum pericul"

It will also be so if one within confederates with one without, so as to get him in, it is an entry in both parties, Sta. 141.

As to the intent— the breaking and entering must be with an intent to commit felony for an entry without this intent would be nearly a trespass. But whether the intent be carried into execution or not makes no difference, if such intention is demonstrated by some overt act. Show 53. Sta. 441, 15 Haw. 164.

The statute of larceny attains the larceny. Law in this, that it must here to break a house— where goods and wares are deposited to make it larceny.

The punishment of this crime by the Eng. law is death by larceny, New gate.

Of Perjury

The definition of perjury is the same as it was at Rome. Laws
Public Wrongs.

The punishment has been laid by statute.

Perjury is a willful false swearing in a public matter by a person under oath relative to some proceeding in a court of justice, and the oath must be lawfully administered by some one authorized to do it. 1 Haw. 318.

The swearing must be willful, for if it arise from inadvertency, mistake, or surprise, it will not be considered perjury. If from taking one view of all the circumstances charitably would suppose it not to have been willful, it will not be perjury. To constitute it, there must be some thing more than mere difference between the manner of the witnesses; some difference may arise from a thousand extraneous circumstances differently understood. 5 Mod. 250, 10 Mod. 195. Salk. 319. 1 Haw. 319.

2d. It must be relative to some proceeding in a court of justice. By this it is sufficient that the court authorizes the swearing by commission or otherwise, and therefore the false swearing need not necessarily be in court. 1 Haw. 319.

But where in an arbitration one of the arbitrators is a competent officer or justice of the peace, and administers an oath to one who swears falsely, will that be perjury? Although the rule formerly was that it must be a court of record, yet it is not thought that an arbitrators are a kind of domestic courts there.
Public Wrongs

is the same danger of injury resulting from bad false meanings in them, as in other cases, even of record. Hence the law infers it to be.

It is settled that a man may commit perjury in two ways.

Affidavits of a private nature relating alone to certain facts not in court, if even were false, will not constitute the

meaning of perjury. Although extra-judicial oaths are now quite common, yet the House has always questioned the

right of persons to administer them.

So no promissory oaths, if false, will constitute perjury.

1783, 319.

A breach of truth in an oath of office is not perjury.

As where a grandson, grand juror, or an attorney, takes an oath to perform the office faithfully, and does not do it—

The party, however, will be committing a misdemeanor for which he may be called to account. Guilt will be in

"in good conscience." These cases cannot be pun-

ished as perjury upon the ground of the proceeding, not

being in a court of justice. Co. El. 16, 907, 185, 609. 1 Roll 56. 9q.

2 Roll 227.

37. To constitute perjury, the oath must be administered by lawful authority. Administering false in an oath administered

by a court, one not authorized, will never constitute perjury.
Will a false meaning under an oath administered by a court wanting jurisdiction (as evidenced by a denial of jurisdiction) in the cause in dispute, amount to perjury? It has been said (this being common no justice, but an extra judicial proceeding) it will not amount to perjury. But Mr. Reverend that there is no doubt, but that the court has power to administer an oath, hence it should be considered as perjury. 1st Int. 1812.

When a party himself is a witness and swears falsely it will amount to perjury, as he may do when called upon in his own act of account, or to the defense of a witness at law.

The meaning must not only be willful but false. This does not intend false in fact alone, but falsely made, for the man may mean falsely, and still may be as the swears it to be. To constitute perjury he must swear willfully false, i.e., to something which he really does not believe himself. This will be the case very often when a man swears being basely, to that which he knows nothing about.

Phrae 292. 8th Int. 222. 1st Nov. 1822.

It has been said that it must be not only willful and false but also absolute, that is, that the must swear positively and absolutely to a fact or facts. This would be a ready way to get rid of perjury, but it is now abrogated. 8th Int.
It must be in a point material, which is an important consideration. How is this to be understood? If it is entirely immaterial to all persons, to all purposes, most certainly it will not constitute the crime of perjury, but where a witness enters into a circumstantial detail to give him credit as to a material point, these circumstances attach in themselves immaterial, yet if false will constitute perjury. These circumstances were connected with a material point, and to give the witness's credit for that point. Lea. 500, Salt. 514, Latch. 422, Palm. 382, 1 Bow. 924.

When it is in point material, it is by no means necessary that it should be sufficient to substantiate a recovery for the party for whom the untrue was made. It relevant testimony in the question, and not whether it goes the whole length towards establishing what it tends to. Lea. 458, 3 Bow.

If it is in point material, but so unimportant as to have no influence or make no odds, it is conceived that it will not be perjury. This notion of perjury is nothing more than the procuring a man to commit perjury, and the punishment of such is the same. 1 Bow. 325.

The punishment for perjury was originally death. Afterwards either banishment or cutting out the culprit's tongue. The punishment now at law, is fine and imprisonment (at the discretion of the court) and an incapacity to be a witness in
future, upon the ground of having committed the "crime of self".

The punishment by the Legislature is a fine not less than £ 40, and imprisonment not less than 6 months, or mailing both to the penitentiary. The court may also transport for 7 years. To return before the expiration of the time in felony without benefit of clergy.

The Court seems to be made in appearance of the law.

It has been a question of moment, whether a party injured by false swearing to the amount of £ 500 could sue and recover his damages independent of the statute. Mr. B. sees no reason why this may not be done.

**Forgery**

Forgery at law will now be treated of, for what it is by the Legislature does not at all concern these statutes. The statutes make rather additions to the common law than alterations of it. At law, I saw the crime was known. Statutes have newly extended it.

