Reeve & Gould's
Lectures.

Twin & Gould's
Vol. 6th Lectures
A crime is an act committed or omitted, for the violation of the law of the land, forbidding or commanding it. It is an injury done to the public.

In crimes where life is concerned, they are called "capital crimes." Smaller faults and omissions of less consequence are called misdemeanors.

At Common Law, public and private actions are totally distinct. When unite, it is done by a Statute. This union is the foundation of those actions which are called qui tam actions, in which the individual who has suffered the injury, or some common informer, brings the action as well in the name of the public as in his own name. The public prosecutor cannot bring an action for the same offence unless the individual withdraws his, on the principle that a man shall not be punished twice for the same offence.
Criminal Law.

The justice of its officers are the public concerns.

In England, Criminal Prosecutions are brought in the name of the King. In Connecticut, in the name of the State; in the United States, in the name of the Government.

There are many crimes which are upon both the individual and the public. In these cases, the individual may have his action for damages, the public their action for the violation of the law— and here the rule of evidence is, that the proofs obtained in the civil action by the individual, is not evidence in a public prosecution.

It will be remarked, that it was no more a law or a crime, because the individual does or does not suffer by it. The violation of the law has constituted its heinousness.

There are several crimes where the informant has the whole penalty. In those cases, the form of the action is civil, not criminal. It is a crime in effect, but civil in dress. It is in the nature of an action of Debt; the person committing the crime, is required to answer the informer a penalty.
Criminal Law.

In England, the person who suffers an injury by folly cannot bring an action to recover damages. The reason given for it is that, the private wrong is merged or swallowed up in the public wrong - but this reason is insufficient. What cause exists in the nature of things, why the individual sufferer should not be compensated for the injury sustained if the felon has property to compensate him? There is none. The true reason then is, that in England no man can commit a felony without a forfeitures of his life and liberty. The sufferer cannot obtain any thing even if he should recover in an action for his injury on the gallows to the public. To the king. But here the reason of the Law ceases. Felony in England is not always felony here. It does not give occasion for forfeiture of property. This is the highly reasonable, that the individual should have his action to recover damages.

Crimes are of two sorts. Those which are called malae conditae (i.e., those which are prohibited. The former is the commission of an act which the conscience of a person tells him is wrong,
Criminal Law.

They are punishable at the Common Law. The latter are also punishable at Common Law, t by Statute. The statute punishment, accumulating, the Common Law punishment. Unless the former take away the.

common Law remedy, it remains as it was, t there is no necessity of proceeding under the Statute. Sometimes, the Statute tells what the Common Law

is t then it is said to be declaratory of the Common Law. If the statute lessens the punishment, it takes away the common Law punishment, the public prosecutor is not left at his option, whether to prosecute at Common Law, or on the Statute.

Final Statute: receive strict construction.

In England, to steal horses is a felony. It was therefore by him who had stole one only, that his conduct was not criminal by the statute. This going much too far, yet it is proper when a balance is made, the judge & jury should lean on the side of acquittal, rather than that of punishment.

To constitute a crime, it is necessary that there should be a vicious will & a vicious act consequent.
Criminal Law

on such will. If the act is not committed, however,
wrong, in fore consent, the intention may be,
it is not a legal crime. Here the Law of his
conscience reaches him, if no other. Neither is it
a crime, if the act committed be unintentional.

But to this rule, there is one exception, that

Here, it is evident, that for a time the man has
no will, but, motive of policy require that he should
be punished as the he had. It is a matter of necessity
that his drunkenness should not excuse him.

But what is to be done, when a statute
is made forbidding certain actions to be committed,
if no penalty is annexed for the violation of it?

Answer. The person may be prosecuted at Common
Law for a breach of the statute. That comes in
to aid it assist it. This is the principle. If no
penalty is annexed, his wrong is no less. He has
violated a statute, which he has no right to do. If
the Common Law will punish him for this
violation. The degree of punishment is optional with the court.
Criminal Law.

There are but few of the Criminal Statutes of England used in this Country, but there are some so general, that they have been adopted by every State in the Union. In these instances they are generally subject to variation from the English Statutes. Many of them have had constructions put upon them by their Courts. The rule is, that when they are adopted, they have had constructions put upon them, our Courts are bound by their constructions; because the Legislature when they adopted them, thought their construction was proper & reasonable. They cannot depart from it, any more than the they were told in detail.

But of a woman who is totally deprived into intoxication - Drunken, ought to be viewed in the same light as a Lunatic?
Lecture 2

It is a general principle that when a man commits an act which was not intended for the purpose of injuring another, would be criminal, he is not criminally liable. This must be understood, however, with some qualification. If the man does an act in pursuance of his lawful business, and in the course of it, he is hunting for deer, and by accident kills a man who is not criminal, but if he is in pursuit of any lawful business, unintentionally kills another, it is a crime.

Persons may therefore be criminally liable for certain acts even though they had no intention to commit a crime. In these cases there is a culpable negligence which subjects guilt to an action. This distinction runs through all the cases.

3. A man is privileged from the imputation of criminality when he does an action through mistake; which, if it were not for the mistake made, would be criminal. Thus, when a person lawfully entrusts a

(Handwritten notes and dates present on the page.)
Criminal Law

House & the owner in attempting to kill him
unintentionally kills one of his own family.
This however does not extend to mistreatment of Law
as outlawry.

4th. A man is also privileged in certain cases
on the ground of compulsion, where in other
the action would be criminal. This is the case with
soldiers in every unjust war, but where by
their Government to fight they must obey. But
no instance whatever is the compulsion of a son
below one an inferior an excuse for the crime
committed by the latter, not of a servant by the master,
even in the case of a wife, at the request of her excuse
without by the two following rules.

1 For every invasion of the rights of property
which she makes by the coercion of Commandments
4th. No. 28.
1. Hale No. 45. to 45 of her husband she is excuse.

2 When she transgress any Law of Society
which is merely a creation of society, and is now,
if done by the coercion of her husband, she is excusable.
Criminal Law

If the guilty of crimes which are made
inherently
the 

a
wife
may
also
be
indicted
with
her
husband

for
keeping
a
brothel.

In
those
cases
where
the
wife
is
excusable
his
correction.
the
husband
is
liable
to
suffer
the
penalty
annexed
to
the
crime.

5.
Minors
or
infants
are
privileges
in
some
instances
for
the
commission
of
actions
which

would
be
criminal
in
others.

By
the
Common
Law,
in

minors
under
seven
years
of
age
are
not

capable
of
committing
crimes.

Between
seven
and
fourteen,
whether
they
were

capable
of
Admission.

After
the
age
of
fourteen,
they
are
of
full
age
to
commit
crimes.

Principal

and
Accessories

There
are

two
crimes
in
which
there
can
be

accomplished:

The
higher
the
lowest.

Reason

Secrecy:

cannot
be
in
Washington.

A
Principal
is
one
who
does
the
act
or

who
is
present
aiding
and
abetting
it.

It
is
not
necessary
that
the
person
should
be
actually
in view, to constitute him a Principal. If he is at a distance keeping watch for the purpose of giving notice, when there is danger of being observed, he is a Principal.

An Accessory is one who is not present, but in some manner concerned in the act; he may be an accessory before or after the fact. He is one before the fact, when he counsel, advises or, conspires for all the consequences which follow from the commission of the act; but he is not answerable for a totally distinct crime.

An accessory after the fact is one who aids, assists, aids, clothes or any person guilty of a crime. This is true only when he aids, assists in the

Criminal so that he may escape theleanor of Justice.

This rule is as extensive as it possibly can be, except in the case of Wives, they are privileged. The Father is an accessory to a crime when he assists his son in fleeing from justice. But a wife may rescue, feed, etc., her husband guilty of
Criminal Law

Criminal action, theft is not considered by the law guilty as an accessory.

The punishment inflicted on accessories before the fact is different from that inflicted after the fact.

Lecture 3

Arson

Arson is the malicious willful burning of the house or outhouses of another.

I. There must be an actual burning. To constitute this crime it makes no difference how small the burning is, if it only affects the board; it is arson.

2. It must be burning the house or outhouse of another. By outhouses are meant barns, which are empty if near the mansion house; those at a distance, if filled with hay, grain or stacks of hay, grain or if they are at a distance and not filled with hay or it is not arson. But a high misdemeanor. In Connecticut burning stones for the mill that saw mechanism.
Criminal Law.

21st Oct. 22

Mark 14:105

Verse 377.

in their own house, by that means burns another, it is Arson.

But it is only exposes it does not burn his neighbour.

It is a misdemeanor. If a man burns his own house which he has leased it is arson.

3. The burning must be done with malice.

The generally mean by malice ill will, but this is not the legal sense of the term, because a man may as an action this malice, and thus ill will.

He may burn the house of his neighbour for the purpose of plundering him of his money.

I yet have no ill will towards him. In law then, it is thus understood. W. When a person does an act from a wicked motive, he does it with malice. If the motive is a mere one of the shows an entire want of social feeling.

as in the case in one of negligence, malice is presumed to that always.

D. It must be a willful burning; by this I mean that there must be an intention to burn.
Criminal Law.

In Connecticut by statute a man cannot be executed.

By the common law arson is punished with death without benefit of clergy. By benefit of clergy is meant nothing more than that any person when convicted of a capital offence the first time might make the plea of heat in the blood, but for the second offence should suffer the penalty annexed to the crime. The laws of the United States do not recognize any such privilege.

In Connecticut arson by which life is hazarded is punished with death. The kinds of arson are punished by confinement in Newgate. Circumstances must determine whether there was an intention to expose the lives of persons.
Burglary (as defined by code) is when a man by night breaks into the mansion house or another with an intent to commit a felony.

This definition is not sufficiently broad to break open a house of public worship with a malicious intent or Burglary — to break down the walls of a Town. To be complete it should have been, "When a man in the night season breaks into a mansion house, a house of worship, or walls of a city, with intent to commit a felony."

1. To constitute the crime, it must be done in the night season. By night season is here meant, when there is not sufficient sunlight to discern a person's face. If there is a progression or day light enough to see his face, it is not burglary.

2. As to the place, it must be a mansion house in the town in which all houses within the Cambridge, Woodhouse, Court House, Chamberlain, and for lodging.
Burglary

It makes no difference how inconsiderable the robbery, if there is a disturbance. The main object of the law is to protect the tranquility which every one wishes to enjoy in the hours of sleep.

3. There must be a breaking. If a house is shut up, however it be opened it is a breaking as if a window be lifted up, a door unlatched is. If a door is open & a person enters & breaks an inner door, he is a burglar, so is he. Com. own a chimney, he is a burglar to where a fraudulent

instance is made use of to enter a house, the burglar as knocking at a door, proving a Constable to break the door then binding the Constable. If the person is lodging in the house, if the night breaks another door, with intent to, it is burglary. So if a man gets into a house in the day time & breaks out in the night it is burglary.

4. There must be an entry. Any, the least

part of the manor day, in hand or with an instrument held in his hand is a burglary.
Burglary

5. There must be an intent to commit a felony. It is not necessary that the act should be committed. It must be intended. This intention must be ascertained from the circumstances attending the fact. The presumption is, however, in this case, always against the criminal. The whole burden of the proof, that he has no ominous intent, lies on him.

Lecture 4th.

What is felony? In England, it is a crime which occasions a forfeiture of goods, let it be minor. Here it is such a crime as would be an English occasion those prosecutions. In England it is by the Common Law, punished with death; by statute it is cursed by the benefit of clergy. In Connecticut, it is punished by confinement in Newgate. If a man in this place be found that a person may in some cases with a Burglary or the theft there, be justified. The general principle is that when a man maliciously
Burglary

to commit a crime with violence which, if committed would be punishable at common Law, with Death, resistance unto Death is lawful. The attempt must however be attended with force. The intention of the Law is to prevent injuries; therefore a man may in some cases kill his assailant if there is no danger of great bodily harm, or the there was no intent to commit a felony. This killing, however, must be necessary.

Larceny

Larceny includes Theft and Robbery. In the English Law, it is subdivided into grand larceny, which is the stealing of goods over the value of twelve pence, and petit larceny stealing under the value of twelve pence.

"Steal is the felonious taking & carrying away the goods of another man." But the same may:
Larceny

As it is in England. It differs only in the punishment.

1. To constitute this crime, there must be a taking.
   The finding must not be in his possession, else it is not a fraudulent taking. If property is delivered to another in trust the break that trust by carrying
   away the goods it is not theft, because he has then in possession. But if a carrier who is
   entrusted with a bale of goods breaks it open
   and takes enough to make him a lord I deliver
   the rest it is theft. The reason appears to be,
   the man had possession of a part, nominally only
   of the whole - of a person has the use of a thing
   i.e. convicts it, it is theft. The punishment however
   must be lawful. If the article is possession of
   him constitutes it as theft. Yet the intention must
   have come into his mind, before the article was
   delivered to make it theft. If it came afterwards, it
   is theft.

2. A carrying away. Any removal what ever,
   from the place where the property was situated if fraudulent
   taking away. There is however this exception,
Larceny

A thief was taking a piece of plate from the floor and lay horizontally, articles while I was on the floor, but not from a particular. This was not considered a felonious taking away.

2. It must be felonious. Being taken clandestinely, in general, evidence of felonious intent not taken.

3. It does not always evidence a felonious intent. It must be felonious intent. If it excludes every thing which comes under the denomination of Falsity.

4. It must be personal property. But suppose a man holds out a number of streets, say then immediately to a house will shift the two.

5. Suppose he had carried them away some time after they had been cut down by the hewing, would this be theft? It would not so if they had been cut down by the hewing. If any thing adheres to the pedestal, it is taken immediately it is a Freedom. If he keeps it for a time, then take it away, it can belong.

To take Dorn's note, writings evidence of theft is not felony when possible of the Common Law.
Larceny

To steal a Bank-bill is felony by statute. I think it is by Common Law, because it is money. This however was never decided except by a Court Circuit in the State of Connecticut. They determined it not to be theft; a statute of theirs since declares it to be theft.

5. It must be the goods of another. But under certain circumstances a man may be guilty of theft, by taking his own goods, as if he knows his watch, and then takes it from the pawn-brokers. Here the general principle operates. His watch is not in his possession.

If property is stolen, if the owner is not known, it is Larceny.

Lecture 3rd

There is one species of property which cannot be the subject of theft. It is those animals which are called free nature. But if they are of use for food, labour, it is Larceny to steal them. And the those that are not of use are not subject to theft.
Larceny. Robbery

An action of trespass will lie for the recovery of damages of goods taken away.

In England theft above the value of twelve pence is by the Common Law punished with death, unless the sum with which the person is convicted be

In Connecticut punished by whipping, except horse stealing which is punished with imprisonment.

By statute in England, stealing from house is made more penal than stealing from person, by

Stealing one step from the benefit of clergy. The Common Law places them on the same footing.

Robbery.

Robbery is the felonious forcibly taking from the person of another, goods or money, of any value, by violence, or a previous putting him in fear. The word felonious is immaterial, because the forcible taking is in a felony.

1. There must be a taking. Any attempt how so ever forcible is not robbery, but by Common Law is high
Robbery

Robbery is committed in Connecticut. Courts may punish for the attempt, precisely as the act has been committed.

1. It must be a previous putting in fear. But if two men are riding on the highway & one knocks the other down, plucks his pockets, it is a Robbery.

2. If must be a forcible taking. But there are exceptions. If a beggar, with a pistol in his hand, asks charity, & money is given him, it is Robbery. If a person has an instrument of death in his hand, says, "you must purchase my watch, & the price is $500." If you take the watch, I deliver the money. It is Robbery. It would be better however to say the person must be in fear of force.

3. It is from the person of another. It may be in his presence. As where a Robber, by menace of violence, puts a man in fear & drives away his sheep or cattle before his face. It is not necessary therefore that the man should consent to the Robbery.
Robbery, Perjury

There is an offence in England called malicious mischief. Here it is nothing but fraud, as common law in England. It is punished with death without benefit of clergy, fine with imprisonment.

Perjury

Perjury is when a lawful oath is administered in some judicial proceeding, and the person swears falsely, absolutely and falsely, as a point material to the issue.

1. It must be a lawful oath that is, it must be administered by some person having power to do it.

2. It must be administered according to the law of the land. In this state, the law is to be held as a custom derived from Holland.

3. In some judicial proceedings, a person has a right to administer an extra-judicial oath. But a man may perjure himself, before arbitrator.

4. He must swear wilfully, absolutely and falsely, i.e., he must have an intention to swear falsely.
Perjury

He must swear the fact is so. He must swear falsely. He may be convicted of perjury even when he swear the truth if he did not know it to be true.

5. Is a great material. But if it is not material, the thought it was, it is Perjury.

Lecture 6

Subornation of Perjury is the procuring another to take and an unlawful oath to constitute perjury in the principal. It is punished in the same manner with perjury which by the common law is imprisonment setting in the stocks, hanging etc.

A Conviction of this crime disqualifies a man to be a witness in any case before a Court of Justice. It is a part of the judgment, a person will not make him qualified to be a witness by the statute at his it causes the disqualification of persons, besides the guilt of the person and another crime to which

witness
Subornation of Perjury

The crime falsi is such a crime as shows the person guilty of it to be a violation of all the principle of honesty and integrity. But to exclude his evidence you must produce in Court a record of the judgment.

When a person is convicted of a Capital crime is sufferers death, by reason of the false

act of another, the person taking it is indictable for murder. But if he is not convicted

it is only a high misdemeanor.

Forgery

"Forgery at the Common Law is the fraudulent

falsely making or altering any record, or any

true copy of an authentic nature, or deed or will.

Every thing that has been deemed a forgery, when

the man's name & seal are made use of to effect

that which was contrary to his intention: A gives

a Deed to B of 3 acres of Land the 15 February. A

gives to C a Deed of the same Land the 17th last.
Forgery

States at the 12th This is forgery because the last writing cancels the former & prevents the action of Justin & Equity.

It occurs his drafterman to draw his will and drawing it, he inserts legacies without the order of the Testator; this is forgery for he has altered what the Testator never intended.

To use an instrument is that an effect may be produced different from what the man intended & to prevent Justice & Equity is always forgery. If a man who owns a note, alters it from a greater to a lesser sum, it is not forgery but the least alteration in an instrument wholly destroys it.