Forgery may be defined to be the fraudulent making or altering any matter of a public nature recorded in any other public matter of a public nature or any deed a will. 17 Geo. III. 356.

Any matter of record, refer to the records of court for.
Public Wrongs

Any other authentic matter of a public nature refers to
registrars, certificates of marriages, protections to come to come
to court. P. Haw. 339.

[Text continues, discussing legal documents and the concept of forgery.

If A. sells to B. black acre, and afterwards sells the same land
to C. and unto D. the deed it will be forgery, although C. and E. and
others contend that it will not. For they say a man cannot forgive
his own deed. Moon 685, 759, 1 Haw. 296.

If a man writes a will for another and imports in it a
legacy or legacy, not intended by the testator, it will amount to
forgery.

So where a man finds a conveyance, or other instrument, so that the name answers
to it, it will be forgery. 3 Mod. 66. 3. Mod. 192.

It is necessary to keep in mind that the alteration must
be a fraudulent one to constitute forgery; for if no fraud
exists, no advantage to be gained by the person who attains, it will not be forgery.

Where the oblige attains a bond from £500 to 500 marks.
Public Wrongs.

It was no forgery, for the object gained nothing thereby, and the alteration was made to correct an error, committed in writing.

So where "but cattle" was altered to "but cattle," the cattle having been intended by the party.

If the person derives any benefit who alter or does anyone an injury, it will be forgery. Moore 655; Sale 675.

It has been a question whether a man by mere nonfeasance, in omitting to insert what was directed and intended by a testator, in his will as a legacy, is guilty of forgery? It has been decided that a mere nonfeasance as to omit to insert a legacy is not forgery.

But if such nonfeasance will make the will speak essentially different from the intention of the testator as to the quantity, nature, and line of commencement of the estate given as where it makes it a distinct thing, or gives it a distinct operation, it will be forgery. 1 New 397.

The state of law has extended forgery to an alteration of almost any instrument whatever where there is this fraudulent intention which is indispensably necessary to constitute forgery.

It has extended it to an alteration in deeds, bonds, wills, titles, account, acquittals, letters of attorney, bills, receipts, releases, or any other writing whatever, which means any writing in the usual nature of any or either of the before mentioned writings.
Public Wrongs

This clause undoubtedly includes any and every alteration made to prevent justice and equity.

Letters for "spoil and fear" written and alterations made, will not constitute forgery, this the judge decides against them.

The common punishment for this crime is fine imprisonment, and standing in the pillory at the discretion of the court. In case, where not exceeding 3 years.

Of Robbery

Robbery must now be treated of as a distinguishing wished from other kinds of stealing.

Robbery is a felonious and violent taking away from the person of another his goods or money of any value (and it is sometimes added) by putting him in fear. This latter is never laid in the indictment for robbery, and is never necessary to be proved, because it is uniformly presumed from the violence offered.

Besides, it would often be very difficult to prove that a man was in fear. To adopt this criterion would be to say that whatever the robbery in a man of weak nerves, would not be so upon a man of strong ones. 1st Reg. 14.

It must be a felonious taking; i.e., such an one as would have subjected in Eng. the estate of the criminal to forfeiture.
Public Wrongs

2d. It must be a violent taking. Affract, violence unreasonably applied to the act of taking, if there is any violence offered, by which the man is induced to deliver up the money. Afterwards it will be robbery. 1 Nee. 14 4.

The crime when once committed cannot be flushed by a redelivery of the money under any circumstances whatever. As when a robber demanded a gentleman's money which he gave him in a curious purse, which he expressed a great regret to part with. The robber gave him the purse to go out the money and in the mean while was apprehended—this was not larceny—1 Bue. 14 7.

The act of taking must be committed. If a robber goes even so far and does not get the property it will be no robbery. Not even tho' the robber threatened the person and cut his girdle. 1 Bue. 14 5.

Any person who consents himself in aiding or abetting a spiring is as much a robber as the person who perpetrated the act. As where a company were in search for John but not finding him, one of them falls in with Tom and robs him—all are equally guilty. 1 Bue. 14 8.

The taking must be from the person. It is however not necessary he should be aware of the property. It must not be the house heir.
Public Wrongs.
In the first place, it is necessary to make some remarks and general observations as introductory to the different kinds of offences.

*Crime* and *Misdemeanor* are the same at the time generally denotes a minor offence.

Whenever an act is committed which is prohibited by law, it will be a crime; and if it will be a civil crime, although it may not be a crime "in jure consuetudinis".

To omit what is by law commanded to be done will also be a crime. This must be understood with some qualification, for if the thing forbidden to be done is merely a private wrong, it is not a crime, although it may be recovered therefor, by the person who is injured. To be a crime, it must be an injury to the public or to society. Yet however, where Murder or Robbery are committed, they are not only public injuries but private injuries of the highest nature. It is presumed that when the law is understood with this qualification it may suffice as a complete definition of a Crime. Vide 1 Dane 12. & 13.

By the English law, private injuries are sometimes merged in the public wrong, and sometimes not. In cases of private injuries, the private is not merged; but in Burglary, Rape, Murder, the private injury is said to be merged. Let us inquire the origin of this doctrine of merger. In Eng. whenever
a man committed treason or felony his life was jeopardized and his life only became the subject of forfeiture. Therefore it commenced a civil action for the private injury would be nugatory. Hence the private injury was said to be merged or drowned. W. R. thinks this reason would not apply when the culprit might claim benefit of clergy, or what is the same thing "a pardon". One thing is clear that none of this reasoning founded on forfeiture will apply in the U. States, and therefore an action may be brought for the private injury. E. g. a man, a fence across a highway in another falls over it and breaks his leg, a public prosecution and a private action may be commenced.