It is a general rule that one cannot commit forgery by omission. This is a mistake for Moore 760. If the omission produces the effect of altering the intention, it is a forgery as in the case of Will. The principles of Forgery by Statute are the same as by Common Law. The Statutes have only
Cheating, Trespass vi et armis.

Cheating is sometimes a criminal offence. Where it is done by mere naked lying, it cannot be prosecuted. But where a man, by means of some artful device (more than mere lying) depraves another of his rights, he may be punished as a criminal. So for using false weights and measures, false due to. A miller is punishable for cheating.

Trespass vi et armis.

Lecture 7th.

Trespass includes all offences, but it is more confined to simple trespass. This is sometimes only a civil injury, but when attended also by a breach of the peace, it is a criminal offence. It is punishable by fine, sometimes by imprisonment. Some eminent writers say that a mere assault is not a breach of the peace. Battery is an angry or unchaste treatment of another, is always a breach of the peace.
Riot.

A Riot is the simultaneous disturbance the public peace, by three or more persons, who have assembled of their own will, with an intention to support each other in any opposition which may be made to the execution of their unlawful enterprise, or an enterprise for a private matter, which must be executed actually in a turbulent manner, to occasion terror, or have a tendency to effect terror.

Whether the enterprise be lawful or unlawful, if it be done in this manner, it is a Riot.

1. It must be done by three or more persons.
2. Of their own authority, without any right by law. A Sheriff may call the price committee or militia officers and soldiers, but it is not a Riot.
3. They must assemble with a view to execute an enterprise. But if they meet one lawful business, then enter into a combination to, it is a Riot.
4. It must be in a turbulent manner, and with violence, to cause terror. Offering to hurt a man causes terror. So do threatening speeches, and turbulent gestures. If there is no offer of violence, it is not a Riot.
5. It makes no difference whether the enterprise be lawful or unlawful if done in the manner above described it is a Riot. Removing nuisance in a violent or tumultuous manner is a Riot.

2. Show 150. So if a man breaks open his own house in the way in which another person has shut himself up, he is a Rioter.

The thing must be done or actual execution to constitute a Riot.

**Riots**

It differs from Riot only in this, that in the former the enterprise is not executed. It has every ingredient but actual execution.

**Unlawful Assembly**

This is where three or more persons meet to do an unlawful act and attempt nothing. But there may be an unlawful assembly without an intent to do any thing.

An Affray is the fighting of two or more persons in some public place to the terror of the people.
Lecture 8th

There are instances in which a person the fear of outrage may assemble his friends together. He may take his friends into his house, to defend his castle. It will not be an unlawful assembly. There may be suppressed. It is the duty of certain characters to suppress them. There are certain officers called peace officers, such as sheriffs, deputies, or constables. These persons have power to call the peace constables. Grand juries must do it, upon complaint. Private persons may suppress them upon some occasions. They have no authority to compel each other to do it, neither are they culpable if they do not come or if called on by peace officers.

They are punished according to their degree of fine, imprisonment or soling.

One person may be indicted with others whose names are unknown. If the jury finds one guilty of one guilty, the other cannot pronounce judgment on that verdict.
Libel

but if they find all guilty with others can known
to be not guilty, it is a good verdict, judgment may be rendered.

Libel

A Libel is a malicious defamation of character
expressed in writing, printing, speaking, by any public
Leaving a tendency to blacken the memory of
one dead, or the reputation of someone alive
of to expose the person in his memory to hatred
vituperate or contempt.

It is a crime because it disturbs the public
peace and tranquility. There is a difference
between a Libel and common slander. It is true
that whatever is equal slander, if reduced to
writing would be a Libel—but many things
are Libels which would not be slander. Whatever is
told of a man which would reduce him to a criminal
prosecution, is slander. But Libels do not go on this
ground. Reduce to writing that which will expose
him to hatred, contempt, ridicule: if it will be a
Libel, you cannot see two persons for slander, but in Libel you see,
Libel

1. It is a libel when it is shown to the notice of a person, name, or with a pseudonym name, so that it is manifestly obvious to whom it refers, as a libel.

2. If it is expressed in a taunting, ironic, or malicious manner, it is a libel. If the party known whose name is sufficient to warrant him in bringing in a verdict.

3. If the contents of a libel are true, as in justification. In slander it is. In private Libels it is not, but in public Libels it is a justification. I think, on the Principles of the Common Law.

4. It must be published, else it is no offence. After which both publish and write, are liable.

5. If there is a malicious reading, it is a publication; otherwise, if not malicious, the causing such publication.

6. Publishing books that have a tendency to deprave public morals is an offence at Common Law.
Libels
Lecture 9th.

As all libels have a tendency to disturb the public peace, they are no less libels if they do not; therefore if a letter is written to one who knows its contents but the writer & knows to whom it is sent, it is a libel.

Every thing that tends to bring a man into contempt, ridicule or hatred, if published in any manner before statio, is a Libel.

When the memory of the Deed is dissolved, it is necessary that it should be indicted in the indictment that it has a tendency to disturb the public peace.

In a Libel there are two parts for the jury to find first, the publication & secondly that the language of the attorney is sufficient. It is true, that where the intention is so mixed with the Law, that they cannot be separated, the jury can to find both, but where they can be separated, the question of Law is to be left with the Court.
Lire. Homicide.

When the act may be innocent, the intention may be left to the jury, but when the act itself is criminal, the jury are only to find the act as an instance of this position. There is a Law of this state forbidding a man to deed away his land, the title to which is in dispute. The land in possession of another, and the grantor and grantee are both punishable. Now in an action against the grantee, the jury are to find both the part of the receiving of the deed or the intention of receiving it. But in alleged the publishing is itself criminal, the jury can therefore only to find the facts before stated.

3 Penn. 428

The general rule is that when an innocent act becomes criminal by intention, the jury are to find it. But when the act is criminal, the intention is an inference of Law.

8 Penn. 2688

Homicide.

Homicide literally speaking, signifies the killing a man. It is divided by the English Law into these kinds: Justifiable, excusable & felonious. There is no
Homicide.

1. A person is justly and committed homicide

This an unavoidable necessity, either in the

execution or advancement of justice, as in

the execution of justice; when the Sheriff issues

a warrant, consented by a proper tribunal to

death. It is laid down as a principle, that

when a Sheriff issues a warrant, by a person

from a court which has not jurisdiction of

such a death, the Sheriff is not justified.

This requires some explanation. A Sheriff

is bound to know the laws of the land. When

therefore it is apparent, from the face of the

warrant, that the Court had not jurisdiction,

of the execution, a man, he is guilty.

If he does not execute him, he is justified

Le is guilty.

2. When he commits it for the advancement

of justice. When a person, has been guilty of

illicit when an attempt is made to take him,
Korridore

Homicide

2. Homicide is punishable as defined by

Every private person has a right to

But how can a person without means or property

Homicide is punishable as defined by the

For the person accused of murder in

A man is an affiliate of a

If a person without means or property

In the event of a

In the event of a

In the event of a
Homicide

The assailant is justifiable when any one attempts to get into his house with an intent to commit a felony, or attempt to burn it, if the felon is killed it is justifiable. When he attempts to commit rape, the woman, her husband, or parent, may kill him. Justifiable homicide goes on the ground that there is not the least fault or blame on the part of the slayer.

Lecture 10th

2. Excusable Homicide. This species of homicide does not claim exemption from punishment on the ground of authority from Law, but on the ground of want of blame. In every case of excusable homicide there is no blame in front of intention or negligence. Where the latter is found it is a low grade of manslaughter.

This species of homicide is of two sorts, either by accident, as the defendant being excusable of prosecution, or accident, where a man in the course of lawful business, without any intention, kills another, it is either excusable homicide, or manslaughter.
Homicide

Homicide.

Where ordinary care is used, it is the former, where culpable negligence is perceived, it is the latter. e.g. Where a person is cutting wood with an axe of the head thereof flies off & kills another, this is not murder, for there is no malus animae. It is not manslaughter, for there is no intention to kill; no negligence. It is therefore excusable homicide.

But if the saw, once it is cut, is carelessly set aside, & it flies off again & kills a person, this is a low species of manslaughter, because there is negligence. A. is on a horse, B. strictly follows him & he runs once by killing him. A is excusable but B is guilty of manslaughter, because the act of whipping was a Frespan &continent.

A Schoolmaster chastises his scholars moderately, & by the inadvertent death ensues. This is said to be excusable homicide, but I think it is justifiable, because the authority to chastize is given him by the Law of the Land. But if B. should he strike him inmoderate, such as a blow on the very body is beyond the bounds of
Homicide

reason, the air, this is manslaughter, or may be murder. The male animus is deducible from the instrument alone.

Hitting in a lawful game, if an lay is used & one is killed, then is curable Homicide. So if in playing foot ball one is killed, this is also excusable homicide.

But such cases, they are amusing them selves at a play which is unlawful, as in England, fencing with a sword if one is killed, this is manslaughter. If two boys ar throwing stones at each other, & one is killed, this is manslaughter. If a stone is thrown with a prime dictation design to do some great bodily harm, & one is killed, this is evidence of malice, & is murder.

It is not every provocation that makes the crime manslaughter; there must be an adequacy in, a ground for the provocation. E.g. Two persons are sitting at the ends of a long table disputing
Homicide

The policy of killing one of them, yet,峨峨, he takes a glass bottle standing upon the table and throws it at the man, but misses him. The other in turn throws one at him and kills him, this is manslaughter of the willful kind: a man is asked by his servant when the wife was asleep. The master, nothing in mind, kills the servant, this is murder because there is not sufficient provocation to authorize the act. This happened 40 years since in the State of New York, the master was acquitted.

A distinction is made in England between the criminality of two acts which do not exist. If one has a deliberate design to commit a felony and unintentionally kills another it is murder; but if he has a design to commit a felony, it is manslaughter, e.g., if in shooting at him with an intention to steal, then if you kill a person it is murder, but if in shooting at a horse you kill a person it is not murder. If one is insane both are, if one is not, neither is the other.
Homicide

I should say it was not murder in either case, but in the former case it seems to be.

whipped, and the other to be hung with a fillory to have both ears cut off.

From what has been said, we derive the following rules:

1. Where a person is engaged in his lawful business, if he is guilty, if no fault, no negligence, no intention, he kills another, it is excusable.

Homicide

2. Where there is negligence perceived, it is manslaughter.

3. When he has no intention to do some great bodily harm, kills another, it is murder.

4. When he has an intention to injure property, if it is felonious, it is murder, if not felonious, it is manslaughter.
Manslaughter is the unlawful killing another without malice. It is divided into two kinds: 1st when death ensues from the happening of a sudden quarrel; 2nd when death ensues in consequence of some unlawful act, but there is no intention to kill. The former is voluntary, the latter is involuntary.

1st Voluntary Manslaughter: If when a sudden quarrel two persons fight, one is killed, it is voluntary manslaughter, so if they go into a field to fight it out because it is done out of passion. So if a man be greatly moved at killing his nose, immediately kills his aggressor it is manslaughter. But if there is time for the passion to cool, if afterward the person provoked kills the other, this is murder. If a man takes another in the act of adulteries with his wife, it instantaneously kills him, this is manslaughter, because
Manslaughter - Murder

It is the highest of provocations. In this case, the Court orders the punishment to be slightly inflicted.

1. Involuntary manslaughter. When a man goes into the land of another in order to kill his cattle & unintentionally kills the owner, this is manslaughter. So when the act itself is lawful, but it is performed in a negligent way, as in the case of an ape in the last instance, & on a sudden, great, or unprovoked, a man slays another or kills him with a slaying instrument, this is manslaughter as for murder in Connecticut, by a statute which now all the other States have done. From what has been said we collect the following. There may be sudden quarreling, in which a man kills another, the intention to kill, or manslaughter. There may be case in which there is no intention to kill, but only to commit something which is unlawful, or else it is manslaughter. There may be case in which the act is unlawful but performed in a negligent manner & then it is manslaughter. Our statute leaves the law of killing manslaughter but punished as a Negligence.

Murder

Murder is by some elementary writers, which...
Murder

will amount for the present, to "the willful killing of any human being with malice aforethought." But a man may kill another without doing the act if he is the cause of producing death, if the circumstances prove that he had an unsocial heart. And if a tenant put a prisoner into a room with one who had the smell for, when there were other rooms, or when a son opposes a sick father to the Cole against his will, by reason of which he died, of a harelip who laid his child in an orchard to hit a stick at, it is not more to be the instrument of killing is a murderer.

A person may in some instances, by negligence, be guilty of murder. This will always depend on the circumstances of the case. If the negligence of the social heart is discovered, it is murder.

By the Common Law, if the person does not die within a year to day after the event, given it is not murder. But no negligence or inattention in the party injured, if he dies within a year to day, will excuse the person from the guilt of murder.
Murder

This is true also in civil cases, as in case of a physician who destroys a patient's arm. But whether the killing a child in the womb is murder or not depends upon the question whether the child is alive or not.

A murder, as defined by Sir Edward Coke, is when a person of sound memory, direction, unlawfully kills any reasonable creature in being in the place, with malice aforethought, either express or implied.

The express malice may be evinced by killing in wait, by threat, by former grudges, or by the fear of killing, or prima facie evidence of malice.

The whole burden of proof lies on the prisoner, to show there was no malice. I do not think that Duelling ought to be just as a proof, but murder by former punishment would be better.

Lecture 12th

Then in no instance in the Books in which conversation merely by words or by gestures will occur the charge from the imputation of an immoral heart.
Murder

Saturday 29th
Hawke 57

... makes animus. But let it relate to science.

This, does not always accord with our feelings.

There is no intention to commit a felony.

And if the circumstances be such, as show that

the probable consequences would be bloody,

if one is killed, that is held to be murder.

In all cases killing upon authority is

authority in the execution of the duty is

punishment. If he is a special officer it is assault.

If killed before the murder intended, it is breaking into

then he's innocent of assault. If he is.

no authority, he is in the same situation

of any other man.

On a murder ground, the circumstances being

Homicide Poi of B. a.

not intentional it is murder. A. awaits B.

if he retires from possible, if the kills B

is excusable homicide. Part of B. a.

if lying him too powerful, retreats, it is murder.

1802 wins. Also held to be murder.
Murder, Stealing, Rape

11th July 1829

In all cases where there has been a design for the purpose to subdue, it is murder even when there was no intention. If by a word or manner he advances to them all, then it is evident the meaner may be of more not necessity of it in murder.

Sermon 67.

If a person is killed by one, whether in promise of the object of all, it is murder in them all.

Lect. 308.

When the servant assists his master, a person is killed in him, it is manslaughter, in the master it is murder.

Ser. 1296.

Suicide. A common occasion a person of good repute in most, but the amount, to nothing amounting. When a person has been accused or suspected, it is said to be sufficient provocation to the body to bring one's self to commit the same.

Ser. 1296.

Lecture 13th

Prose.

Ser. 170.

Rape.

Ser. 170.
Rape, Bigamy, Adultery

may be punished. Upon the principles of the Common Law, complaint must not be made for that. But by statute, it must. All persons who are present assisting as principal offenders.

See Lord Baltimore's case in common reports.

Bigamy

Bigamy is when a married person marries another; the former husband or wife being alive. This is properly not an offense at Common Law, but at the Ecclesiastical Law, which is the Common Law as it respects this crime. In Connecticut it is punished by statute. If one party is absent seven years must have 3/4 of, in low circumstances in life, the other party may marry again, without being guilty of an offense. The Law becomes the absent party to be dead, if administration may be taken out on his estate.

Adultery

Adultery is the criminal connexion of a man with a married woman. This also an offense not punish- able by the Common Law Courts, but by the ecclesiastical.

In Connecticut it is punished by statute.

Let now come to consider statute offenses which are adopted in this Country.
USURY

Usury is a Crime, because it tends to be
punished. There are two kinds of usury, and
which is not punishable as an offense, not only
occasions a destruction of the obligation. It
therefore destroys the obligation but amounts to
a penalty. Moreover, a man by any agreement
whatsoever contains within the contract more
than legal interest for the use of the money.

I destroy the contract, but does not subject
the money to punishment. Punishment too much
received he is liable to a penalty.

Lord Halswelle held a different opinion
that it is not considered as law.

As Common Law, Months mean Lessons
months. I sometimes in costing interest of my
heirs views. But in these cases the Time
punishment there was no correct consideration
until the contrary is proved.

When a principal has paid a lawyer
the principal he may receive more than
the principal. This is the principle of all activities
by attorney known as the Lord's presence case.
Chapter: Courts

Lecture 11

Selling a voidable title to an offense under 2 Common Law by Statute. Where a
conveyance is made to a title to real property other
is a cause of action, I and an injunction
claiming by an adverse title, it is an offense to
punish by civil or criminal action. By statute
England the forfeits the value of the land. In Con-
necticut half the value of the land. But on this
notice must be presented within a year.

Courts

In Connecticut

1. Superior Court. This court has exclusive jurisdiction
over all capital offenses, and its jurisdiction is
limited to magistrate shall have stolen from it has concurrent
jurisdiction with the County Court in all other crimes, the latter
being. A court, superior to criminal jurisdiction in all
cases not related to crimes committed in the
State. It has concurrent jurisdiction with the State. Where the
damage is an appeal from jurisdiction from venue of the Court
as specific venue from venue to venue to the Court. Where the
appeal from the Court, venue to venue from venue indefinite
to the Court. Where a partial appeal is filed, appeal involves.
Anxiety

Private persons are bound to arrest persons—only are bound when they have committed, or a dangerous wound given, in their presence. They may do it. Then they think certain persons committed a felony. Common justice will justify them.

If no crime has been committed, the private person arrest another is justified? The old rule would not allow it but late decisions are to the contrary.

If an officer breaks open an outer door in a civil cause, he is liable, by a long of execution had—

Where a person has committed felony, or given a dangerous wound, a private person on an officer may break open a door to arrest him; he must however give notice, request reasonable assistance. You can indulge in no revengeful acts, nor do any thing that wantonness.