There is a distinction of offenses into those "Mala in se" and "Mala prohibita". The true line of difference may be presumed to lie therein, that an offense Mala in se is one which would have been such, before the existence of society. It would have existed anterior to the formation of laws and in a state of nature, as some express it. Mala edicta (prohibitions and rules of conduct) and these offenses are not the mere criminal because prohibited by human laws. Laws "Mala prohibita" are mere preventive regulations, as when men are commanded to bring their dead in wooden, or to make their cart wheels of such dimensions.
But can a man be justified in breaking these laws, provided he pays the penalty? Some earnest men have maintained the affirmative, and their reasoning would apply, were our sincere to be created by the power of the laws of our country which are laid upon us in our conscience to transgress.

To constitute a crime it is said there must be both a will and an act for, where a man merely meditates the commission of a crime, it will certainly not amount to one in the eye of the public. Where a man does an act unlawful, but does not intend to do it, it will be no crime. But where a man attempts to murder and does not commit the act, yet it is a crime. The time must however when an attempt to murder, was considered as the actual commission of the crime.

It seems that there must be a will. Acts are committed where the will is said not to join and are therefore not public offenses, but excusable.

First, where there is a defect or want of understanding.

Secondly, where there is an understanding but no will or in all cases of mistake and accident, where the act is altogether involuntary.

Thirdly, where a man is excusable on the ground of being coerced or compelled by some superior force or power.
Public Wrongs

As to a want of understanding—This does not include men of mere capacity, or simple men. There must be some radical defect. First in case of Infancy, there is this want of understanding—

By the civil law the presumption was at first, that no one under 7 years old could have of discretion enough to commit a crime; this was afterwards extended to all under 10½. Where persons are over 14 then shall be no inquiry on the ground of infancy. Between 14½ and 15 the maxim applies "malitia subjectat statum", for between these periods the inquiry is, was the perpetration "Capax doli"?

In Eng. one at 8 years of age has been executed for arson and one at 9 one for murder. Under of capital punishment cannot be inflicted.

Idiots and Lunatics are incapable of committing crimes; the former on the ground of a want of understanding, the latter on the ground of no settled mode of thinking or on account of derangement of thought.

Drunkennes by the Roman law exculpated the perpetra-
tor if a crime, their maxims being "qui delapsus in vinum est, spalatus"—But our maxims in "omnia crimina strata est necendae et detegit" and therefore if one commits a crime when intoxicated it will not at all excuse him; and yet in case of drunkenness there is the same want of understanding that there is in case of Ina-

zy or Idiocy. The rule then is founded in policy, for if drunken
sence exposed a crime, men wishing to perpetrate crimes would only have to get drunk. It is clear then that it must either be unjustifiable or the drunkenness itself must be punished. Mr. R. has heard a man of very acute understanding advocate the latter which, if adopted, he conceives the advocate himself would have stood in danger of.

24. Where there is understanding but no will or in case of mistake or accident—Where a man justifies on this ground, he must show that he was pursuing some lawful employment when the mistake or accident happened. When a man aiming at a fox kills a man who was not seen, nor could have been found out by ordinary vigilance and due care, this will be no crime; but if a man shoots at his neighbour's house and kills a man, it will not be a justification to say he intended not to kill his neighbour. It is said that if the act intended to be committed was felony such killing will be murder.

Ordinary and not more than ordinary care is required to be used—where one is cutting with an axe and another person standing by the axe flies off for the first time and kills the bystander, it will be no offence but if the axe had frequently flown off before and flying off kills the bystander it will be an offence.
The case of obeying an unrighteous judge or of some court, the case of a heathen:

{Note: illegible text, possibly discussing cases of consultation, protection, and justice.}
The doctrine of Deodands, as Mr. B. succinctly observes, "the punishing a cart by the forfeiture of the wheels pecuniary over one in now antiquated."

Again there are other classes of cases when the will is not concerned; and there are such acts as are committed from an ignorance of some fact - as where a man attempts to commit burglary and the owner of the house meaning to kill him supposes he sees him, and by mistake strikes and kills an other - this must be specifically a mistake and not merely an ignorance of the law for "ignorantia non excusat legem." 34. In compulsion there is no exercise of the will. Under this head may be ranked that class of cases, where something is committed commanded by law to be done, which "in suo conscientia" is not a wicked, or against a man's conscience; in such a case his omitting to do it will be justified.

Monstrous actions however mean will excuse the commission of a crime except where the wife is coerced by the husband, where the husband commands her, she will be excused in all cases except those of treason and all cases purely "mala per se." But when they are wicked mixed partly "mala per se," and partly "mala infra prohibita" the wife will be excused. She will be excused in all cases merely "mala prohibita."
I. A principal offender is one who either actually perpetrates the crime or is present at the time aiding or abetting the fact to be done. This "principle" is not always an actual standing by, within sight or hearing, but it may be a constructive presence or where one keeps watch, for another while he commits. Robbery, Mace, &c.

II. An Accessory is one who does not perpetrate the fact himself, nor is present aiding and abetting it, but is either directly or indirectly in some way concerned therein, either before or after the crime committed.

As in many cases, the intention goes a great way; in some stating the crime, it will be necessary, in this place to define the term "malice" and the definition about to be given will apply well to civil as to criminal acts. If the intention which induces a man to commit an act is a vile one, he is in all such cases said to act maliciously. But malice is better explained by a reference to the abstract Latin word "malitia" and itself. To say a man acts "male animo" will not cover some completely
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up to the pernicious of the latit word - the act must proceed from an unchristian malicious heart an evil intent.

To determine the degree of malice exercised, it is necessary to take into view all the circumstances attending the commission of the act. When a man strikes an other and kills him, it will be deemed murder: yet if the perpetrator had been induced to commit the horrid deed from provoking words, it will be manslaughter only. This malice may be further evidenced by the care of a master charterising his servant or child a father his child. If the former in so doing kills the latter it might amount to manslaughter or only justifiable homicide according to the circumstances. The weapon and the manner in which it was used will be taken into consideration.

Again if a landlord should drive over and kill a child by accident entirely, it will be an act excusable; but if he should see a number of children in the street, and should drive over and kill a child in a careless and inattentive manner it would amount to manslaughter manslaughter.

Where the landlord sees a child in the street, and orders him out of the way, but the child not immediately obeying, he should run careless by over him, and kill him, it will be murder. Here there is that "malitia" which our law recognises parts of describing.
Of Felony

Many crimes are considered as felonious, and many not so. Felony by the English law comprises every species of crime which occasions a forfeiture of lands and goods. We have fallen into the habit of calling felonious whatever is felony by the English law, notwithstanding forfeiture does not at all prevail in this country.

In Eng. this crime was punished with death but not necessarily so, for the benefit of clergy was sometimes claimed and obtained.

Of Particular Offences and first of Arson

Mr. Coke will take notice of this offence as it was at Com. Law. By the English statute it has been considerably extended, tho' not by ours. 4 H. 8. 220. Therefore the com. law of Eng. in our law as it relates to this offence "Arson" then "in the war obnoxious and wilful burning the house of another." The word "Arsen" in the register is "demesse" which has given a rise to the question whether this term denoted particularly a Manseion house. 1 Bacon, 155.
The burning out houses or barns, statutes be within the same 
estate (as it is called) amount to arson; for the out house are 
considered as a part of or belonging to the house itself - the com-
mon law has been so far extended as to make the burning of
a single barn in the fields, arson if the barn has hay or grain in
it - 4 Co. Rep. 20, 4 Bos. 201, 1 Hawk. 166 - 4 Bl. comm.

By stat. in Eng, the burning stacks of hay or grain in the 
fields, was made arson - Not so here.

If the rule says to constitute arson "it must be the burning a
of house of another person." Therefore if a man burns his own
it will not of itself amount to arson - But if a man sets fire
to his with an intent to burn that only, and in so doing
burn the neighbor's, it will be arson, and the reason is that
the act in the first place was unlawful and done "malo animo"
Cox. vol. 374, 1 Now 1562

It has been determined in the English courts that if
a lessee for years sets fire to a house on the leased premises
and it will not be arson for during the term, the house is the tenant
property

Upon the same principle, if a mortgagee sets fire to a house
which is to revert to him and of which another is in possession
under a lease for himself, it will be arson - Yet however
the lessee's decision is inapplicable to our country.
not be suffered to govern us.

2. The rule says, the house must be burnt—Our next en-
quiry is, how much must it be burnt, to constitute this crime?
The least possible burning if it be done with a malicious intent,
says Mr. Hume, will amount to arson; but if it be not done with
a malicious intent, it will be the most only by 4 Bl. 221. 11 Haw. 147.

3. The only remaining part of the definition to be con-
considered is the MANNER in which the crime is to be commit-
ted—It must be a voluntary and malicious burning
if therefore the house is set on fire by negligence or mis-
chance it would not be considered as arson. Therefore also
where a man intended to set fire to his house, but mistook
another A's; this will be arson for the malicious intent de-
determinded &c. Pown. 475.

The statute of LOMB declares that if any person 16 years of
age or more, shall wilfully or purposely burn any house, barn
or out house, he is guilty of arson—

The punishment of arson at LOMB. Law is death without
benefit of clergy—

By the statute of LOMB. if the life of any person is endan-
ergised by the burning of the house, the incendiarist should
be punished with death tho' if there is no life endangered
the part is otherwise; for although in both cases the crime was
himself. If the man is put in fear and the taking is in his presence, it will be sufficient—Salk. 613. Est. 145. 1782. 148. 9.

The taking or delivery up must be in consequence of fear; for if a wallet be taken privately out of a man's pocket and afterward the taker threateneth threatening, commands him not to stir unless he be seized, it will not be robbery, because the fear did not occasion the taking.

But the case of a robber being alone with armed threatener person apprised to sing if the do not hurt him, this is robbery.

Fear is in fact the grand criterion to judge of robbery-Peto. Est. 128.

So threatening to swear a crime against one if he does not give so much money will be robbery, if the money is given.

So where there is a claim of property and a threat if it is not delivered—i.e., if it is given up then fear it will be robbery this is going a considerable length; Boyle. 70.

Where a man comes up and in the street and breaks off your hat, it will be no robbery because no fear was excited.

Robbery differs from larceny in this: No other larceny shall then be judged of death unless the thing taken be above the value of 12 francs, but robbery shall have judgment by small sum, the value of the thing taken away. 1782. 149.
Of Theft or Larceny

Theft is not an appropriate technical term, for it includes all the several kinds of larceny.

Larceny is divided into simple larceny and compound or mixed larceny.

Simple or single larceny is further divided into grand and petit larceny. If the theft is of 12½ or under it will be petit larceny and not punishable with death.

Concerning this Maestune makes an ingenious observation "that while every thing else has grown dearer man's life has grown cheaper."

The distinction between all these kinds of larceny relates to the punishment and not to the crime nature of the crime, for that is the same in them all.

"Grand or Petit larceny is a felonious and fraudulent taking and carrying away, by any person, the personal goods of another not from the person nor from his house."

1st. It must be a felonious taking. This is merely disciplinary, and relates to such taking as would subject the goods of the taker to forfeiture.