On any offense, but the felony, a private person is not justified in arresting a peace officer may arrest an offender, but not a private person...
Arrests. Bail

If a person once arrested escapes to his house, the officer may break the door. If an officer takes bail, the prisoner gets into his house, the bail may break through. Don't force officers has a right to command help, but a private person has not. The former has power to carry before a justice, but the latter has not, he must deliver him to the constable or sheriff.

If a constable has once arrested an offender, in his sight, he cannot arrest him a second time. Because it would be dangerous to allow them to proceed officers with warrants. If the warrant is illegal, or the face of it, the officer is not justifiable. If a man forfeits his bond, he may be arrested for the same offence.

Bail
Lecture 15th

This subject is generally if not universally regulated by statute, of course it depends on the application of the principle, the common law...
Bail

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247 -

...there is a practice in England for the Sheriff or Constable to take bail themselves, but not known in this country. If the bond is taken for his appearance in court, if he appear, the bond is discharged; but if none of the appearance can be made, the bail are looked on as the fault of his own choosing, if they please they may imprison him if he does not wish to go before justice authority to get other bail. They have also the power of forcing him to appear in court if refused.

The bail taken must be sufficient. The authority taking, acts in a ministerial, not judicial capacity; it is therefore as much hath as a Sheriff in civil cases if the bail is insufficient.
The old common law principle is that there must be two sureties in bail for a felon; but it is now entirely disposed of. The law only requires that it should be sufficient. If the authority is imposed upon by the bail, he may take the person to confine him until he gives bail a second time.

If the officer takes bail in an offence not bailable he is liable. So he is, if he refuses to take bail in any offence which is bailable, for the act in a ministerial capacity. The Supreme Court in every county has a right to bail. They have exclusively the right in homicide, arson, counterfeiting public money, treason & falsifying the King's seal.

In Connecticut their usage is peculiar. All offenses there are bailable except capital offenses.

In manslaughter their officers to be on difficulty in bailing. The Attorney may insist for murder.

The Supreme Court has been the same in capital cases, but it is seldom exercised. There is an analogy.

A bail in civil & criminal cases. A man may take and prove to arrest the body of a debtor, or if bail is taken, it is not perfected during the life of the execution.
Bail- Contempts

This is true only of Bail Bonds. When the bond is forfeited, it is liable for debt & costs. If the return of the officer is evidence whether forfeited or not. The officer is not obliged to take & hold bail which the reasoner thinks insufficient.

Lecture 16th.

To constitute an escape, there must have been a lawful arrest, which is made either by seizing the body, or when the body is known that an order is to be made, voluntarily goes & submits to the officer. In civil cases, an escape in any time before action brought, will excuse the officer. In criminal cases to constitute a voluntary escape, so as to incur the punishment of a voluntary escape, there must be a corrupt intention; in civil cases, the letting him go with such intention will subject the sheriff

Contempts.

The mode of proceeding in such cases will be committed in open court, or in a justice of the peace court. They order the Sheriff to commit the person to gaol, and a record is made of it by the Clerk. In these cases the writ of the Sheriff's supersede all others.

They proceed no further than confinement during the session. The reason mainly is, because after that, they can make no disturbance. But there were
Contempts.

Contempts of Court, i.e., the mode of procedure in such cases, is as follows: some person makes a false oath before the Court, which consists of the facts before the Court, who consider of it. If they think the facts do not amount to a contempt, they make a record of it and dismiss it. If they do amount to a contempt, a notification, being made, out of court, is issued, commanding the person charged to appear on such a day, on the reason of the cause being tendered why attachment should not issue against him. If he does not appear, there is good reason for believing the truth of the facts stated against him in the affidavit, and he does not appear, the court may acquire of him, under oath, that if he denies, they dismiss him; yet if he swears falsely, he may be indicted for Perjury. If the reasons given are not sufficient, an attachment will issue.

Officers of courts may be guilty of contempts which others cannot. It is not every neglect of duty in an officer which makes a contemp. The generally true, that when there is an abuse of office, the officer is both liable to the party injured, to the court for a contempt, the principle is this: the court can confine him until he makes a reason of the satisfaction. Attorneys are also liable for a contempt.

Persons are guilty of a contempt when they refuse to come to court, or to be sworn, or to give any account.
In all cases where persons are not officers of court, but have a duty to do or refuse to perform it, a mandamus issue 1 if they then refuse they are guilty of Contempt.

Pardon

In former times by the common law it was held, that there could be no pardon until conviction. But in late times there have been persons before conviction. The pardon restores the man to his rank in society except the imputation of guilt which his conviction or confession has occasioned.
The Mercantile Law is applicable to transactions of a commercial nature. The Law merchant is called the custom of merchants.

But it must be received in a different light. It differs from a custom, in all its parts. A custom is a law of a particular place different from the general law of the land. This is the common law we are bound to know. But the law merchant they are bound to know, because it is applicable to all commercial countries, in the same way that is expected by custom or statute. And the common law is to other subjects, the Law merchant is to mercantile subjects.

This is the Law of the commercial world generally.

The things on which this law operates are the following:

1. The whole doctrine of Insurances
2. Bills of Exchange, promissory notes, and bills of exchange
3. Charter Parties
4. Bottomry and personal loans
5. The Law of Shipping
6. Matters regulating seamen and their wages
7. Tonnage

The leading distinction is that Equity is interposed with the Mercantile Law, in exclusion from the Common Law. Mercantile Law differs
from the principles of the Common Law in many respects.

1. Difference. By the Common Law, no security could be so negociated or conveyed away as to give the debtor a right of action in his own name. But it can be done by the mercantile Law. At Common Law the property is not vested in the purchaser; all he gets is a power of attorney to collect the money and to sue. A discharge by the assignee secures recovery against the person or any body. In Equity to be sure the assignment was protected by subjecting the assignee to an action on the covenant as also for the fraud in discharging the obligation. Nay, it could compel the obligor to pay the money once again, on the ground of having fraudulently received the discharge.

Thus, however, one exception to the common law rule, that a man cannot convey to another a right of action; yet it is when in the sale of lands.

There are covenants of warranty, stemming to him who assigns. Here it is said the covenant runs with the land, the warranty is to one man, of course, any subsequent purchaser may sue the original covenantor.
Mercantile Law.

But the law merchant imposes a contract that the drawer will pay the holder.

2. Dish. By the common law, an action cannot be maintained by one man against another unless there is a promise of contract by the one man to the other.

3. Dish. It is not in the power of the common law to create an action in favor of one man against another for a voluntary delivery, but by the law there can be. The rule does not hold in all mercantile transactions.

4. Dish. By the common law, if the consideration is once passed, you cannot create an action without a subsequent promise. By the mercantile law you can.

5. Dish. And in the consideration of a contract by the common law does not entitle it an action may be brought for the recovery of damages, but by the mercantile law, the good faith of parties is the test.

6. Dish. The want of consideration can be waived again, any contract, except a specially of common law. But the mercantile law, when the law come into force, you cannot over want of consideration. There are two instances, in which the tenability of the consideration can be waived. Those on Usury being the owners of the act are to all intents and purposes...
Mercantile Law

Lecture 2

7th Diff. By the common law, where one of two joint debtors is taken in execution for the same thing, supposed to escape, you can never take him either. The presumption is, he has paid the debt. An escape is considered as discharge to discharge to one is a discharge to both. And the principles of the mercantile law are different in escape of one is not a discharge to the other.

8th Diff. By the common law, months mean lunar months; by the mercantile law, they mean calendar months. By the common law, if a buyer purchases goods, but does not take them away of gives his note for the price, they are liable to attachment. Execution to the seller cannot attain them in his hands three years of Bankruptcy of the buyer. But by the law merchant, when on a newly made bargain, there is danger of Bankruptcy. The seller may retain them in transitu.

10th Diff. If a contract is to be fulfilled on a certain day, that day falls on the Sabbath, it is to be fixed on Monday.
Mercantile Law

1st. Common Law. It was on Saturday by 12 Law traders.

11th Diff. At common Law, here notice is the given, any manner of notice is sufficient. But by the

Mercantile Law, a certain particular form is necessary.

12th Diff. A man who comes by a Bill of Exchange
or promissory note fairly may hold it.

Insurance.

To make a contract of Indemnity against certain
risks, a consideration of a sum of
money ought to be given, a contract for a sum to which the insured an exposure
is made. This may be called a House of Seaways, an Indemnity.

The latter is more properly called
Mercantile Insurance, which extends to
Ships, Cargo, Bottomry and Reproduction Bonds, monies
paid out by the captain for repairs to. To bring it
under the Mercantile Law, it must be a nautical
contract.

Of such we shall contain the following
contracts.

This insurance is effected by an instrument called
Policy, which contains the contract, and everything
foreign to it, either by writing or said without intent.
Every contract contained in a policy which is called a "warranty," must be literally complied with. But if it is a representation merely, if it is complied with generally and substantially, the policy is not vacated. The representation is merely on another paper than the policy. There are a great many policies which are void at iniito; the causes which induce them may all be reduced to three: fraud, unascertained, illegal (voyages). Each of which we will consider in its order.

1 Fraud. It is a general principle, that fraud vacates the contract. It operates equally well, as in respects to policies of Insurance. In as much as parties to conceal a fact that ought in good conscience to be disclosed, as to tell a direct falsehood, is a forfeiture of the common law. It remains to to this day (as I think untenable) that a man may be cheated yet not have his contract vacated. He can only recover damages for the cheat. But by the mercantile law, this principle is not allowed. The deceit destroys the contract entirely. The maxim here is that no man ought to be bound by a contract which he never intended to enter into; this maxim ought to be adopted by the common law.
Insurance

Who may insure? By statute in England, no companies except the London Insurance and Royal Exchange are allowed to do it.

When there is a false representation deliberately made to vacate the policy, or also a misrepresentation made this mistake, a concealment of circumstances made, the policy vacated. It is here the only inquiry is what circumstances ought to what ought not to be disclosed.

Opinion of a Judge—A concealment is a fraud.

In insurance on freight, concealment will often vacate the policy. We may not see the materiality of the circumstances that constitute the fraud. It is sometimes the possibility of it.

A man has never a right to conceal a fact within his knowledge, which he has reason to think if told, the insurer would alter the premium. But he is not bound to tell his own speculation or private opinion. If he knew any fact he is bound to tell it. So if it be a mere rumour.

It is often the case that there are many underwriters, if there is a false representation made to the first insurer, it does not affect every one.
Insurance

from the contract. The reason is the insurer generally get a respectable merchant to sign first which always induces others.

To make a warranty, it must be inserted in the policy. It has been made a question, whether if a representation made in writing & attached to the policy, is not a part of it. It has been decided that it is not. The policy is an instrument by itself.

Whenever a warranty is made & expressed in the policy, it must be literally & strictly complied with, but if it is a mere representation, then more lenience which will be permissible, the insurer subject to subject the insurer, which must be determined by a jury from the circumstances of the case, itself. But a representation being & so, with a substantially

It has been contended that the insurer ought not to suffer by the fraud of the agent. It is strange such an idea should ever be indulged. The employer ought to suffer for the fraud of his own agent rather than any other. It was occasioned by the old common law idea, that for violent acts of agents, the employer was liable, but not for frauds. This was sanctions
Insurance

There is the promise case. But it is now settled that
the fraud of the agent vacates the policy.

It has been a question whether the policy
is vacated by the fraud of the insured, the insurer
is liable to retain the premium. But it is not for
principles of policy, they ought to retain it. Contracts
for their effect in case be annulled by court
of chancery, yet they will compel the payment
of principal & annual interest.

Almost all commercial countries have made this penalty

A trade carried on in contravention of treaty
is illegal; of course, no insurance on such trade is void.

Commence with the treaty is illegal. Is an
insurance upon such commerce illegal? Clearly so.

In principle it has been considered by Lord Mansfield
and Lord Chancellor of course, is not the controversy
in England, from the preceding cases. There is an exception
to the rule. And an insurance upon an illegal transaction
is void. Indeed it was not long decided that an insurance
upon goods purchased in enemy's country was legal.
Insurance.

But this judgment was reversed in the court of King's Bench. Of course such insurance are void in England: so I think would be the case in the U.S. States.

Lecture 3

2 Unseaworthiness - If the vessel was not seaworthy, it makes no matter what difference whether there was fraud or not. This point is not treated simply between by Law or Equity, as it ought to be.

When a person insure a ship & cargo, which ship is not able to perform the voyage at the time the insurance there is no defect unknown to the parties, the insurers are not liable. The principle is that the insurers are never liable for an unknown, apparent defect of the thing insured. In every insurance there is an implied contract that the ship is able to perform the voyage. This is as strong an express warranty. But the insurers are liable if a defect is occasioned by a subsequent event. If the vessel proves defective without any adequate cause, as a gale of wind, without the least strain, if there can be proof to be a defect in the building of the ship, the insurers are not liable.

It will often be a question, whether the defect was present and known to the insurers, which can be determined only from the circumstances of the case.
Insurance

3 Illegal voyages. They are not a footing on the same principle on which contract are void at Common Law. If an insurer insurance upon a vessel which is known to be engaged in an unlawful voyage. Insurance liable. Courts of Law have no aid to an illegal contract, as a smuggling voyage. It is a principle that our country will not help a voyage which is illegal as it respects whether it is within a municipal regulation.

Some things cannot be insured, as the masters & sailors wages. It is a principle of policy to compel them to make expiation to save the vessel & cargo. They have been a practice of allowing master to bring slaves for themselves, when engaged in the African trade, but these could not be insured. Any thing may be insured that is considered as incident or appendage to commerce, as parts to secure against nations for the purposes of carrying on Commerce.

One point under this head seems to be quite an illegal voyage? Is trading with an enemy unlawful? on the principles of the Common Law? It has been so considered by commercial countries. I so think always, although determinations are to the contrary. The opinion of many of the best lawyers in England is that it ought to be allowed in some instances. In the
Insurance

By the third of Oct., it was decided that trading with an enemy's country was unlawful in that case they determined that a license to purchase to trade was void. The propriety of an alien remaining in the principles of the commercial law and to be invariable, because it is against Policy and Lord Hardwicke seems to make the legality depend upon the

Nov. 31st. 1792

Their opinion was that trade with an enemy was always illegal (see page 85) was a neutral in partnership with an enemy, residing in the Country, be insured to recover during the war? It has been de

C.T.R. 613.

clared that, as far as it extends to his own interest he can. See W. Pull.

Hart Vol. 354.

It has been decided in two cases, that Insurers

C.B. R. 2235.

when enemy's property cannot be allowed the insured cannot recover. This decision may depend upon the

Burr 1734.

principle that an alien enemy cannot bring an action, but surely he can in time of peace. An alien friend can recover when his personal contracts.

I may depend upon the principle that all trading with an enemy's country is un lawful. With 83, I understand that it is not necessary to consider such

insurers good. Are insuring policies good? They are made to by statute in England. A surroring
Insurance

Policy is one where there is no interest in the subject. I believe there is no policy as void at common law. It is not to be considered in this country. Before the statute in England, it was considered they laid a foundation for an action. But I conceive it to be a settled principle of the common law that contracts for insurance where there is no interest are void. They are all wagering policies. In England, they have been admitted to be good, because they were more wagers, if wagers are recognized by the common law. By 1746, they are declared to be void, if they are so by a statute. It is contrary to sound law as an agreement must to carry on one's trade, as a contract to found a match. I should say then that every contract in the nature of a wager was clearly void. There was a period when wagering policies were considered as void, if other wagers were not.

1st. 1574
2nd. 1642
3rd. 1692
4th. 1710
5th. 1746
6th. 1750

In 1574, it was decided that the policy was totally void. In 1642, it was decided in the same way. A bill was filed to have the policy reviewed and was held to be good. In 1710, it was in the first time held to be valid. In 1746, it was held in the same way as to be good. But the same year, on the beginning of the next, it again decided to be good. From that time to the making of the statute, they were held to be good and in 1746 a decision appeared in the statute.
Insurance

If articles insured are contraband of war, the policy is utterly void. There are cases in which the premium must be returned. Sometimes on the ground that there has been a mistaken insurance, as where a man had a ship in a foreign country, which he supposed would bring home a certain cargo, but as the tide set, part of the premium was sent. I should have remarked in my former plan, that article contraband of war are, arms ammunition, naval or martial stores, such as gun pitch turpentine, hemp, tar, cargo and tackle, in short any thing (except provisions) for the purpose of assisting to carry on the war. So horses are included. I suppose for the purpose of mounting cavalry, and some provisions when the place is actually besieged or blockaded. If a captain on a vessel going to a place actually blockaded, but not declared so to be, the loss will fall upon the insurers. The policy is not void. The illegality of a voyage depends entirely on knowledge of the blockaded or on the nature of the voyage. Of course notice is given by nations generally that such a vessel must not be blockaded. Hence sailing may not be illegal unless it was known by the insurers, or sailed after going in to a port which at the time is known in blockaded. (Back to return).

If the insured goods are sent in another vessel than that insured to be sent in, having never been on board the insured ship, as there is no risk run by the insurer, they return the whole premium. The analogous is the sale of an article never delivered. The further intende
Insurance

So in the case of a ship having returned to the underwriter or owner at the time of the insurance, this would be on the ground of fraud. But if the return is ignorant, it would not be returned. The general rule is, that if the insurer runs no risk at all, the premium must be returned, because the ground of the consideration is the risk, where there is no risk, there ought to be no consideration. Action to recover it, is consequently absurd.

If after the insurance the vessel does not sail, or the risk has not begun, in matters of the stage, the premium must be returned. There is one set of cases, which seem not to correspond with the principle laid down, but there is a distinction. The cases are those where the premium was paid on a wagering policy. The vessel went & came back safe when the payer of the premium brought his action to recover it back, it was beaten, because the Law does not help rogues. In such cases they are both in pari delito. This rule does not apply in every case where the parties have broken the Law, as in the instance of mistake using here, there may be a recovery.

There is to be no apportionment of the premium.
when the voyage has begun to run. But this excepts to this rule. If there are two distinct voyages, if the voyage or one only is run, there may be an apportionment, which is made according to general custom. As, when a ship was insured from London to Halifax, with convoy from Portsmouth, has sailed without convoy from Portsmouth, there would have been an apportionment of premium. But in case of an insurance for twelve months, if the vessel was lost in two months, here the insured could not get an apportionment.