2d. It is a fraudulent taking. It must be such a taking..."
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as includes in it a trespass. If it is not with a bad or impure intention, it will not be fraudulent. And so nice have the determinations been, that if a man finds a watch "anime parans," it will not be theft or larceny.

It is clearly settled that whenever an article is bailed or delivered to one for his benefit and at the time of taking he has no fraudulent or dishonest intention, and afterwards goes off with it, it will not amount to theft, but if he takes it with an intention to steal, it will amount to theft. The bailment must be for some beneficial purpose to the bailee.

To show the intention of the taker, all the circumstances must be taken into view, for if it was a bona fide bailment, it will not be theft, not being fraudulently obtained. Thus far we may speak with confidence.

But it is laid down that where there is a bailment, not for the benefit of the bailee, but of the bailor, such carrying off would not be theft; yet the current of authorities support a contrary doctrine.

There has been held a difference between a delivery of an article to a servant, and a delivery to a common carrier, for it is said if the servant runs away with the article it will be theft, but if the common carrier it will be only a trespass.
So it is said where goods are delivered to a tailor, or grain to a miller and they count them or say them off it will not be a theft in either and yet it is settled that if the tailor can shade a part of the cloth or the miller takes a double share of grain or toll it will be theft i.e. if the carrier, or the tailor, or the miller takes a part out of what is delivered to him it will be theft, but if they take the whole it will not. These distinctions are certainly arbitrary and the reason of them of them cannot be seen. The principle in fact is the same as appears from the following cases:

Where money or other property was delivered to a servant who carried it off it was theft.

So where one delivered quills to another to get changed, and he says of with them, it was theft.

So where a man committed stock to a shepherd who took them without licence, it was theft.

So where a man hired & a room and carried of the furniture it was theft here.

Upon the whole Mr. Coke approves that whenever there is a delivery or bailment to one other who takes the property with an intention to steal, and does actually carry it off it will be theft the exempt cases of the carrier, the tailor, the miller notwithstanding.
As to Indictments — It has been settled that where A. steals from B. and C. steals from A., B. may indict C. as having stolen the property from him, without concernmg with A., and he may be indicted in any county.

Strictly speaking however Indictments for offenses are local. Where an offence is committed indictments must be not only in the same state but in the identical county where the crime is committed. To this rule the case of stealing or larceny forms an exception; for a thief may be indicted in any county, because he is reprehended to steal from any and every person, who may come within the territory of every county. If the person however is indicted for stealing in one county, he cannot be indicted for stealing the same thing in another county.

Where a riot is committed commenced in one county and continued and renewed, the riot will be distinct in each county.

So a larceny in one county it seems will subject the

whether in every count

It is not only a taking but a carrying away, any the heart moving, will be carrying away under this definition. There must however be some motion. Where a man was caught tying up the sheets belonging to the bed when he lay with a manifest intention to steal them, it was a co
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...taking away...

So where a man was caught with a horse in the pasture but had not got him out — 1 Shev. 141.

So where a man was caught taking money out of a trunk it was a carrying away of all that he had taken out.

So where a man was caught shearing wool off of a sheep's back but had not moved away with it — 141 of Shev.

But where a man had merely hoisted up a tote of good it was not carrying away for there was no opporuntity whatever.

When a man at a public entertainment had twisted a ring out of a lady's ear which lodged in her "right" it was a sufficient sentence or "opportunit" 4 &. c. 355. 818.

4. This taking and carrying by may be by any person.

This part of the definition is rather too broad, for the wife may take the personal property of her husband and carry it off without being guilty of theft — 1 Shev. 141.

It is laid down that where a wife delivers the personal property of her husband to some third person who takes "unio jurandi" it will be no theft — This must be seen to question 98.

It is said that in cases of extreme necessity man will be excused from committing larceny, but this is
not warranted by the Eng. law.

5th. It must be the carrying away be of the personal goods be. – Theft cannot be committed by taking anything whatever which adheres to the freehold (unless such theft in taking is made theft by statute) as emblemema growing on the land, or after growing on the tree be it will be otherwise if the emblemema are cut or the apples fallen off the tree be.

"It seems that it must take a little time for this real property to turn into personal." For if a man severs the property from the freehold and carries it away at an other time it will be theft. These are artificial distinctions.

Choses in action are not that kind of personal property on which theft may be committed at law. Because they are not considered of any use to anyone except the owner and not so much endamaged to stealing therefore provision for such cases is unnecessary. 1 Laws 14. In Eng. and perhaps in some of these states they have made it theft by statute.

Bank bills are (it is supposed) subject to theft on the ground of their passing currently as money. Theft cannot be committed on mere creations of whim and fancy; as cats and dogs mourning it. If any thing which is really beneficial to the owner be taken it will be theft.
appointed sheriff for the present county of 'Hans 1446
aged 16 years of Edward 1641
agreed to.

1 Mar. 426.
1 Jan. 1451.

1 Aug. 162.
4 Oct. 71. 72.
4. 21.
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When a man has a right of fishing in a particular part of a river, lake, or pond, and fish are caught out of that part it is not theft. But if a man takes fish and puts them into a trunk or makes a pond and puts them in and they are taken from thence it will be theft. But a man may steal his own goods or where he delivers them to a bailee or other person for a particular purpose and in order to subject the bailee steals away the goods, it will be theft.

As to Mixed Larceny, which is the taking from the house or person of another it is the same as other larcenies. It is only an aggravated species of larceny, in which the thief is deprived of the benefit of clergy. In simple larceny the benefit of clergy is extended i.e. the culprit is screened from being hanged the first time.