Lecture 4th
The Policy

The construction of this instrument is very important. A valued policy is where the contract is in the nature of equity and damage.

Date: usually the policy should be dated to the benefit of the policyholder in the event of loss or damage. It is also advisable to date the policy to show the time when the insurance was taken out. The policy should state the date on which it came into force. It must also be signed and witnessed for validity.

The formation of the instrument itself is very important. A valued policy is where the contract is in the nature of equity and damage.
Insurance

be invited to make a value policy. A value policy is one when the sum assured has been insured on the policy. It is when no sum assured when issued, but such thing is insured without any sum insured. An insurance is made upon the value of the goods, be it more or less. The sum is not specified. A policy may be executed upon principles of law as well as any other instrument. This however has been carried. The correction is made in Chapter 7.

Never can be maintained when a policy is taken, as well as for Bond, Note or

Who may be Insurers? By the common law.

There is no restraint upon any person or persons who will not affect an insurance. In England by statute certain qualifications are given. To know a change. Persons cannot be

What may be insured? Any thing in seaward. Bottony Bonds must be of seaward residence. So they are not otherwise included. Hence by usage of freight may be insured. To recover for freight which, where that some wrong has been

Book 267. In. Can packets be insured? I think they cannot on principle, the same decision took the other way.
Insurance

8 Pr. 13. - Can a mere trustee insure? decided that he can.
A certain que trust, may insure, even the same
was so at the time of the insurance. The latter
will rest without

On reasonable expectation of advantage may
be insured. It is in many trades, for the
captain to make repairs; to receive for payment, what
is called the corresponding interest. These repairs may
be insured, on which he recovers or loses; as the
ship gains or loses the port. Seamen can never
insure their wages, because it is against a great
principle of policy; it is to make them expect to save
the vessel & cargo. Agents are bound in three
cases, to make insurance. 1st Where they have
effects of the principal, in their hands, sufficient to
indemnity for the premium - (the note at Com. Law)
2 Where they have always been in the habit of doing it,
whether they have effect in their hands or not (I doubt if
this be so at Com. Law). 3 Where the principal
bears both advising for the proper purpose of effecting an
insurance & the agent accepts them. 3c Premium at Com. Law

Ch. 147, 118154. Indeed, where a voluntary agent undertakes to
do a thing, then in a few occasions this negligence is
Insurance

What must be inserted in a policy? The name of the person insured, the name of the ship, the master, generally inserted, but it is not absolutely necessary. When goods are removed from the insured ship as for a task or sea, then lost in another, the insurance is good. What is included when the term goods has been defined? It has been held that the captain's clothes and ship's provisions were included under it. But this is not true. Goods lashed to the dock are not insured under it; if by sea to be insured, they must be insured. It has been questioned if money, bullion, or is insured under the term, goods, wool and merchandize. The general law is that they are not. I cannot find any case in which this point is directly decided.

A. Bar 1796. In one case, it was not directly decided, but apparently would have been, if it had not been considered as settled that they were included. If however they are insured, they should be insured at the value specified, to be insured. It is necessary to state the place where the goods are taken to which
Insurance

They are bound - also the time when the requisite commodities tenders must be stated, otherwise there is no certainty. The construction of the words...

"from the time she is loaded till the has performed the voyage of discharge" has been that the cargo must be unloaded in the ship's own boat to make the insured liable.

The policy to be issued against must be inserted. They are various - as against "the dangers of the sea" primes, potentiates, people, thieves, etc. Against thieves means except as against people, means the ordinary house, not a continous.

Thieves mean primes. I think, any external thieves. The premium must be inserted. The time as small to be, because it may be returned or renewed by an appointment. The day, month, year must be inserted.

Construction of the wording of policy

The general rule is, that the construction should be literal to obtain the intent of the insurer. The usage of Trade often points out the construction, which this differs from the literal meaning of a policy. Hard evidence is admitted to prove the usage. Where the words are not...
Insurance

The arrival of nothing more are insects; this
should, until the is unloaded. This must however be
done without delay. Insurance cost or not cost
there are cases where time to own the ship policies
will involve.

A ship is insured from such a place to
said with conveyance if there is no conveyance
at the place, but is forty miles for her destination,
that before she gets to the place, or afterwards is
taken, the insurers are liable.

If goods receive damage from being lashed,
acked, this by the negligence of the owners
they must bear the loss.

Duration of Insurance. It is usually continued
in policies, that when commence, after the
goods are on board, it continues, until required
at the port of destination, or also until they are safely
loaded — but they should remain on board unless
taken out. The absolute necessity on a ship in
disaster or at the port of discharge.

The goods should be landed in a reasonable time.

Sale of Goods. Therefore on board, insurers cannot
be subject. This however depends on usage.

Freight, is what the vessel earns,
when none of the freight is borne at the time
of the loss. The insurers are not liable.
Insurance

5 Decr. 362
But when part of the cargo is on board, the rest ready to put on board, the insurance ought to be taken.

If insurance is made on freight to be put on board at a certain place, it is lost, actually stated to take it on board, if the goods before the arrival there, the insurer is liable.

2 St. 1205

A policy of Insurance is discharged when the vessel arrives at the first port. If a general insurance is made.

Lecture 5th

As the usage of trade determines the construction it is absolutely necessary to have a knowledge of the usage at different places. When a vessel receives damage at a port, or if she goes into a port to refit, the insurers are not liable for consequential damage, unless a special provision. In general, when a technical word has an appropriate legal meaning, there is no difficulty but when general words are used.
Insurance

Drum 130. In a policy, no remote consequential damage is to be taken into consideration.

Dyke on Bruce. The time must be continued, not detached.

By "seals of the sea" are meant any thing that happens by the immediate act of God, or being, winds, waves & lightning, rounding on rocks, driving on shores, &c. They are not foreseen, and cannot be guarded against. All such may have contributed towards the damage, capture, &c. if there is the intervention of an immediate agent it is not considered as a cause. If no intervention is made against such, it is an insurance, not against danger, but against the happening of events of which danger is apprehended. They must be distinctly enumerated. All injuries arising from bad stowage are imputable to the owner, and so is embarkment by master or mariners. When a claim was unity to such a course, master or mariners to make every exertion to save the ship, it is not the omission of the insured. A Policy always acknowledges the receipt of Premium, but in fact it is not so. It is never amount to proof of payment.
Insurance.

It is adjudged amount of insurance is also the rule. All persons

in such cases are sued, they shall state not

be sold by a court of Equity where it appears to be

made this mistake different from what it should

But this power is seldom exercised, if hard proof

may be introduced to show what the agreement was

the contrary to the general rule, that

proof shall not be admitted to vary written agreements.

If a ship is about beyond a reasonable

time the insurer are liable. The preservation

is that the party rescued. If the afterwards and so

in the ship can recover it back again. It was

once thought they could not, on the ground that

they could not impress a judgment. But this

is no hindrance, for the judgment need not be

intercepted

By capture. This is a technical word;

do not extend to vessels taken it carries it by

capture in time of public war. The insurers have a right

to abandon as for a total loss immediately
Insurance

Upon the capture & recovery. This principle is admitted now, in all commercial countries. If before action brought, she is released, a recovery may be had for a partial loss.

Detention - This includes embargoes.

a. a captain after hostilities have ceased, if the diminished an agreement is only a detention. In general, any cause arising from insufficient detention, makes the

Innominate Liability - This extends to the time of loading.

Lecture 6th

Baratry. By this is meant a concealment against loss which may arise from the fraud or trick of the master or mariners, which involves in it the idea of criminality. It must be an injury to the owner, it must happen during the voyage to the owner. It must happen during the voyage or time limited in the Policy. If the answer.

Baratry must be some fraud. The fraud is the means of which the injury is caused. Whereby the average is taken. Whereby the average is taken. Whereby the average is taken. Whereby the average is taken.

2la7 1349

2 Lumf 252

Pro 3176

So 1264
Insurance

This was notified to the Insurer - On his way thence to Marseilles she was lost. Although the insurer did not take up the policy, he was not liable for the loss.

Where the Captain is forced out of his way, it is not Baratry - Baratry cannot be committed against owner of goods, but may against owner of the ship. But a loss arising from the deviation of the Captain for fraudulent purposes of his own, is Baratry - as when one was insured from Jamaica to Honduras, the master anchored at the mouth of the river, then went off for the Savannah to sell his goods & the Ship was lost. This was a fraudulent

To where a master having an illegal letter of marque cruised contrary to his instructions, or in violation. Then doing so, lost the ship. This was deemed Baratry

If Captain is also owner, or insured against his own Baratry, the insurance is void.

A Total Loss does not mean an entire destruction of vessel or cargo, because in certain cases, they have a right to abandon and if a total loss without their entire destruction -
An average loss is a partial loss. The
prime cost is what is insured against in case
of a general average loss.

There are certain expenses which are not
insured against in the general terms of a policy,
they are called petty average, such as pilotaage.
The rule for settling average or partial losses
is, that they must be such a just part of the
prime cost, as corresponds with the just
part of the diminution.

When money is paid on a total loss, it
should to be partial, the insurers take the salvage.

Every partial loss is not a general average
loss. The last is one species of partial loss.
The partial loss is excepted in many articles.

The general average excepts none. If there is
a partial loss upon grain, fish, salt, seed, flour,
I quit it will be a general average. Also
\(\text{gins}, \text{tobacco}, \text{hemp}, \text{cattle}, \text{sheep}, \text{in U.S. wine,} \)

But as to all other goods, the partial loss must
be at least that part to entitle to a general average

Exception: unless the ship is stranded.
Insurance.

Does this mean liable at all events, unless the loss is occasioned by stranding? It is now concluded as resting the old commercial law in all cases whether the loss is occasioned by stranding or not. First decided by Chief Justice Ryder. The same reason also says, "unless the loss be general," i.e., any partial loss that is general. Here they are liable for partial losses, if general losses are omitted.

By this it means loss occasioned by a cause endangering the general safety of the ship or cargo.

That which is thrown overboard is called jettison. The other articles on board contribute to payment of this loss. But if the vessel is afterwards lost, there is to be no contribution although it may be stranded, found on a whole of the cargo remaining. If the vessel was found, the throwing overboard is conclusive evidence of the valuation of the vessel by it. The law requires a notice by the captain, who swears before a public notary, that the goods were thrown overboard solely for the purpose of saving the ship. There is always a total loss where the salvage is not worth as much as the freight is.
Insurance

If the cargo be entirely lost, but articles specifically remained, although worth nothing, it has been held that the insurers were entitled to recover, but this is denied.

Owner and master are liable for

1. GB 210

1/3 of 96.238.

1266 63-

If goods are put into a lighter, for the purpose of enabling a ship to sail up a River to her destined port, if the goods are destroyed, the goods on board must contribute. But if the goods in the lighter are saved, the ship is lost, they will pay no average.

It is said to be an usage in some countries, that money on board does not contribute, but in England, in this country it is said that it does.

Salvation: This is said when property is saved

by equations of other persons than the owners. The Saviour has a right to retain the property until the salvage is paid. The rate of salvage is fixed in England by statute.

Elementary writer
Insurance

Say it must be reasonable at Common Law, it is one half. In case of wrecks or founds where the parties cannot agree on the salvage, it is settled by
\[\text{Registration on the spot by a summary judgment.}\]
In case of wrecks at sea, the salvage is settled by
\[\text{the Judge of Admiralty. In case of recapture, it is said, it shall not exceed one half. It is now in England fixed at one eighth in case of recapture.}\]
\[\text{by a ship of war. One eight is re-taken by a privateer. The insurer are always liable to say}\]
\[\text{This salvage, if within the limits of the policy, which may give the insurer a right to abandon as for a total loss, as if it amounts to or exceeds one half of the value insured.}\]

Abandonment. The insurer may abandon
\[\text{in case where there is not a complete destruction, to recover for a total loss. He must, before action brought, give notice to the insurer that he abandons.}\]
The insurer has never a right to abandon without their consent, but may seek for a partial loss.
\[\text{They may abandon when the voyage is defective, where the salvage is half, or more than half.}\]
\[\text{when the expense of repairs amount to 50\% of the}\]
Insurance

over 1 above the value of the thing insured, unless the
insurer will pay the amount of the repair, which if they
do, there can be no abandonment; when the damage
to the cargo exceeds the sum. If under 50 liras, they cannot
abandon; in the case of a capture by an enemy, when
the insured hear of it, they may immediately abandon,
by giving notice; unless they hear at the same time
that she is recaptured or ransomed. Where there was
a recapture, but by the action, the voyage was
broken up, the insured were allowed to abandon
as far as any such loss or damage affect the voyage—

Lecture 7th

Reassurance & Double assurance.

The former is prohibited by the general memorials. Law,
but for political reasons permitted by statute: it is when
the insurer obtains his right to be indemnified. In
two cases there may be a reassurance: when the
first insurer is a Bankrupt, or when he is Dead,
in which case his executor may reassurn.

A Double assurance is where a man pays his policy
within several offices. He can recover twice
but one satisfaction; else it would be encouraging
Gamestly. The whole design of Insurance is to
secure the party bringing the action against either.
Insurance

If an insurance office has joined the whole loss to the insured, an action will lie against the other who insured the risks for the payment of the share alothesthere is no priority of contract.

Where there is an insurance of two offices on the same goods, the persons having different interests, this is not necessarily a double insurance.

Where insurance is made on goods on board a vessel, the insurers have no right to shift their goods at pleasure, yet they may do it, when there is an absolute necessity. The insurers are not discharged by their doing

Where the policy was never at first, but that

Insurers do not do their employing duty. Insurers are not liable for the loss. Insurers, when exigiting provision, on general rule, continue only while they are on board. Usage of trade prevails here.

Deviation. This in most cases displays

The insurers, on the ground, that if there be no express, yet there is an implicit contract on the part of the insurers that they will not deviate. If they have insured against loss or duty, the deviation will not excuse them.
Insurance

It makes no difference whether the vessel be lost by the means or not, or whether the
insured knew it or not. It is a deviation to go
into a port, unless the bosun of the voyage, or
the usage of the trade warrants it; or unless that
is known given in the policy — the shorten-
ning of the time makes no difference, if the deviation
has been wilful. It has been held, if it is only
for 24 hours, it discharges the insurer. Deviation
from necessity is no breach. A deviation
arising from the act of God always excusable.
A deviation to repair a ship, is necessary.
In all cases, the protest of the captain is
powerful evidence, the most conclusive.

A vessel may deviate to avoid being taken
by an enemy. And it is always a free
deviation, to avoid danger, is allowable. It is
no deviation to go out of the way to get a convoy
in time of war. A ship at sea being there
was a convoy near, it known, the war was much
expected, went out of the way to get to it, succeeded,
but was afterwards lost in a storm. The Court held
that the deviation did not discharge the insurer.
The usage must be a general practice. When
necessity has forced a deviation, the insurer
must not go back to the old track, but must take the
nearest way to pension it, with the greatest diligence.
Trading Voyages. These are not subject to the same rules. But they may go where or when they please, for they must do nothing unusual. When there is nothing but an intention to deviate, which is never manifested, allowance is discharged. It is never the intention if the insured go to the place specified in the policy unless it is manifested by circumstances irresistible. If, then, on the track to the place specified, she is lost, the insurers are not liable. If, before deviation, this intention is manifested, damage accrues. It has been decided that the insurers are liable for them. But Judge Rees thinks this decision without foundation.

Thus was an intention to go from A to B. She was insured, with liberty to go to C. She is cleared, but for C she went to B, and directly to B. Is the former holder? She is. This is founded upon a distinct principle. It is a trick to get them Hunter.

Demurrage is commonly agreed between the merchant & owner that the former shall load to unload the ship within a limited number of days after she shall be ready to receive her cargo, or after her arrival at the destined port. But it is frequently stipulated that the ship shall required wait a further time to load or unload, or to road in the conveyance for which the merchant shall pay a daily sum. This is called the payment to be made for it is called the demurrage.
Insurance.

Lecture 8th.

Express Warranty. In this case, the rule is that the insurer cannot recover, unless there has been an exact and literal fulfillment of the warrant. It makes no difference whether it has increased or decreased the value of the insurance. The question is never suffered a better it was immaterial or not; or whether the loss happened by non-compliance with it, and if there is a literal compliance, it is sufficient. It is no matter how good the reason was for non-compliance.

There may be a representation or writing, parol, which is not a warranty, and the Law as it respects, this is different from the Law in case of warranty. A substantial compliance with a representation is sufficient to bind the Insurer. All warranties must always appear on the face of the policy. A writing waives for a policy is only a representation.

It has been a question, whether the non-compliance tends to increase the value. If it does, it discharges the insurer. If not, it does not.
Insurance

Writing on the margin of a policy has always been held to be a warranty (see 23 Edw. 3 647)

There general rules apply to all cases of warranty.

One case rests upon a well-grounded suspicion of concealment; this must amount to a conviction of the

parties having a concealment.

The fact supposed to be uninsured to be material in view of a concealment, a failure to disclose vacates the policy.

In this warranty, I see worthiness. If not the policy is void. 1. The state of the ship must be changed by consent or necessity. 2. Conveyance determined according to Law. 3. According to Law of Nations or Treaty.

as to seaworthiness, a loss arising from an internal defect of the insured, shall not injure the Insurer.

The time of sailing is often just in, because at certain times there are dangerous winds. Hurricanes.

If you go directly out of the way to get a convoy, it is a sufficient sailing without the warranty.

Sailing to sail with convoy. This the master of the insurers must do, or the insurers are discharged.
Insurance

By a convoy, in our, is meant, a ship of force appointed by the government for the purpose to protect the trade, with its armed force in times of peace, the front is not settled. They must be so appointed, because the whole success of the nation depends upon commerce. They will always provide a sufficient convoy. Of course it must be a government ship. It appears to that junction, or it is no convoy.

By accompanying with convoy, is meant accompanying where the government has appointed the convoy to rendezvous. And, the manner, place where there is a convoy.

To fail with a convoy, is failing with all the voyage, if possible. By failing, laying in place. This is in some cases, where the convoy, goes out of the way, it is a sufficient compliance; in other it is not. If the precaution is made by an unforeseen accident, it is a sufficient compliance. The true ground of discharging theسمس in these cases, is that there is an implied warranty, to go the whole voyage with convoy if possible; not that there is an express warranty to this effect.
Insurance

In our country,i.e. said the construction of
dealing with convoys,advised by the English
nations,will not answer—that it means they
may defend with any armed ship.But we
never have had a question on this point decided.