Of Piracy

Every species of depredation or robbery on the sea that amounts to felony in any of the before mentioned cases on land, will be piracy unless it be done by any of the inmates or crew of the vessel on which such depredation is committed.

It matters not whether it be done openly or stealthily by violence, violence or menly by fraud. If any of the crew or inmates steal or commit depredations in their refit, they will be prosecuted.
Public Wrongs

These offences are all thus remedied to preserve peace and tranquility in society.

Of Homicide.

Of Homicide there are several distinct classes.

I. Justifiable, which frequently happens from accident and to which there is no blame attached.

II. Excusable Homicide, which is divided into that "per inspiciendum" where there is not ordinary care, and se defendendo, in self defense where there was an intention to kill but excusable on the ground of self defense. In both of these there is some blame attached, or the case may be.

III. The next grade of Homicide is where the crime is not so great as to amount to Murder nor so small as to be excusable and which is called Manslaughter.

IV. Where a main life is taken with a malicious and wicked heart and is denominated Murder.

Of Justifiable Homicide.

And first of homicide which happens per inspiciendum or by accident. In order that a death should happen
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by accident and therefore to be justifiable the one or who perpetuates the act. must not only be doing a lawful act but must take proper i.e. ordinary care. As when a man in a barn had been pitching off a load of hay and a child suddenly gets under it, and is killed by it a stroke of the pitchfork. No blame.

So also where a man's axe flies off and kills another standing by, which had not been in the habit of flying off—there is no blame attaches itself to the person.

If the act was legal unlawful of which death was the consequence, the perpetrator is guilty of some offence. Concerning this the rule is—If a person who kills another was doing some act which amounted to fell felony, the crime would be murder, but if he was doing an act under fell felony and death was the consequence, it would be manslaughter.

As committing a trespass or trespass; this rule has been reversed, for Brown thinks unwise and so a departure from principle. It had been restricted that to constitute murder there must be an unchristian malicious heart. There must be that warlike animosity which we hear so much about. If there are any cases notwithstanding the act may be felonious, where this social heart cannot be discovered. The Reason presumed they cannot properly be called murder.


As where a man is shooting bears for the purpose of killing them and he kills another man it will be murder, but where he shoots them merely to plague his neighbor and kills him, Mr. Brome thinks he that there evil heart cannot be discovered. What shall a man be cut off from society when he has not that venial heart which agreed on all hands is so essential by necessary to constitute the crime of murder. It is supposéd that in such cases the crime should be manslaughter.

If death should be a consequence of any lawful sport or recreations as wrestling the crime would be ranked under the head of execrable homicide, unless there were some want of ordinary care or some impropriety in which case it would be manslaughter. As where a game is instituted, if you pitching a Cotts which is unlawful in any of these cases should death issue it will be manslaughter.

Where one man attacks another with a large bird or al premeditatedly, not for the purpose of killing him, but beating him, in fact to do him some great bodily harm, and actually kills him still it, manslaughter or murde. The solution of this question depends upon whether there were this makes animus, that venial heart.

In this case there was, says Mr. Brome, the authorities.
Supposing a man having a spite at a company should attempt to do great bodily harm as by throwing large stones into the company and one is killed thereby it will be murder, notwithstanding there might be no intention to kill yet there was that malitia inferable from so rude and savagely an act.

But where death issues from a careless or incautious act, it will not be murder but manslaughter, as where a man is going to set down and the chair is pulled from under him for the purpose of creating a laugh, and death is occasioned thereby it will be manslaughter he says Mr. B. "The devil was not in the man in that case and yet it was an unlawful act."

If death is the consequence of some unlawful act, and there is not the malice animus, it cannot amount to more than manslaughter but if the malitia is discoverable, it will clearly be murder.

Again a blow at B. with a design to kill him, or to him great bodily injury but misses B. and kills C. This will be murder for the reason of heat is discoverable.

But if this blow had been given under some sudden provocation from it would have been manslaughter only.
It must be recollected that to make a killing accidental the act which occasioned it must be done in a proper and lawful way. Every schoolmaster has a right to correct his scholars responsibly and in a proper way so as not to injure his child. But suppose a schoolmaster corrects a child from a proper cause with a proper weapon and in a proper manner and by an unlucky stroke kills the child; it will be no more than accidental death and therefore justifiable. But suppose he takes too large a whip but not so large as to be likely to kill and corrects the child so as to kill him it will be manslaughter. Suppose the man calls the child up and takes the iron thumbtongs or some other enormous weapon and strikes him so he dies that he dies it will be murder, because the use of such a weapon does occasion the matter.

To exemplify this further: A man is at work on the roof of a house throwing tiles or bricks to below if he gives proper warning to all below and throws one and kills it will be justifiable. Suppose from carelessness or inattention he throws and kills without warning, it will be manslaughter. But suppose he does this knowing that people continually pass below or in a city, the nature animates is in jeopardy, and of course
it would be murder.

Again a man driving a team down this street, and suddenly and accidentally a child runs in the way and is crushed it is justifiable, but if the child is in the road, and the driver being careless runs over him and crushes him it will be manslaughter. If he sees the child and tells him to get away and he does not do it, and the teamster drives on and kills him, it will be murder. But he says neither us to recollect that the least negligence or carelessness about an act from which death ensues will subject the perpetrator to manslaughter.

Again, where in company a squib is thrown not large enough to occasion an apprehension of death but death occurs, this will be manslaughter, but if the squib was large and of course dangerous and death ensues this will be manslaughter murder.

So where a man built is intentionally turned into a company and he kills some one, it will be murder in him who turned him out.