Sailing letters,are necessary,they consider.

The general idea is,that the ship must go from
the place to the place, this being the most direct way
of keeping with the convoy all the time if possible.
But it is sometimes the practice,after getting to

certain latitudes,for the convoy to leave,if they
separate this is sufficient—sailing with a convoy

Warranted Neutral—What may a ship
perfect her neutrality? When she does any thing
forbidden by a nation,contrary to the Law of Nations.
Be refused to submit to search examined by a merchant
man,a perfection of neutrality? i.e. Is it the Law
of nations that merchantmen are bound by the Law
of nations to submit to visitation & search?
It is to be expected that there was no doubt on this
subject until the Armed neutrality entered into
Insurance

(Book pages - Before the pages are packed in)

Acknowledged with this intelligence.}

of the Commencement of your Revolutionary War.

the neutrality determine that peaceable and

peace. This peaceable exist in a manner. I now

acknowledge with this intelligence.}

The power of the state. It is no part in

the Law of Nations. Its services, as the

necessary, which right to cause certain convictions of

the laws. 1. The present, as the

the laws. 1. The present, as the

the laws. 1. The present, as the
Insurance

But by an ordinance—this gives the rules, eqüitable practice regular. Russia, during Denmark, talked of entering into a con-

vention to establish the principle, that few ships shall make few goods, i.e., they determine to all the law of nations in this particular.

But are not the Canny it into execution. In 1768 they entered into a combination. But England

France both resisted. When the neutrality

armed, France issued another ordinance

agreeing to it, with power to restric England

refused. But England never agreed to it. It

France to this day refuses has never revok'd.

During the present war some attempts have been made, but they were frustrated by the death

doing Emperor Paul. The attack upon

Nelson by the

But suppose you can search, can

you reach a merchantman under convoy?

clearly not. But what difference is there

between this the last case, i.e., fraud of principle?

If you cannot do it, the contraband trade.
Insurance

may always be carried on another ground. Must you not search your charts, to see whether they are true? otherwise they do not make free you. In every European treaty, for a century or half, this subject is referred to; it is acknowledged as an existing right. But the question arises, has any neutral nation the right to oppose this servile search by force? Clearly not, from principles before advanced.

A ship may perfect her neutrality by sailing without flags, documents, or registers. Sea letters, passports, Bills of Lading, Insurance. Yet the want of these papers is never conclusive evidence of want of neutrality. It only throws the burden of proof upon the party. The enquiry within neutral property, or not still remains.

They must actually sail with them, or judge of these must be made, else the evidence will be doubtful. Neutrality is not destroyed by not obeying particular ordinances. Appeals to the general principles of law or law of nations. But the inscription should inform the owners of these particular ordinances as well as the parties.
The Action on Return of Premia

36 R. 477
Cousins
D. Dugan.

8 July 268
Frederick B. Smith.

The Action on Return of Premia. The effect is this: in the case of the common law, the premium must be returned if the voyage is lost. In the case of a foreign court, the evidence of the law is conclusive. In the United States, the law is not clear. I do not know whether it is not the law in France. I am not sure whether the general law is generally adopted. It must be generally adopted. It must be generally adopted.

In the case where the risk is greater, the premium must be returned if the voyage is lost. In the case of deviation, the premium must be returned if the voyage is lost. If the risk is not the same, the premium must be returned if the voyage is lost. If the risk is not the same, the premium must be returned if the voyage is lost.

Lecture 9.

Proceedings in a Court of Law

Under there is something special in the case, which requires a Court of Equity. The general rule is that an application to them will be refused. If a person obtains a policy of insurance for another and recovers on it, the employer may bring an action against him for money had and received. If a person is a bankrupt, he may bring his petition in chancery, requesting that he may be ordered to deliver up the policy.
Wager Policies

An insurance being a contract of indemnity, its object is not to make a positive gain, but to avoid a possible loss. Hence, a person cannot be said to be indemnified of a loss which can never happen to him; a policy without it is not an insurance, but a mere wager only. Such a policy, therefore, is properly denominated a wager policy.

In the contrary, authorities are to be found in the books as to the legality of such policies, before the Act 19 Geo. III., yet as they have been recognized as legal contracts by modern judges. It is that Act, or the provision of it, that have not been referred to in my wager policies would be enforced in this part. Indeed, it seems now to be an established point in law, that by the decision of the Law of merchants, particularly by the Law of England, it was before the passing of the Act 19 Geo. III., a wager policy in which the parties by express terms, such as the words, "without interest," or "without proof of interest," declared the intention of making a contract of indemnity, was then (the contrary to other determinations), deemed a valid contract of insurance. (There can, however, be no contrary decision in this point.) For that a policy containing no such clause, declaring an agreement with the proof of interest, was to be considered as a contract of indemnity only upon which the assured could recover without proof of an interest.

The opinion of Chamber L, confirmed by an observation of Lord Hardwicke, in a case which was decided before the passing of the Act 19 Geo. III., speaking of the difference between an insurance from fire & marine insurance, he says, "In the insurance of ships, 'int. or no int.' is almost constantly inserted; if not inserted, you cannot recover under your policy's property."
Plea to support his act must be founded upon the following proofs: 1. The policy must be produced in evidence of the subscription of the defendant, i.e., proof of the defendant being an insured. Having received acts of ownership. 2. Evidence must be given of the indenture of the insured as the subject-matter of the insurance. (Insured having exercised acts of ownership in the presence of the insured.)

This plea in abatement the defendant by producing the policy and the bill of lading. As to two or more insurance or that if a cargo is not produced the bill of lading and the receipt of the goods. Specified as on board bill of lading. 

The insurance may be admissible as evidence of ownership if the insured has paid for the goods or has any documentary proof of title. Also as the bill of sale be under the same regulations as others, therefore, necessitate. 5 T.R. 464.

In an insurance upon goods, the mere production of the bill of lading, together with the receipt for it, is proof of his having writing. He must be proved to have handed in the same.

Case. Where a man is in the declaratory that Deft. may know the case & how to encounter by evidence.

6 East 316. In an act upon an insurance upon profits, the policy must prove loss.

It is a good rule that nothing which relates to any proceeding of a court can be proved by parol. Hence in cases of capture & recapture, written evidence is the evidence.

22东 120. incurred in ascertaining the amount, which can be proved through the orders of 225. to produce the proceedings of the admiralty. 

In an act upon a cause of goods, the master's owners were

220. to be paid & completed from the ship, sea-worthy, until released by the owner of the goods.

In an act for loss by bankruptcy, master, can be a witness

Ref. 463. 399. to prove that it was committed by the consent, and the priority of the owners until released by Deft.
Insurance

The general grounds that a Court of Chancery take when there is fraud, which cannot be proven except by oath of the parties, is to examine them on oath. The party may be examined on his own tempiro. He is only excused when a disclosure will subject him to a penal to. When he will not disclose the evidence shall be taken pure confess.

An agreement to refer to arbitration, is construed as an arbitration pending. This may be done in private or in public. If the subject is arbitrable, it is a temporary bar to an action for the same thing, but if the award is made, it is a complete bar.

When an action is brought on a policy of Insurance, it is necessary to state in the declaration that the policy was made; that it contains; that it is the policy of the defendant; that a consideration was given; that in consequence the premium of the defendant was paid to indemnify against certain risks; that if by any of those risks a loss happens, he promises to pay. If the Insurance was made on goods, and the amount of the goods, the amount of the goods was involved in the goods; that they were lost. By what means. A promise you are not responsible - you may seek for a total return for partial loss. This statement is that
Insurance

No past evidence can be admitted to prove an agreement subsequent to the policy, which shall go to defeat it. 

If a new contract may be given which does not go to defeat it--or which does not tend to destroy it

The premium can never be denied to have been paid, for the policy shows it to have been paid.

Interest on goods a paper by bill of lading.

If sale, y how it makes no difference, whether the goods have an interest or the goods moved.

After assignment of loss by capture, it

that it is evident the loss did not happen as

capture, but by some other peril or cause.

Then can be no recovery. The actual loss must be specified or proofed, that the defendant may come to trial prepared.

Bottomry & Respondent's Bond.

There is a difference between the two loans.

Bottomry is, when the ship is pledged for the

payment of money towards. So, if the ship

is lost, the money is lost. If the return is

the custom is entitled to the amount of the bond.

In this case the person of the owner is liable, as well as the ship. A respondent's bond,
Insurance of the

A loan upon goods made by the ship.
If the goods get to market safe the pledgee pays the bond. They are lost, the pledgee also loses his money.

They are both contracts of PSA of 1762 from the Statutes of Vandyke.

In case of, accepting

The master may choose the ship, lest an agent or factor cannot.
The Lines in these cases prevent the bond from being useless. If money is taken up by the Lines in issue, the Lines can only recover the sum lent, with legal interest; these boatmen bonds may be insured. The bottomy bondsman is never entitled to salvage because the location of the Lines is that the ship return home safe, and he will lose his money. He is not liable to general average. This, however, is not certain. It is a contract sine causa. The bottomy bondsman can only have lost a lien when the ship is gone, while they are safe.

If the vessel is destroyed by fire, all of the master's owners, the bottomy bondsman does not lose his money. This usually provides a fair settlement by a commission of arbitrators.

Insurance against fire. Usurped powers.
Lecture 10th

Insurance on Lives. This depends upon the principles of mercantile policies. No person has a right to be insured on a life in which he has no interest as being creditor or a man holding an estate for another. But a creditor has such an interest in the life of his debtor, that he may get it insured—the exception in these policies are always the same—sucide or death by command of the law. There is always a warranty that the person insured is in good health, and generally that he is of such an age—health and good health are always the same, I mean as Lord Mansfield say, reasonable good health. It is no breach of the warranty that the person insured has a particular infirmity which will not carry him off unless connected with some other disorder. There is to be no return of the premium because the risk commences immediately upon the execution of the policy.
Insurance

Charter Party

A merchant agrees with the master to let him carry his merchandise to a certain place in safety for a sum called freight.

The contract is generally made with the master, although he may have no interest in the vessel. The instrument is executed under power real. There is such a thing as hiring a vessel without chartering her, as when you hire a vessel out round which makes the hires in a time the owners. But that we are not to consider at present. The common rule is to carry her so much to Town. The it may be in gross. In some cases there is no agreement at all, but the usage of trade settles it. Notwithstanding there is an agreement duly entered into to pay so much, yet the freight often depends on the success of the voyage. If the ship is lost by the waters of the sea, the freight is lost. When there is a stipulated price for the outward home voyage, & another for the inward, if the vessel is lost on her return, the freight on the former is to be paid, but not on the latter.
Charter Party

If there is an agreement to bring back certain articles, he does not yet let there have the whole freight, if the man is guilty, if no fault on my side. But if no guilt, he shall not have the freight.

By the law merchant, the money due for the freight is to be paid at the port of delivery, and if the owner of the freight is to be paymaster. The master is not obliged to deliver the goods until the freight is paid, nor has a right upon them. When a vessel returns into port, to refit, the master is allowed a reasonable time to refit it again to proceed on his voyage or he may send the goods by any other vessel.

When by their deviation the goods are damaged or not lost, the merchant if he takes them, must pay the whole freight, but he may-if he chooses abandon the whole and pay nothing. He must always abandon all or the freight of the whole freight. If a ship is captured without fault of the master, the owner shall be entitled to freight and cargo. Unusually the owner of the ship,
Charter Party

as well as the master is liable to the freight.

When a bond contract is made, & earnest
given to him of the merchant, the bond is said to create
for the master liable to pay the damage
for the master fails to perform the terms. In
a charter party there is a covenant on which you
may sue for wrong done. For example, the
freight is due. The master is a lord of the
action at common law. No suing is made
whether the freight is to go to the Captain or owner.
If the master purchases necessary for his vessel
& the credit was given solely to the owner, the vessel
The master is not liable on a voyage. If there are
many owners of a ship, a majority of them direct
the voyage, all are liable for the costs, &
all are interested in the profits. If some declare
their dissent at this distribution, yet the voyage must
proceed, the majority go to the Court of Admiralty
& give bonds that they will pay the shares of
the minority. If the vessel is lost & the master
makes a good voyage, the minority claims no advantage
from it, & no premium for the use of the ship.
Mariners' Page 16

If a sailor is engaged in other duties, in a condition to fall, they may discharge him, take him up and quarter him at the time the ship is out of the capes. If he uses weapons in a conspiracy, it is Death. They are entitled to their wages by the law merchant at the time of delivery. If an agreement is the contrary, will not be enforced by the Court. If a vessel is lost, the sailor loses his wages. The general custom is to pay when the vessel returns. If a sailor is discharged, if a sailor refuses to perform his duty on board, he is liable to lose his wages. He is obliged to remain on board until the vessel is discharged and is required, if that is to be done. When arrives at a place where there are not sufficient number of sailors or mariners, he is bound to become such as is paid for it. But a promise to him by the Captain of extra wages for extra service in a time of danger is void.

Where however a ship was captured, the cargo condemned, the ship detained to retribute, the assignee, by the Court, to the sailors of six months' interest to prevent their leaving the ship and being held valid if the necessity exists.
Seamen's Wages - Passage Money.

A seaman being compelled to leave the ship, this inhuman treatment of the master or being dismissed without lawful cause will not be deemed desertion. 3 East 1842, 269, 72.

So where a seaman is imprisoned in the Royal Service he will be entitled to receive a proportion of his wages at the time of imprisonment 2 East 1841. But nothing further alluded to.

To the ship he lost after the first port of delivery the seaman will lose only the wages due after leaving the last port of delivery 1 East 1841, 739. 12 Geo 409 P.B. 8 East 300.

Where a ship is seized, carried in to the crew marched into the interior where detained for a long time, but the ship at length being restored having returned with the crew, the capo was caused to proceed it was held that the seamen would receive wages for their time.

If a seaman can prove that he was disabled from performing his duty by accident he will receive wages for the whole voyage in like manner as if he had actually served. But see remarks of 9 Geo 5 East 825.

A seaman who is disembarked before the ship returns will have wages.

If the contract to go from A to B & back again with a stipulation at the end of the voyage, he cannot maintain a good indeb. ass. to recover his wages as if he were there wrongfully dismissed by the Capt. that Capt. had his seaman in either for the breach of the special contract or for such tortious act of the Capt. already he was prevented from earning his wages.
By the common law, as law among joint tenants, they have the just accesses and that, if one dies, the survivor has the whole property. This is not the case with merchants in company. The property of one goes to his executor. Now there is no survivorship of profit. The right of being alone belongs to the survivor, and the action must be brought in his name and not in his partner's executor's name. Every thing else that partner can do, the executor can also do. This discharge with discharge. 

Lecture II

Merchants in company are individually liable for their company debts. If one dies, the surviving party must first be sued, if the execution is imperfect, then he may be held. The executor of the deceased may be sued for the company debts.

The general proposition is, that one partner is bound by the contract of the other. This must, however, be understood, with some limitations. It must be in all matters within the scope of the partnership. It always respects personal liability.
Merchants in Company

It does not always follow that if A & B are
partners, it follows a contract in the name
of the firm, from the firm of the contract that
both are bound by it—whether it doesn’t follow
from if one makes a contract that may be
beneficial to the other, that both are bound.

Give particular usage where there be to
make contracts for real estate, the signature
of one is the signature of both. The usage must
be proved to bring it within the scope of the partnership.

Laws cannot be purchased in the name of the
firm, as of A & B, but in the name of both.

They are tenants in common. The purchase
may be made by one assigned by one to the
other, as when the property went into the
company & was expected for the benefit of both.

In this case the action can be brought against
both, the particular statute. And it must be remem-
bered that what is within the company trade is
not governed by the secret articles of trade.

partnership —
Merchants Company

Dissolution

When the partnership is dissolved both are bound
with regard to outsiders, until the dissolution is made
public. Yet if the seller knew of the dissolution,
he cannot bring his action against both; for
the rule is, that if reasonable means are made use of,
to make known the dissolution; if it is become
a matter of notoriety, the seller might have
known of it, then if he did not, he shall have
no action against both.

Bankruptcy

In the case of a partnership, the partners are
 liable to the extent of their company property, their
own private property. In the case of an Insolvency,
this rule does not apply. A & B are both bankrupts
everywhere. The rule in the company property
goes to pay the company debts, as far as it will.
The private property of one goes to his private debts,
the private property of the other to his private debts.
Bankruptcy

If a remain is left, the company creditors have a dividend first. This both have a residue of their private property. The company creditors have a dividend of both. When both are bankrupt in private property, a remainder is left of company property after paying company debts. Private creditors shall have it. But private property can never be taken to pay this private debt. When there is a long expectation on company property, no indebtedness is sold at the first, the purchaser and other partners are in respect this tenant in common.

Factor

A factor is a person employed abroad to sell goods for another, it is paid by a salary or by commission on sales of purchases. A factor as it respects himself must pursue his commission strictly. If he is otherwise to sell for cash only, he cannot sell for credit unless a particular reason exists, as the goods are perishable. The factor binds his principal, yet he cannot pledge the goods for his own debt to make them liable.
Factor

The usage of trade must be considered as where the principal under the debtor not to pay the Factor, he is bound by the sure obligation. Where a Factor pursues his commission, and happens, the merchant is liable, where he does not pursue it, he is himself liable to the law merchant. In cases his factorage is a case where the factor acts under his commission by purchasing gross, the merchant makes a formal disclaimer, yet took them, it being due. They them whom the factor, it set up as before that he took them as the factor’s factor. If factor tells to one whom he did not know to the instrument. He did not know but if he knew him to be in facting circumstances is liable. On the common law it is seen that every man must act reasonably. When the factor sells his own goods and if his principal & debtor able to pay but one, the rule is the principal should be paid. It is a very common thing for a factor’s own trades to effect a bona fide himself as principal without selling goods. When the principal is in the books this makes him liable. If factor has traded on credit goods & honor.
Believers cannot establish prize courts in a neutral country, nor can they make any sale of their prizes there, unless authorized by treaty.

The property in goods captured cannot be transferred so as to divest the right of the original owner, unless after a sentence of condemnation by a court of competent jurisdiction—

The Court of Sovereign of the captor is the competent tribunal to decide upon the validity of captures.

Prize courts [inserted] in some instances adjudicate on a prize lying in a foreign port or out of the jurisdiction of the captor or his ally.

Out of court law, they cannot inquire into the direct question of prize, only a question of property, decide whether the condemnation or sale has been made by a court of competent authority—
Bills of Exchange

Lecture 12

A Bill of Exchange is an open letter of request written by one man to another, requesting him to pay a certain sum to a third person, it is generally expressed to be for value received. The forms are different, but they are all made payable to—on order or to the bearer. On the face of the Bill are three persons: 1st. the Drawer, the person who draws the Bill: he never changes his name. 2nd. the Drawee. The one on whom it is drawn to. 3rd. the Payee, the one to whom the money is payable. There may be more concerned in it. If the Payee endorses his name, he is called the Endorser. The to whom it is endorsed, the Endorsee. If the Drawer accepts the Bill he is then Called the Accettor. In promissory notes there are two persons, the maker and the promise. If it is payable to—on order, it is negotiable. If once negotiated, it possesses the qualities of a Bill of Exchange. I think an order is essential to make it negotiable in the U.S.
Bills of Exchange

It has always been a settled opinion of
Lawyers that the Common Law courts
were not to an negotiable as to give
the holder a right of action in his own
name. And the question has been decided
in the court of Common Pleas by Judge
Judge then doubt the commoner of the Genorn
In Vermont the Law same there is the Clips
negotiable on the principle of the Common Law
the Law same on Statute on the subject. If the
Bill is not endorsed the holder can only
come of the drawer or acceptor. When
the holder is not able to B or order of the bill
is must endorse, but if the Bill be pay able
to bearer, there need be no endorsement.

Every endorsement strengthens the security of
the holder and may run within the endorse acceptor
or drawer. He may run the last endorse of common
Law because there is a priority of contract between
them.

It is a question of Law that the
endorse has effects in the hands of the drawer to
or may be unmade. These Bills are indefeasible
when the holder acts even sometimes in many day's time

116
1st. 441
2nd. 241
3rd. 167
4th. 141

Chitty 141
Bills of Exchange

When payable at once & money payable at.

And when the money shall have been established. In merchandise proceedings from

Acted from the day of the date & not from

Same thing, I must exclude the day.

At common law the said date includes.

The day of the date excludes the day.

There's no day before that date.

The day of the date is the day.

The day of the date. The month's days be regulated

By the rule where this drawn matrass is payable

According to elementary words. There are three

days of grace allowed in this country in England.

But the days are different in different countries. Bills

payable at sight have no days allowed.

At common law when a note becomes due on

Sunday it is payable on Monday. By the Law merchant,

it is payable on Saturday.

Foreign & inland bills of exchange are placed

nearby on the same footing. A bill in London drawn on

a person immediate or a foreign bill. Promissory notes

are of modern origin. At common law they are not

negotiable. They were introduced in the room of those

It was formerly held that no person could draw

a bill of exchange but a merchant. It has now been

A person who can bind himself by any other contract.
Bills of Exchange

2 Nov. 292
1 Sep. 17
1 Dec. 80. Dum. 40.

is bound by a Bill of Exchange. A minor is not bound by a Bill of Exchange. A minor is bound only to the extent of a Bill for necessaries.

A Term Court can draw a Bill of exchange as well as any other person. Provided the Bill is separate or a contract made by the husband in consideration that the wife might live.

It was formerly doubted whether in one joint debt the other was bound if he was the only signatory, but it was settled that he is bound unless proved that it is a mere private concern. The presumption is that it is for a joint debt.

A Bill which has been accepted to accept it does bind his master. The general rule is that a Bill of Exchange is a promise to make or sign on the same footing. But there is a difference in the terms. The maker of a Bill of Exchange is the same person. The last endorser of a Bill of Exchange is the same person. In this respect, they are both.

Payable to the order of B is the same as to B, as to himself.

It was formerly doubted whether a Bill payable to bearer only was a negotiable Bill.
Bills given at State of Georgia to Usury.

Bouye v. 2111 It was held that an innocent indorsor for a valuable consideration without notice could not maintain an action on a promissory note given for money knowingly lead to game with profits on the authority of this case.

In Doug. 135 it was held that the indorsor of a bill of exchange given for an innocent consideration cannot maintain an action upon it against the acceptor although the indorsor has given a valuable consideration for the bill unless affected with notice of its usury.

Bank R. 92.
18 U.S.C. 274.

Doug. 179.
6 F.R. 59.
7 d. 63 A. 43.

The fact of usury applies only where the bill is originally given for an innocent consideration; for if done by a legal in its constitution an indorsement by payee for an innocent consideration will not avoid it in the hands of a subsequent bona fide holder. Where the illegality of the consideration does not lie within the State of Usury, the holder is not affected by the transaction between the original parties, unless he had notice, or took the bill after it became due from a person who had notice of the illegal consideration for which it bill was given.
Similarly every Bill of Exchange ought to be dated, but a date is not of the
substance of a Deal, for if it want a date or have a false or impossible
date six the Fals' yet the Deal is good. Good case 2 Be. 3 a.
In 2 How. 422 the date was inserted in the declaration on a Bill of Exchange
he said they would insert the date stated at the time of drawing it.
In 3 Bev. 173 the same principle is recognised.
In 1 T.C. 320 in a case of a Bill which was altered in its date after acceptance
while in the hands of the payee by some person unknown to any party, it was
afterwards ordered to pay who did not at the time know of the alteration.
In an act of acceptance Bill was held to be void, judgment given 24. 23. 14.
Such a mere correction of a mistake, as by inserting the words, "in order to"
furthermore the intention of the parties will not interfere a title.
Bills of Exchange

2 Sw. 20. 114. 22. 188.
3 Sw. 19. 132. 153. 92. 36. 193.
4 Sw. 19. 15. 12. 8. 75. 13.
5 Sw. 24. 1. 26. 61.
6 Sw. 7. 3. 29. 23.
7 Sw. 4. 21. 26.
8 Sw. 29. 1. 3. 18.
9 Sw. 18. 32.
10 Sw. 24. 36. 2.
11 Sw. 13.
12 Sw. 10. 2.
13 Sw. 2.
14 Sw. 2.
15 Sw. 2.
16 Sw. 2.
17 Sw. 2.
18 Sw. 2.
19 Sw. 2.
20 Sw. 2.
21 Sw. 2.
22 Sw. 2.
23 Sw. 2.
24 Sw. 2.
25 Sw. 2.
26 Sw. 2.
27 Sw. 2.
28 Sw. 2.
29 Sw. 2.
30 Sw. 2.
31 Sw. 2.

But it is now settled that it is not receivable by
a non-payee holder. When the bill is payable to
an order, it cannot be transferred without endorse-
ment, but one payee to another payee only delivering
the instrument when the same is endorsed with a
seal, you need not prove a consideration. But
as a rule, labels must be proved to be given for a valu-
able consideration.

Qualities of a Bill of Exchange:

1. It must always be an engagemnt or consent to
pay money.
2. If it must be in a personal order
in the drawer - N.B. payable out of particular fund.
3. Notice of hand are good. However the payable out of par-
ticular fund.
4. It must be payable in all events
not depending on a contingency. However, the time
to uncertain the contingency must be shown. It
is a good bill. Moreover, there is a moral
certainty it is a good bill. How far the
Common Law operate may be seen in 2 Blk.
1872. - The phrase "value received" in a
Bill of Exchange is not necessarily a
made negotiable, need not be vested.
The word "order" is not necessary, sec. 163 between drawee & drawee. 106, 152, 20, 131, 76.
Bill of Exchange
Lecture 13th

The acceptance of a Bill

An acceptance is an agreement to pay according to its term. This may be by writing or by bond. The latter however is more difficult to prove. It was even in most contests whether a bond acceptance was binding. It was supposed to be sustained by the general clause of the statute against interés, which made that no bond agreement to pay the debt of another shall be binding, and it was supposed that to undertake to pay the Debt of A, i.e., the promise supposed to be made to B. But the argument is evidently fallacious. The promise is not made to B, but to himself. Consequently it is out of the statute. But is it not a written contract? Is there any consideration proved? The Law always presumes that to have effect of their hands. And if there was no consideration, it would not remove A to pay instead of B. Hence it could be because there is no such thing as a written instruction.
null
Bills of Exchange

He writes back, I will. You are the promissor 

He may, the rule of discrimination in this 

To the promissor is attornied with any circumstances 

Let them be to the contrary, which indicates a 

Third person to take such a bill, which is known 

as an acceptor. If there are no such circumstances 

it stands as at Common Law a mere negotiation.

There may be a special acceptance unless 

The payee gives notice to the drawee, it is to be 

only the acceptor not the drawer. If acceptor 

is to pay some time after that mentioned in the 

bill, it stands as if notice must be given 

to the drawer in order to become time also. 

It may be accepted to pay at a different place 

to pay half goods half money at the drawing 

in the case above. They must also be given 

to the drawer. There is no one decided that a man 

could take nothing from the acceptor unless he 
took the whole. This idea is more embellished 

or a law argument to come from the north of a 

Drawer.
Bills of Exchange

An acceptance that may be conditional as well as absolute, and when the conditions are fulfilled, if the acceptor, he must offer the condition in the acceptance — a number of

The 648 cases have been stated to what this conditional acceptance — "to accept this Bill, &c., verbal condition will not excuse the acceptance, as to the introducer the it will be between the drawer or payer — to know quere?

"What is an Acceptance?"

Almost anything written on the back of a Bill

acceptance, to "present" or "pay" or even acceptance. No particular form of words is necessary.

In Litchfield we had a Bill was presented to thedrawer and "except the Bill," an action was brought for non-payment, but the court subjected the drawer, on the ground that he could not tell the word acceptance a direction to a third person to pay it is a mistake, but if a man accept a Bill to pay at a different place, as I accept this Bill, payment I will pay it. So must go to Jt. & make the demand if he does not, he the other will lose it.
Bills of Exchange

If the drawer says, "leave this bill until tomorrow, then I will accept it," it is a good acceptance.

Gilbert Land. Action: The question is, was the intention to accept.

But if he says, "leave this bill until I will come over the account," I accept accordingly. This is no acceptance.

But if on the bill, the drawer writes, "I pay the contents to B," this is a good acceptance.

Accordingly, if a bill is drawn upon B, requesting him to pay on account of D, D draws upon D and refuses this, no acceptance.

But if he writes, "I pay the contents to B," this is a good acceptance. D may countersign the bill and draw upon D, or D may countersign the bill and draw upon D, in blank, and B will accept his bill drawn by him in blank, account (12th 3rd 1st.

Lecture 14

Transfer of a Bill of Exchange

A bill is drawn payable to B or order. This is effectively by the payee endorsing on the back of it. The endorsement may be in full or in blank. It is in full when it is endorsed, "Pay the contents to B." In blank it is made payable to any one who holds it. D as all the parties that the payee has to endorse it in full or in blank.
The mode of a conveyance blank, it becomes trans
ferable by delivery. A bill has raised a question
whether the drawer leaves the bill blank, it is
served up by the payee, he is liable. He is no
bound because he places unlimited confidence
in the payee. Transfer without endorsement does
not add to the security of a bill. The blank endorse-
ment is equivocal. It does not certainly mean a
transfer of the property. The name the indorsers
may make it so, by filling in the dep. Yet it is not
necessary that it should be so filled up. A power
of attorney may be written over it, you can write
anything over the name which refers to the bill.
But you cannot draw a distinct agreement to a
blank endorsement. As in a transfer, a power of
attorney, or a receipt, you cannot limit the power of
the holder to whom the endorsement follows the nature of the note.
If is in payable to order it endorsed without in word
order, it is still negotiable. A decision in the Italian
court. This has again been agitated in later times. No evidence of what the Law
merchant is, is admissible. But the custom of
a particular place may be admitted. If a bill
is endorsed by a minor, it is only voidable at
it binds the drawer, a subsequent endorse.
Bills of Exchange

Bills stolen or lost may be recovered by the bona fide holder. The endorsement must be in the endorsement of the whole bill. When the legal title is in one of the equitable title in another. The party to the legal title must endorse. Transfer of choses in action an action as a criminal. This is implied in the contract in the party of the drawee.

1. That the drawee is capable of binding himself.
2. That he is at the place where he is to bear the some person to act for him. By whom presented, he will accept. After the due, he will pay it.

Or, however, to his duty, i.e., the duty which the law requires. The moment default is made in within the party, a right of action accrues. The engagement of the endorser is precisely the same as the drawee. Nothing discharges the note, but the payment of the money. If the execution proves ineffective against one, you may sue the other. The party is nothing but a suspension of the right of action.

If a note or bill of exchange is made to a 

person, he cannot endorse it for the 

right in virtue of the instrument. He alone can endorse it. So if it is made to him when sold with same
Bills of Exchange

If an endorser, namely, Mr. Turner, demands a Dorse for being Journal properly of the Exchange, relative as

An executor on administration may endorse a note or Bill of Exchange, for the whole or part of the same, by the order of the same. If a note or bill of exchange may be endorsed to an executor on administration, as such, it can be endorsed.

A Dorse a bill where to in favour of B, to Dorses A and B, who being in joint endorsement to take a security to pay B, on demand the note, an action of Tors will lie in favour of B against B. D is a constituent witness to prove the fact, because it can be proved that the property in the note was assigned to D is lying only a blank endorsement.

If the Dorsor has received part of the money on a Bill of Exchange, he may nonetheless have an action, the Dorse for the whole amount of the Bill endorsed, but his remedy against the endorsee for some of the money as he has paid.
Bills of Exchange

Lecture 15th

Duty of the Holder

Bill ought to be presented due season. The time depends upon circumstances. But in cases of bills payable to a certain date, it has been held, that if presented any time for acceptance on or before the day when it becomes due, including the usual three days' grace, it is sufficient to bind the drawer. In all cases of foreign or indorse bills, notice of non-acceptance must be given to all persons to whom the holder intends to look for payment. There is a particular rule about giving notice which must be attended to. Simply giving notice that the bill is dishonoured is not sufficient. Notice that he shall take when no payment is also necessary.

The reason of giving this notice, at common law, is different. In the former, because these persons ought to be acquainted of an action brought against them which they did not expect. In the latter, this reason is
Bills of Exchange

that the drawer may take the benefit out of the

acceptee’s hand, which the law presumes he has

there. The same notice must be given in case

of non-payment, or of non-acceptance. The

presumption must be made in the usual form

of business, according to the custom of the place

of the same notice must be given of the acceptor

where the parties live at a distance from each

other, is to be given by the next mail. This

which is called directions in the Books as

written for necessity.

mind of the party living

declared, is to be written by the next mail. This

in the same place, if dishonored, require notice

in a reasonable time. What is reasonable must

be determined from the cases - as 7. In the case

two days has elapsed after being dishonored

no notice given the Drawee was not liable.

The instant one case in which the time exceeded

reasonable exceeds 24 hours, that depended upon

particular usage as where it was known to be the

usage of the time of drawer, the company when they received
Bills of Exchange

...bank's notes, to send them next morning for cash to the Bank, which cash was made up in bags and called for by the clerks in the evening. Payment was made to them by three o'clock in the evening of these notes next morning they were sent to the Bank. Left there as above said. The Bank then paid them just before the clock called in the evening. There was a question as to the loss must fall on the defendant, the money might have been received in the morning, for the Company had only six acres of corn to sell. 2d. Received at 12 o'clock to present the next day at nine this was considered reasonable. 3d. A note was received on Saturday, on Monday it was sent out, but not called for until evening. This was held unreasonable. 4th. A note was paid to 10 at 12 o'clock to entice away to the Bank. At 10 o'clock next day the Bank sent it out to demand payment, but did not give up the note. Agent said the man would pay it when he came from the Bank, where he had gone for money...
Bills of Exchange

In cases again it was found that reasonable
This rule then may be drawn from the cases,
and it respects the reasonable time allowed, that
where the parties live in the same place, the bill
should be presented within 24 hours. But there
are cases in which the drawer is liable without
notice: there are, where he has no effect on the
drawer's hands. The insurer must always
have notice because he has his action against
the drawer. But drawer need take notice when he
has no effect in drawer's hands. T he insurer must always
have notice because he has his action against
the drawer. It has been said, there is a case in
which notice must be given, even if the drawer
has no effect in the drawer's hands, that is,
which he may receive some special damage.
A drawer's bill is a bill in favour of
D, upon E, on the
account of D. D owed A and D. B never gave
notice of non-acceptance to E yet recovered it
against him. A motion was made for a
default, on the ground that A had credited D the
amount of the bill, supposing it paid, which he
would never have done, had notice been given. It was

Bills of Exchange

What notice is necessary?

With respect to inland bills of exchange, the

meaning the law knows no particular form of

notice, only that he looks to him for payment.

Foreign bills must go through certain formalities

which must be strictly complied with. An

inland bill of exchange is any bill the parties
to which live in the kingdom. In the United

States, a bill drawn in one state upon a person in
another is treated as a foreign bill. The

mode is the following—When the bill is

presented for acceptance it refused it must

be carried by the holder to a notary public

where the it is to be drawn or in a way

plea manner demands acceptance. If

refused, the bill drawn immediately it makes

a minute upon the bill, the time, day, year

when presented, afterwards he draws up a

protest that he all such a time presents it

for acceptance it was refused. He then writes

to the drawer that the holder expects to recover
Bills of Exchange

of him all the damages which he or any other person may sustain from the non-acceptance.

This is then subscribed by the Notary at the head of the next post-stamp to his protest, which must be given. When the bill becomes due, it must be presented for payment; if refused, the same

be presented for payment, if refused, the same

must be done; if you must demand payment for the whole, as it is accepted to pay

but half. If a bill has been accepted, it

is notorious that the acceptance is in

failing circumstances, the holder by a

Notary public, must demand better security.

If refused, must give notice to the drawer

in order to make him liable. By the

Common Law, the interest and actual damage

is the rule of damages for non-payment of

money. But by the Mercantile Law, you

not only recover interest but damages, if the

rule for damages is according to the particular

usage in each place. In the United States,
Bills of Exchange.