When a man was shooting over the heads of others to frighten them, and some one strikes the gun down so as to kill it will be manslaughter.
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Put in a case where a man found a pistol with a rod in it which went entirely down when the attempt was made with it to see if the pistol was loaded—and of course created a suspicion that the rod was not loaded it happened however that the rod was too short and in snapping killed his wife is it manslaughter or justifiable homicide? This depends upon whether the man was careless. If there was any thing left than ordinary case it will be manslaughter if there was not it will be justifiable homicide—Foster seems to be of the latter opinion.

Where a man unloaded his gun but some mischief should arise, and some one without his knowledge loaded it and put it in the place where it was first put, and he in showing his wife how exact it would strike a shot her dead. Foster seems this justifiable.

Another kind of justifiable arises from unavoidable necessity and is founded in justice—as the executing a man under sentence of death—Ed. Coke says where the warrant of exeunt varied from the judgment of the court and execution according to the warrant it would be murder in the executioner but this is contrary to every dictate of common reason and is done even
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dem to be no more than justifiable homicide. Where the
officer substitutes one punishment for another it will
be at most but manslaughter.

5. Homicide is justifiable 1 In case of resistance to any
officer who has legal authority and 2 where a man attempts to
commit an atrocious crime to prevent which homicide
is committed.

1. This must be an actual possible resistance, for if the
officer has once gotten the person in his power and then kills
him it is murder.

2. Where the man who runs or attempts to escape from the
officer is accused of felony and is killed by the officer it
will be justifiable, but if he is accused of trespass only
some crime or injury lower than felony and is killed some
contend that it would be justifiable, others that it would
be manslaughter.

3. Where an officer trips up a man's heels to catch him
and death is consequent thereon, Pomeroy seems it jus-
tifiable. It seems that cases of this kind depend upon
this whether the act has a tendency to kill, say any.

II. Of Excusable Homicide. Judge Blackstone
divides excusable homicide into 1 Per infortunium or
misadventure and 2 Per se defendendo acting
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upon the principle of self defence and preservation. Of the former of these Mr. E. seems to have fully treated under the foregoing head, probably more for the sake of giving a whole view of this subject than from any idea of regular expounding. The latter kind to be defended will now be treated of of which there are two kinds.

1st. Where the person assauted may kill without retracting at all and plead self defence.

2nd. Where the party assauted must retreat, or as far as he can without being in the most eminent danger which when it is the case he may kills the fact and expose it on the ground of self defence.

I. As to the first. A man need not retreat when an attempt is made to rob him but may kill him immediately and be excused. So where a man attempts to break into another's house in the night or time. So where an attempt is made to burn another's house. So where a man attempts to rape.

II. Where a retreat is necessary necessary before killing to enable the party to shelter himself by these den fende or inexcitable necessity.

There are cases where attempts are made exclusively upon the person and not upon the property as in the other
case - They are cases too of sudden affrays where life is taken by a man when touched by "Beast Fever" or sudden passion or rage -

One who then happens to be engaged in a sudden affray must not take the life of his opponent without retreating until his own life is endangered it is not material in these cases which party begins the affray -

This Homicide [defended] differs from man slaughter in this when in the same affray both parties are actually contesting at the time when the mortal stroke is given the slayer is then guilty of manslaughter But if the slayer had not begun to fight or having begun endeavors to decline any further struggle and afterwords being closely pursued by his antagonist, kills him to avoid his own destruction this is Homicide excusable by self defense - I repeat it that it is not material who begins the affray -

But if one man spurs to another knowing him to be passionate and understanding fencing well retires for the purpose of killing the opponent and actually does kill him in this way it will be murder for this discours the malle animus -

Homicide "defendedo is frequently called
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Chances have

The punishment for this offence at Rome was a forfeiture of goods and chattels (hence denominated felony) but now there is no punishment annexed to it.

Of Manslaughter.

Manslaughter is of two kinds one of which has been previously considered viz going with the preceding cases or where a death is not sustained by the commission of some lawful act turned vicious and inhumate.

And in whereby a death is volunatly by doing a lawful act in an unncecious base and lese manner, this with no design to injure.

The second species shall now be considered which is known by the name of wilful manslaughter.

This is where one intends to kill another or to do him great bodily harm and actually executes this intention this will always be murder unless it be shewn that it was done in a sudden affray in the heat of blood & with some actual or conceived provocation & if this be shewn it will amount to nothing more than wilful manslaughter. But the law considering the quickness of temper & human infirmity is willing
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To throw a veil over it in some measure that it by no means
was the offence or blameless or wholly pardonable.

But if there has been even so great a provocation
and the party injured has time to cool before he
exercises his wrath it has been always considered as
murder, and this is a rule of justice as well as jus-
tice, for if it was not viewed as murder it would
be virtually giving encouragement to revenge.

Again where a man without any provocation
throws himself into a passion and kills another his
passion will not excuse him, for it is a mere diabol-
ical fury without cause and it would be murder.

The same in the case as to slander are would
be the same as applied to slander for if one man
is provoked to speak ill of another it will go in mitiga-
tion of damages.

But if a man without cause throws himself
into a passion and then defames another it will be an
aggravation of the offence and consequently of the damage.

It now remains to determine what degree of
provocation will reduce the crime of killing down
from murder to manslaughter.

No words, nor gestures, or any other actions, exp
opinion of contempt will be sufficient.

But suppose in consequence of these provocations a person should take up a horse whip evidently with a view to chastise him merely but in so doing he should46

instantiate kill the man it would amount to manslaughter only.

But if this person under the same circumstances had made use of an improper weapon as an operand spike it would have been murder for him the maker

assumes appears

A case put in the books which was determined to be murder. A boy was caught stealing wood from a park by a parker who in stead of chastising the boy with proper punishment tied him to his horse's tail and then went to whipping the horse which ran off and killed the child, and this was held held to be murder.