While we were Geometers, the Longitude of New York was 22° eastward; subsequent to the decision it was 104°. Judge R. thinks it so now. The interest is calculated down to the time of the judgment. Formerly judgment was only for the principal, as the instrument was for bonds. At common law, the same maxim is required in case of indorsement of a foreign bill of exchange. There was formerly no damages recovered on inland bills, but by statute in England giving notice as on foreign bills, subjects the drawer to damages as on foreign bills.

Lecture 15th.

Acceptance for the honour of another.

It is a settled principle of the common law that you cannot make another your agent without there is a privity of contract, or a moral duty compelling you to do the thing, or you are bound by law to do it. If the other does not. By the law merchant a man shall recover, for a mere voluntary contract. If a drawer draw a bill upon to p, he will not accept it, but D accepts it for the honour of A. If D takes the necessary steps...
Bills of Exchange

Presented bylaw, it shall bind to the drawer. A third person may accept it for the honour of the endorser with notice being given. It will bind him, the drawer, and all previous endorsers.

If it is accepted for the honour of the endorser, the drawer, or for the honour of the endorser, then for all the subsequent endorsers. If for the honour of the endorser, then for all the subsequent endorsers.

The drawer may accept after having once refused it. It has been before accepted by D for the honour of the drawer. A dishonour does not discharge D, but adds strength to the scrutiny. When this acceptor for the honour of the drawer, D's, the acceptor must give notice. If he has received no prosecution or any draft protestation but must otherwise.

The man who accepts the bill for the honour of the drawer has his remedy only against the drawer. But he who accepts for the honour of the endorser has his remedy both against the drawer and all subsequent endorsers.
Bills of Exchange

The payer is not bound to get a third person to accept the Bill to the payee of his pleasur.

Notes are in the same judgment as Bills

An acceptance is prima facie evidence that the drawer has effects in the hands of the drawee, but this presumption, like all others, is liable to be removed out of the way. Suppose the payer effects his contract into law, the Bill, in all
damages on failure of payment. Consequently, the drawee has his action against the acceptor of the Bill. But if the drawee had no effects of the drawers in his hands, this will be a good defence on his part in the action against him by the drawee. But the drawee may recover if he has paid it.

This acceptance once made can never be revoked. It is a principle of the common law, that when a right of action has once accrued, it cannot be destroyed by any words, without consideration. But by the law merchant, an acceptor may be discharged by the holder.
Bills of Exchange

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Some words and acts have sometimes been considered as tantamount to this:

To indulge the bank, an attempt to get it out of the drawer, will excuse the acceptor. Then must something appear, which will show that the holder has given up all idea of looking to the acceptor for payment. To length of time, Short of the statute of limitations, excusses the acceptor. The old idea was, that receiving part of an offer would be a discharge of the indorser, but it is otherwise now.

There are a great many usages in the law merchant. There is an usage in Turkey that an acceptor of a bill when he puts the drawer in fertile circumstances, may apply to a bank within a certain length of time, yet the acceptance was not. There is no such usage in any other part of the world.

A discharge from one indorser does not take away the liability of a preceding indorser. It was formerly an idea that the holder could not sue the indorser without applying to the endorser, but it is now done any. There was no inconvenience in the doctrine where all the parties lived together, but when they live in other countries than was.
Waiver of Sache

If you receive a draft of payment I accept or endorse, I do not protest, the drawer is discharged, but on the ground of part payment I may still protest. Complete satisfaction prevents further recovery on the instrument as where there was an execution against A&B, A was obliged to pay the whole to the officer. If the execution is endorsed, B cannot recover of A. His suit for the execution is dead.

The Remedy

This remedy is by action. Unknown to the common law, it is supplied entirely by the law merchant or in other words, between the drawer and the drawer. The remedy stands as a common law action by indubitable consent or, money laid out is repayed. But where there is no priority of contract the same rule still holds. If, furnish a remedy without priority.

The ancient practice was to set out the custom at large, according to the case. Then brought their case within the custom. All the law was set out under the idea of it being custom that it was now
In order to revive a legal title to a *Bill of Exchange* payable to order, it is necessary for the indorser in an act of the acceptor to prove the hand writing of the payee on the back. Hence the act may come into the hands of another holder of the same name of the payee, and his endorsement will not convey a title at all, the payee is not particularly described in the bill; and an endorsement made without the knowledge that he is not the proper party to whom the bill was made payable will be forgeries, and the indorser, in which a title could be derived.

If the holder institutes composition with the acceptor, he thereby discharges the indorser. Co. 2. 2a to 3 Br. 6. 14 & 15.

**Act of the Holder which discharges the Bill.**

2 Com. 42. 61

If indorsee receive part payment from the acceptor, take from him a security for the remainder, with the exception of a nominal sum, the indorser is discharged. But receipt of part from acceptor will not discharge the drawer, if timely notice be given that the bill is not only paid.

Cod. M. 827.

14 G. 88.

Note, the receipt of part from the drawer, the holder may recover the whole amount of the bill from the drawer.

Wms. 226.

1719, 6th.

1719, 6th.

I Bro. 652.

A mere forbearance to sue the acceptor after protest for non payment or matrix, or what is equivalent to notice thereof to the drawer will not discharge the drawer. As is also the case that if 60 days have expired and 3 Bro. 326. the principal debtor, with any money of the remedy of the action. 2 Th. 6th. 7th. 6th. in 6 th. 887. the collateral sureties are discharged in law & equity; because B. 20. 1719. 6th. B. 6th. are to be paid in the other parties without an injury to the person to whom C. 1388 given time.

The doctrine therein in 2 Bro. 2d 51 (above) must be confined to those cases in which the presence between the holder & acceptor is made with the consent of the other parties to the bill, even they will not be discharged as appears in 3 Bro. 334. in which it was adjudged that the drawer of a bill who had agreed to Holden, taking a security from acceptor, was notwithstanding such security, liable to an act of the other party.

The holder may sue a prior indorser when it has been taken in exchange a subsequent indorser. 6st. 2d. at large or a letter of title with being paid the debt.

Holden sued acceptor & charged him in escrow. The letter obtained his discharge under the said act. Holden then sued drawer & recovered an offset the bill.

2 Bro. 325. id.

Wherefore drawer sued acceptor & charged him in escrow; this was Holden.

The holder, notwithstanding the debt, had an offset the bill, & that he would not dispute as much between Brown & acceptor.
Bills of Exchange

Lecture 16th

Declaration

The declaration on a Bill of Exchange is less particular than common law declarations. Here certain words imply certain other words, but it is still necessary to state every thing which will show the Plaintiff's right to recover. It must be stated that theDrawer made his Bill in favour of such a person, directing a third person to pay it. If it is not known in states that the maker made his note to someone to pay, it is not that an assurrance was raised. If the drawer drew the note when payable must be stated, in common law the mode of making is stated. Then you have to state how made it how the obligation was raised, i.e., all the facts on which the consideration is raised to them, so becoming liable, assumed upon himself to promise. When the drawer's name is signed by an agent it is not necessary to set forth in the declaration that it was signed by the agent.
Bills of Exchange

"Nunc qui paletur alter palet fuerit." But when it is signed in the name of the agent you then set forth that it was done by the direction and authority of his employer. It is usual to draw them as four notes of bills, for fear some of them should miscarry; therefore say in all subsequent bills, pay this, my first, bill second, third being unpaid; for when one is paid, the others are payable, but the payment of one voids the note in the declaration as a bar to the others, unless it is stated in the declaration that neither of them have been paid. Yet if proof is obtained of the payment of one, it is a good defence to the action on the bill against the next. Then an action is brought by the payee against drawer; it must be stated that there was a delivery of the bill to the payee, else he has no right to the money; and at such a time the payee presented for acceptance it then states whether accepted or not; that at the time of payment he intimated that he did not pay in consequence whereof he, also that your protest was regularly given; you must state the facts of
The execution of the instrument, that you did what it was your duty to do, is reasonable; I did not get your pay. If the action is against the acceptor, that it was accepted, consequently that he appeared from himself to faithfully promise to pay it. If against the drawer, you must state that it was presented to him, and that it was protested or notice given him thereof. That it was afterward presented for payment refused, again protested or notice given. The manner of notice of the acceptance to pay according to the tenor must be stated.

In an action by indorse against the drawer of a bill negotiable to order, the circumstances of the parties will determine what should be stated. It must however be stated that the indorse the Bill to the Plaintiff; the word indorse implies by the same person, power given of delivery. If D the indorse be paid with it, without endorsement, the holder may bring an action; I state the same as I would a further, that D indorse it because this is always the presumption, the proof that is obtained by friendly use on the defendant. When the Bill is payable to bearer, you need not state
any endorsement in your declaration, even if
it has been endorsed, because the authority is not
drawn from the endorsement. If a bill is
endorsed in full, you must go into the whole
in order to preserve the chain. You must
always state notice given of what has taken
place between the holder and drawer. If no
notice is inserted in the declaration, the verdict
is found in favour of the plaintiff, the verdict does
not cure it—because it is an universal rule
that a verdict does not cure the omission of
stating that which is absolutely necessary, that
which is the sine qua non of a recovery. But
if it is stated badly, such as would be considered by an
opinion as correct, yet the verdict saves it
because it is stated. The jury have found a verdict
upon the promise as stated, notwithstanding the
formalities required by law. This may be
illustrated by the Oakes-Statute: motion was to be
given in writing. The declaration stated that notice
was given, but did not state that it was given in writing,
which would be the description of law—so that
Bills of Exchange

This point the fact, the statute requires, if they are to be damages, accordingly.

In an action brought by the holder of a bill against the drawer, it is not necessary to set out a demand made on the drawer prior to its being refused. The action against the drawer by the drawer when he has no cause of the drawer in his hands is not an action on the Bill, but at Common Law, for money paid at his request.

When all these facts are stated, you need not state the promise, the always done at Common Law, to deliver the money necessary. The new instrument raised.

In an action brought by the drawer of a bill, in favor of the payee, so many days after sight upon C the drawer, against C, the party states that he drew a bill upon C in favor of B, that he delivered it to B, who presented it to C for payment; he, we, required that it be drawn a bill, regularly protested, that the deposit to pay, by which means to become liable, the consequence of his liability assumed upon himself to the plaintiff, and fully promises it (this assumption as before observed may vary with the state).
Bills of Exchange

To meet the case that he had no effect in his favor if it is in favor of his favor: you must never state what the Law presumes for you.

It brings his action against C every thing must be stated as before mentioned except notice.

A transfer without endorsement by Law merchant, never creates a liability except between the transferor & transferee. When you sell goods & take a Bill of Exchange, payment this does not destroy the right of action by the

Common Law Contract unless it was made on

That special contract to that effect. If the Bill is paid, the Defendant may plead it as the action on the contract or if not paid then the plaintiff's negligence, or if the drawer was not called on

at time of payment, 2 months after failure,
or on refusal to pay no protest. If an action be by D endorser, against B endorser, every

thing as before must be stated, that B endorsed

it over to him. The holder of a Bill may

pay all concerned in it at once & have judgment.

2 While 258
Bills of Exchange

When it is paid by one, it discharges all the others, each one pays his costs, and the principal, interest and damages on execution coming against each separately for their costs, and against one for interest, principal and damages. If two executions are obtained for the debt, the court will not lay the plaintiff's case in abeyance for 15 days.

The right given to this action is not absolute, but may be given in evidence under it. If it is barred by the Statute of Limitations, the plea is good in law and fact. If a person acquires a promissory note, he may take it out and sue the maker of the note. The ground on which this in-ability goes is that the Statute has taken away the right of recovery, but on presumption that the debt is paid. Clauses will direct that all the debt, including those barred by the Statute be paid. The Statute is a law of fiction, because it is not possible to settle all cases. A court's decision is not certain, and a man is bound to pay after the statute has run, unless the statute is void. He can always do it, when a man desires of obtaining an act of Bankruptcy, in favor. Since the creditor has large amounts, and has a right to judgment, a statute of limitations, or a statute to discharge the debt, to make it a statute, may be void. The statute is a statute of execution, to the prejudice of the other creditors. The statute has been a statute of justice, not to discharge. It has been a statute, in which you must bring your action on the proper day. It has finally been decided in two of the Circuit Courts of the United States, that the action should be brought to the...
Bills of Exchange

If the person endorsed on a Bill should become the Bankrupt, the Holder may prove it in the Commission to take his dividend. He may then prove the reason against another to take his dividend, to on until he is paid.

Lecture 17th.

Proof

In an action brought by the Holder against the Accepter, his hand must be proved. But the drawers hand need not be proved, because the acceptance is supposed to know his hand writing of his correspondent.

However when the reason ceases, the hand of the drawer must be proved. As where the acceptance was without seeing the Bill, or by promise in a letter or otherwise. If the action is brought by an Endorsee, it must be proved that he endorsed it, to prove the hand writing of both endorser acceptor. If B brings it, if the Bill was filled up by B to D, he must prove D's hand.

If the acceptance was conditional, he must prove that the condition was taken place. If against endorsed by Endorsee, second from drawers hand, or acceptor, if by drawer against drawer, the law of the acceptor must be proved. It is every acceptance that is prima facie evidence of effect of drawers
Bills of Exchange

The act of drawer, not in drawer's house, as when the acceptance accepts
for the honour of the drawer. The main dispute is
proves whether he held or had not. A Bill is said
to be protested if the protest of the Notary is insufficient
at the protest of the Notary is insufficient
in the protest of the Notary's instruction of the protest without proving his hand
and the security is strong. For the Counterfeiting it is
in many European countries. Causes. As what? We therefore
require the existence from the necessity of the case or
we must state somewhere.

In England the bill must be produced. That I
do not understand, the one bill was sent to one drawer
with one protest. A action is against the drawer
in a dishonourable to keep it back in this way that
difficulties is prevented. When a protest is for more
acceptance, notice only in part, but when for non
payment the bill is also sent.

In an action by B against A, the acknowledgment
of A that he drew the bill is sufficient evidence of the
fact. Confession is proof against the confessor, but
not against any other one. In the case of joint
partners, confession of one is confession of both.

If a bill is endorsed by one as agent, you must
make out that he had authority. It is not necessary
to show a power of attorney and that the was in the
endorser's business, that the validity of his acts
had not been denied by the endorser.
in an action by praecipe against the drawer. It is immaterial that the drawer drew the bill but once if it was true by those words and if the drawer knew the bill would not be allowed. The bill must be protested to be given. Know what is consequence of this notice? unless writing a letter of protest is issued on reasonably long time. I base my refusal on these. Bills of exchange are served by the board or a jury. The defaulter admits every thing but the quantum of damages. The word of consideration may be found between the immediate parties. A third person knowing there was no consideration being his action if there was no fraud in the transaction his knowledge does not bar his right of action.

It is a part of the implied engagement of the drawer that the acceptance is at the place where he says he is. If then the payee goes to find the assignor, he must get the bill protested for non acceptance. If he has removed to a place where it cannot be
Bills of Exchange

presented within the time allowed, he must
its protection. The form of the protest is to state
the facts as, not found in his place. But the
he can present it within the time. If it is dishonored,
it cannot protest without making presentment.
He is gone. He has an agent who is known to
transact his business in his absence, it must
be presented to him. If he has no agent, it must be
presented to his wife, for the presumption that
she is his agent. If the drawer is dead, it
must be presented to his personal representative.

Lecture 18th

When a bill is paid, it puts an end to its
operation as a negotiable instrument. If the drawer
pays the bill on default of the drawer, or within
40 days, the money out of the drawer, after payment
enforces it to B, who brings an action against
the acceptor. He cannot recover, because the
negotiability of the bill is utterly destroyed by the
payment of it. If the holder of a bill present under a com-
mission, rights a dividend without notice to an
Bills of Exchange

Consent of the other obligor, he cannot resort to them; for they are discharged.

In an action of the indorsee against the

answer, although the indorser paid part, yet he
shall recover the whole sum against the drawee.

Can you sue the acceptor without present

ing it to him for payment? By the Common

Law, the debtor is to find out his creditor to make

Remedies. He has a tender of the debt. But to this, there are

exceptions, & this is one. The Order of a Bill

can only go to the acceptor, & make a demand

of payment; for it would be highly injurious to

the acceptor to look up the indorsee, who may

live at a distance or have transferred the bill.

The universal practice and usage of business should

be given a note to B, who endorsed it to D,

knowing at the time of endorsement that C was

insolvent. D brings his action against B, but

gave him no notice of the non-payment by C at the

court adjudged that in this case the notice was

not necessary for it could not possibly do any good.

Being insolvent B knowing it at the time of the trust,
Bills of Exchange

Where a note is given payable at several installments, if you sue for the non-payment of one, it has been considered that you can recover for the whole amount of the note, even when there was an agreement of that kind to no penalty amounted for the non-payment of the first. But later decisions have not recognised this principle. But the doctrine of

Commence the suit on the day the holder gets the protest.

Can any one who has given money to a bill or any other instrument, be admitted as a witness to enforce the bill or instrument? He cannot. By the decision of Lords, if the whole court.

The action must be brought against the drawer, who wishes to prove that it was returned. It could not be known to neither by B who has endorsed it, D - in this case the Court could not allow B to testify. It has been adopted in Connecticut. But it is now given up as untenable.
Bills of Exchange

An acceptor of an acceptance cannot prove the
forgery of a Bill.

It is a principle of Law as well as of Equity
that when there is such a concealment of circumstances
as would have attended the bargain, that the person
who is not guilty of the concealment shall be answerable for it
"under such circumstances" as well as at Common Law as
at Equity, as much as fraud at "suggestio falsi."

A drawer or payee of a fictitious player, upon
such a bill is considered as payable to bearer, it can
be so read.

It has been disputed whether a note can
be assumed by an infant for necessaries, he not
be bound by it. He is evidently bound by the contract
for as much as the necessaries are worth. Nor infant
is even bound by an express contract, because
if he were so, he would be bound by the terms
of it. The reason why an infant is not bound
by a bond, is because the condition is inadmissible
as it is written a bill of Exchange, which is binding
between the infant and payee for the value of the
necessaries, but not binding between the infant and
indorser, because that consideration is inadmissible.
Promissory Notes

There were notes payable until the 31st Jan. as of hears from the 29th Oct. 1829, and a case. There are notes with instructions which have been countermanded to account with 170 for which has been a promise to pay 200 or more. St. 262, 263. Le P. 1829.