Two boys got a fighting the smallest of the two was considerably injured. He went home and told his father who went immediately in pursuit of the boy and followed him nearly three quarters of a mile with a cudgel and upon coming up with him he struck and killed him this.
this was considered to be manslaughter. But the now.
considers it to be murder for two reasons. 1st there was
not sufficient provocation to make use of such a wea-
on, 2nd there was time for his blood to cool be-
fore he came up with him. The story above of
is said by some of the reporters to have been very
by stated for they say the father took a small stick
which make a material difference in the case.

Where A. caught B. in the act of adultery with
his wife and puts him to death immediately.

Indeed it was held to be manslaughter. Otherwise
had waited till his temper had cooled and then killed B.

A man killed in a detestable deed is considered as
being murdered - and yet many deeds are detestable
without either of the parties acting male animos.
It is policy however to consider every deed a murder
where death is the consequence.

The law, upon manslaughter has taken the taint of
only that of voluntary or wilful manslaughter & has left the other
as at law. Law punishable by fine and imprisonment.

In my treat on murder the jury may find the crime
not guilty of murder and at the same time bring in a
verdict of manslaughter.
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But if this general kind of verdict, a great question has gone on. How are the courts to know which species of manslaughter the mind about is convicted of: whether it be the negligence, heedless manslaughter or whether it be willful. The court, it is true, may have heard the evidence, but they are not judges of the fact; therefore cannot express this point, but are merely to pronounce judgment on the facts or verdict when found but they have notwithstanding their incapacity been authorized in the practice of punishing such general verdicts by statute. But the House doubts very much of the propriety of providing that on the contrary, when a man is found guilty of manslaughter generally, without designating the kind, he thinks the court ought to punish as at

Law.

We have a statute, wherein preventing hurt, women whose bastards children from putting them to death in order to conceal their shame. The Legislature have made it criminal to conceal the death of such infants, if the child is born alive.

Murder will now be noticed in a distinct branch from any before mentioned by writing an officer in the execution of this duty.

As passion excited by an officer executing his duty, which may prevail upon an individual to resist and thereby kill.
This is not necessary except in the private person of an officer. The accused to be brought before a justice under oath, and if the person not obliged to answer any question in which could be evidence of guilt, and whatsoever evidence out of the Preston and Newsham and any evidence which may afford evidence of guilt where the supposed subject was found when may be duly made, it must be committed by due order to await until when the offender is committed to await until the magistrate is present. The officer at his discretion, having two officers, may demand from any person afteramientos, and sworn statement, and then proceed after accordance with a demand of further evidence. Any officer committed for any cause or reason committed to any person in the same. Any person who cannot answer admires be freely asked as the act of the officer, and of the may be false for any offense unless declared and shown by any person contemplating the same.
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the officer will reduce the crime from murder to mutiny.

And the crime will be the same when extirpated to all the officer's associates and even to private individuals when their services are necessary. For if any of these individuals claim the office, by a resistance of the criminal, although it be upon a sudden affray still it will be murder or under the state of True King where no person is obliged to turn out if called upon by the officer.

But in these cases where an officer in doing his duty, the minister must have notice of the being an officer.

The warrant must be a legal one. For if a man resists an officer with an illegal warrant and kills him it would be no murder but mutiny.

You are not to understand that the warrant must be legal in every respect, for if it apparently so on the face of it, it is sufficient.

If a set of individuals pursue and take a wrong person and he kills one of them it will be all mutiny. Otherwise if an officer in pursues with a warrant and takes a wrong person and gets killed for this murder.

If a gander be mal-treated suffers a burn to
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Petit treason may happen in three ways by statute.
1st. By a servant killing his master or wife he has charge of, or an ecclesiastical person his superior.

2nd. Treason.

As relating to our form of government: 1st. If a member should convene for the purpose of controlling the administration to alter the measures or to expel certain laws or to remove public officers to it would be treason without any attempt by the people to remove what they call grievances by force or treason—

But a mere conspiracy against the government without an actual attempt to execute their design is no treason but a high misdemeanor.

2nd. Where a member yet to gather and pull down meeting houses of a certain religious sect it is treason.

3rd. In any manner joining with rebels is treason, but where a man is compelled by them thus to do the case is different. Aliens if they are under the protection of the laws may commit treason as well as natural born subjects.
must appending a power to warrant any 

people drawn by warrant by an officer 

without warrant & by private person without 

warrant - magistrates appoint to warrant 

the business of justice - to bring to examine and 

examine here declared to officer or person in 

fear to commit by no man without warrant or taking 

opine making is left to require judgment of the officer 

officers bound to account as former the persons 

persons - judge may examine when officer 

beast the great sheriff armed without warrant 

a constable may enter and draw his sword 

appear in his presence in case of felony or 

levy on probable cause break open doors 

without warrant and shall & by warrant 

it is made - judge or person present shall return 

saying is committed bound to appear and may 

break doors - upon suspicion may break 

and not break doors of the door and windows
of present

128. presentment where - The assembly sworn, an indictment or presentment averred and exhibited to the grand jury made within the count then returned, sworn, and the freeman of the grand jury signed, the presentment preferred. In them - they hear evidence only on the return of the public officers by way of complaint to the county commissioners in one county and three commissioners in another, &c.

[Handwritten text continues with detailed legal and procedural matters, including references to the law, evidence, and proceedings in a court or legal setting.]

[The text continues in a similar manner, discussing legal principles, procedures, and possibly case law, in a detailed and historical manner typical of legal manuscripts from the period.]