The promissory note payable at B. promising a rider three months after date, was Insured a good note afterwards on account at the 123.

So where a promise was from A to B to pay in money at 123 for a certain time from B to A, the promise to pay is in substance the

So where it was that 120 acknowledge that he had a discharge to me on the order of B for which 120 or there was an account of 170, that he did deliver me 110. I received a note on me for 120 which 120 or 130 balance due to B. The 120

So where the maker shall have made such an article. I 1842.

Some principle in 2 B. 1 C. 213.

It must be for payment of money only, 1844.

And in good faith and no bond. S. 2 B. 1844. Some alternative
case also in 1844. 1846. The particular consideration
being expressed in the note does not affect it 1845.

As at 1 B. 144.

St. 218. "What 218. But where it was payable a certain time after a certain

The 1847. 1833. 1847. 1848.

The 1847. 1833. 1848.

See further in 1 B. 1844.
Promissory Notes

Consideration.

To give to a note for $20 as a fee for his service, which is $2 the amount of the note, and in consideration of the application, made not being true, to the application of a note, not knowing from $28 than thru the note, to the last 30 of July that there was want consideration.

Let me state this case for your valuable consideration.

A note not to be void for good valuable consideration can be recovered for such illegal consideration only as makes the note void ab initio, bigamous marriage can be alleged as one of the action.

In a case where a wife has been induced by the notion of a note to buy a note about it, to cause the constitution to be recovered to a person who has been offered in the note to a person who has been offered in the note to a person who has been offered...

Requiring the payment. Payment must be demanded within a reasonable time after due. This is common a practice of law depending on public as the situation of the parties. The receipt of the note is evidence of communication is.

A note payable a certain time after date or after sight the usual days of grace are allowed. The payment is due sight and the sundays a great hindrance. It should have been the 2nd Monday in the month. Three days are sufficient. Exclusively of the day of the payment. On the day of the note the note is not here solemnly ordered a shorter days of grace are to be allowed on notes payable at sight. They are not allowed on notes payable on demand.

Note payable a month or months after date is a completed contract.

Notice of demand and refusal of payment must be given notice of the debt prior to maturity in a reasonable time otherwise interest is charged.
Promissory Notes

Declaration, Pleadings, Evidence

The original copy is as

an act of assumpsit. The note should be specially declared on
accurately set forth; for a material variance is fatal.

Note on a court for money and a bond in the
note may be given in evidence as a defense, but that so much money was
lost in B. and if such action is brought, yet it is desirable to
declare specially in the note, for otherwise in case of prejudice by defendant
the usual defense in a court is to go into the matter in B. or furthermore in
B. cannot be made to conduct, principal in that it is

Note, payable to A. above 5 in accordance with an act of

The necessity to allege a proof of the make of notice of default
be refused to bring a reasonable time by the note in will?

To the act any plea may be pleaded which may be to act or to

2. Bank 610.


5. B. 676.

1. Bank 125.

2. Bank 610.


5. B. 676.

1. Bank 125.

2. Bank 610.


5. B. 676.

After the seizure it resumption between note shall begin.
Powers of Chancery

 Sect. 1st. There has been much difficulty in defining or ascertaining by proper description the powers of Chancery, because all the objects of this jurisdiction cannot be included in any definition which may or perhaps can be given.

The judicial jurisdiction of a Ct. of Chancery, has been divided in three particular parts. 1st. To declare the rights of the complainant. 2nd. To decide according to the spirit and not according to the strict letter of the rule. 3rd. To use auuantum jurisdiction over parties concerned. This is Littelan. A third definition of the name is, given by Mr. Hanmer. He states that a Ct. of Chancery differs from a Ct. of Law in this, that the former is not bound by precedents or positive rules.

This description is now agreed to be very imperfect. It is imperfect in all the parts of a good definition, for first, it is incorrect because it supposes a Ct. of Chancery to be a Ct. of Law, which it does not. Secondly, because it does not give the Ct. all the powers which it has.

It is said, it is in the power of a Ct. of Chancery to declare the rights of the complainant. But this power has never been claimed except in the same way in which a Ct. of Law could do it. The power given is relief where Law cannot, but it is on the ground of jurisdiction. There are many rules of the Common Law which are extremely rigorous. This before the
Powers of Chancery

It may, of a person conveying a real estate. The law...give relief, it even now a man's real estate given or devised is in her heirs for the payment of contract debts, but chancery cannot interfere. The rule of

descent that a lineal ancestor shall never succeed to an estate is a positive and right rule of law, yet chancery cannot

prevent this rule from operating, so that the half blood should be excluded in a rigorous rule—Equity cannot change agreement for this reason that many rigorous rules of law are

more established. Yet the definition is that in the state of

only to do away these very rules of law. Law, in fact, the rules of

are not laid rigorous for various reasons known some

in so... It is true that you shall not do nothing to do

with equally the rigorous of the above law.

Law. It is true that a lot of the rules according to the

taste of the time. Just a lot of law is bound to arrive

accordance to the spirit of a law. It is, a rigorous and an

equality in the construction of all law. But the spirit of it shall be

the guide that all other rules are made ancillary to this. The

rules of construction are due to both to the construction.

3 1st 431. 1 47. 2 284 1 47 8.
Powers of Chancery

1. Accident - This is true that the Act of God will often relieve from the unfortunate consequences of an accident than a lot of law, but yet the latter will do it as in the case of boats lost which a person may avow himself for a lot of boats as much as in a lot of ships. This is a bond which a man may lose which may declare on it, and if it was lost by this accident to a lot of law may give the sum of it. Law, not lost by his own negligence, which is as much as a lot of boats would do. Perhaps the relieves in more cases of accident than the law, but it is not true that the Act of an exclusive jurisdiction.

2. Mistakes - All relieves of some mistakes than lot of law not because it has an exclusive jurisdiction, but for the reasons given before, in its mode of proceeding the competency of its relief. But mistakes are relieved in law or mistakes in acts contingency, which make the performance of conditions impossible. And all mistakes cannot be relieved at certain law or remedy, as if a device is ill executed by mistake they can give no relief at all. If where a contingency some act is destroyed it law by some matter of accident the can give no relief at all.
Powers of Chancery

Trusts—These are very analogous in City Law in some cases only. But in City Law the cognizance of trusts is much more common, and in the case of a trust in trust there is no case in which a City Court has exclusive jurisdiction. It is a trust in the matter of relief. A further technical trust is regulated in City only. For this reason the title in law is not consummated—It is only binding on conscience.

Mistakes in written instruments are only to be set aside in City Law. The reason is not because there is any intention to make a mistake, but because it is not generally recognized in a City Law, and because in this case no decision could give complete relief in court or make of it an unenforceable bond. Where a bond executes for two thousand dollars in the City, and only one thousand dollars are paid, the obligor is discharged and should not. If the bond is not made absolute the bond is either the act of the party or not. It is the law that gives the act of the bond. Here there must have been payment. If there is no payment at all, then the bond cannot be as part of the bond. Where there has been payment, the obligor would suffer, for he has a right to $2000. A bond then cannot discharge the bond. In the former case it is different. But the Chancellor can make a decree that the obligor shall pay.
Powers of Chancery

1. The words of 1625, as not bound by precedents or positive rules, are more incorrect judgment could not be laid down. These 165 are bound by precedents, many of which are held to get none of. When the declaration is made between the right to waters & certain of the husband owning a trust estate it is held in equity that the wife have not to be deduced if it, but the tidy proceed of a trust estate in their use but by the husband of it. If there is such a declaration made it ought to lie in favor of the woman, for the may get none for the wife, but the husband for mine. Again: a better distinction is made in a mortgage between one at 5 to 1 with a clause of redon to 4 of the interest be regularly paid, one at 4 with a clause or enlargement to 5 if the assignment of the interest be delayed — one being an enlightened the other a consciencious bargain. There are original rules founded on precedent.

These is not a material difference between them. The substance is precisely the same.

This part with regard to the general description given of the powers of Chancery.

Judge Marshman has given another which adds most complete in the best that has been given. He says the principal difference consists in the mode of administering justice arising effect to the same principles. This difference consist in the principal. The mode of Proof of Trial of Relief.

1. As to the mode of Proof, the latter particular city has a great advantage over 10 of other. It can compel e
Powers of Chancery

disclosure of the party under oath. This is a power the common

does not. Why? The reason is not given in the books, but there

is a substantial reason, that if a party were compelled

to make a disclosure he might be greatly injured

by position or relation. It is only this can arise to one

able to files no criminal jurisdiction whatever. A

sometimes in a suit of law the disclosure would work a penalty.

And it has then become a standing rule in equity that

if the disclosure will work a penalty the Chancellor will

rejoin the party to the suit and cause to enter an

order not to use for more than advantage of the penalty.

The constructive disclosure is called forcing or calls undertaking

to a party to construct; if the party may be compelled to

make a disclosure of facts within his knowledge.

From the power of constructive discovery, he has

obtained concurrent jurisdiction in matters of administration

and distribution of property, and which by law in many cases

appertains to the Powers of constructive discovery. It next begins

the same in Equity as at Law.

As to the mode of trial. A jury trial in civil cases

by interrogatories taken in the presence of a proper body

from which objections are taken out of the two attorneys and

the party in the instant mode is shown.
Powers of Chancery

The most of which is useful in many cases. In some cases, the question cannot come up before the Court, as the interference of the Court, the witness is about to leave the realm, or is of a nature to make the reality, so as to impair. They may take a deposition provisionally, which are called the true care taken by a 
Commission granted to perpendurate testimony. The deposition 
then taken may be used in a suit of Law, and the 
consequence of this power may exclude a jurisdiction over the 
subject itself, which a suit of Law might to, the witness might be called before these. This is intimated to a 
resultant jurisdiction of these.

Book 2

3. As to Reliefs, Chancery in many cases affords 
specific relief of executory agreement for the sale 
or purchase of lands is made and will decree a 
specific performance of them. A suit of Law could only 
give damages for the breach of an agreement which 
might be very inadequate.

Indeed in many cases, this increases jurisdiction 
for the very purpose of giving in a more specific remedy. 
Then can be had at Law, it interferes to some 
consideration jurisdiction, for effects, the damages, because 
under the Act of Chancery, the thing wanted would come an injunction to prevent it.
Powers of Chancery

Specific relief is meant that which restores the
injured in his rights as he was before they were actually
violated. This injunction in the bifurcations case merely
continues him in the enjoyment of his rights as they were
before violation. So it is properly called "specific." To this
end a specific relief is vacated the contract either wholly
or partially, as justice may require, whereas in of
selves will compel a performance & afterwards give the
injured damages in an action on the case. So it requires
these facts. That only prevents the evil of
preventive is
better than preventive justice. In many cases they will
decree for that very infringement.

One case in Law to be sure the remedy is specific,
as in Equitable, & sometimes in Bifurcations.
I have gone thus summarily thru the three practical
rules in which chancery differs from that of Law viz-
mode of proof, mode of trial, & mode of relief.
But they differ in other respects. I do to note it is more
difficult to ascertain the boundaries of chancery or to
describe its power than in the other three particulars.

The ditch was taken in a 1st ditch, & of Law of
a feudal bond gives a great jurisdiction to the former.
In a 1st Law the whole felons, it must be recognized.
Powers of Chancery

In the breach of such a Bond, what is really due to the party to whom it is given, he may look into the question and decide whether the damages are not equal to the penalty. He will examine the bond to see what is really due. In law the penalty is considered as a Debt: In fact it is considered merely as a security for the Debt a nomine bono, and that it will be paid, construction is made when the whole instrument is considered. As there could have been done in 2 cases: Law and Equity. As to construction, fud or fud constructions, when whole instrument, is not considered in law as a Debt, as whereas a penal bond is given for the security of a Debt is not for the performance of a condition. The lot of that the said a long line will give not only the bond but the interest. Here they consider it as evidence of a Debt.

It cannot then be said with any more justice that lot of fud or fud differ in the construction of fud instruments, where the penalty is the condition, as the 14th on the ground lot is fud, have obtained a very great, almost exclusive jurisdiction of Mortgage. The condition being in the nature of a penalty, to a notified of lot in the same manner as penalties in penal bonds: as long as the interest of the mortgage is gone forever unless fud at the time specified as by fud it is different.
Powers of Chancery

The decision in equity of redemption, unknown for most purposes at law, has been said, there is a difference in the two. On the one hand, it is a great rule that the construction of an instrument should be the same both in law and equity; on the other hand, the rule of construction between the two may be different as well as between two cases of law. But as I have before observed, the equity of redemption is for some purposes considered in law as well as in equity, and therefore the construction is the same. So far that where it exists, they will consider it such a freedom of interest as can be a matter of dispute, the person entitled has the power of actions for members of the same. The objection is to more importance than it is where there is a right of construction in the same instrument for different purposes. This form a fourth ground of distinction -

The technical trust or useounds or in real estate are distinguished from a legal estate, a present interest, subject to the English Act of 1882, not subject to law, as because trust estates are little known in law.

A trust estate is one where the legal right is in one person, the beneficial title in another. In ordinary circumstances, the law will not take notice of any grantee. The notice only legal estates. Only notice equitable estates. In a lot of law, the legal title must govern; yet whereas an estate is given to one to hold in another, use a benefit,
Powers of Chancery.

Here ought to be remedy provided for those who have the beneficial estate, but of which has power to give the remedy. To this end it might be expedient to give a general description of those powers which are not comprised in the three divisions of the description which I give in this, the first essay with that a list of those cases to which this method of administering justice may apply. The title "he has power to enforce justice" where Romare is silent or where though the reversionary of the justice could not be done. A list may state the reason of the defect of the common law, where the reversion is defect in a collateral or improper consequence of the rule of common law. It is explained that it is correct, but to a true thing, by avoiding collateral or improper consequence as nothing more than giving effect to the true spirit of the common law, I list to the court, and to a judge according to the spirit of law. Yet he says that if the unjust consequence of a rule of law is clear, obvious, and if the rule seems for this cause to a breach of literal extent, I must give that provision at the expense of making the rule. We cannot interfere with certain consequences of the rule—
Powers of Chancery

Examples of both kinds - injunction to prevent waste

Con. Law affords no preventive remedy - legislature is not

for life time commits waste - now a b. d. can sue only

give damages after the fact is committed - that if there

is a plain intention on the part of the tenant to commit

waste, libel which is always there will issue an injunction

to prevent him from committing waste

Again - It is a great rule of law, that all contracts

made between husband & wife before marriage are avoided

by the intermarriage - but it seems hard that those contracts

which are made for the furtherance of the marriage

should be avoided by the marriage - now there is hardly

a marriage in Eng. with a marriage settlement - it a b.

if cly will enforce these marriage settlement agreements.

the Con. Law rule to the contrary notwithstanding - a

b. d. of law are not thus decide according to the spirit of

the rule - all the decisions in law are that such

agreements cannot be enforced in b. d. of law

These distinctions embrace all the well defined ground

of the jurisdiction of b. d. of b. d. - the perhaps not all

one ground of the jurisdiction of b. d. of b. d. which

comes under the third particular mentioned by H. (art. Ref.1)
Powers of Chancery

In order to settle a suit to construe a will, there are cases where an executor may appoint a law and
such a Bender is good or not at Law according to the
difference of opinion held that it was to be avoided if it is
made with a condition that such and such things shall be done
after the covenant is ended it is good at Law. But if the
things are to be done during covenant, it would not be Law
because the wife cannot sue her husband at Law. In the
former case the heir of the husband will be compelled to do
the thing as ancestor contracted. If it were illegal during
the covenant it would be void at Law.

Again, it is a common rule of Law that an
agreement made between husband and wife during covenant
is void, and it was formerly held that in all such
agreements could be enforced only thus the medium of trustees
now such an agreement made during covenant may
be specifically enforced in this without the intervention of
trustees. The husband is considered as trustee to the wife
the Law. The legal title for Law use the last in point.

The ground of illegality in this case is its peculiar
concerning of technical trusts. The mode of enforcing the covenant
is founded in its power of enforcing specific contracts
and it is to be observed that where C has enforced such a
agreement between husband and wife, the latter may use one of the four
cases.
Powers of Chancery

most cases it is the same as that, and it cannot make a contract effectual in which there is a law. The law
is, 'that a contract made between husband and wife cannot be enforced.

I observed yesterday that an agreement between husband
and wife was sometimes enforced in writing, and without
the married who have contracts between husband and
wife are void — that the foundation of this is their
right to enforce a contract.

The law is, 'that a contract made
without consideration is not a good at law, and does not
obligate the parties.

But want of consideration is no more conclusive evidence
of fraud. It is not necessary for me to prove all the
badges of fraud. However, if the husband is at the time of the contract
made to settle his estate in feet, it is a mere badge of fraud.

As if there is no force of revocation it is another; — if
it is not necessary for me to prove all the
badges of fraud. However, if the husband is at the time of the contract
made to settle it in feet, it is a mere badge of fraud.

As if there is no force of revocation it is another; — if
the contract is to settle the estates on a great part of the
husband's property on the wife's disavowal of fraud.

17th. 95
36. 11547
Conf. 748
12th. 15
Powers of Chancery

yet if the is not greatly in debt & makes a contract to
sell a statute on family settlement with any degree of fraud
then it afterwards becomes greatly injurious, & the court will not sit by
side in favor of less. The same rule applies to subsequent
purchases as to contracts.

But even in all these circumstances the
contract is voluntary it is binding when the husband or
his representatives. He now they can make an objection
that it was voluntary in that it was done to conform to
the voluntary conveyance in presumption evidence of
fraud, but it may be rebutted.

It attains from several examples, that only applies to
the substantial object of all contracts, I give effect to this
so as to attain that object, if there is any with regard to the
particular form of the contract. This is the case with a
bond given to convey land. The bond will always compel
obligee to convey the land after there is no stipulation or
express covenant to do it unless the benefit is in the nature
of assessed damages - when enforced it is considered in
these as executory agreements.

Sometimes or more as obligations upon the whole debt
at these as the easiest way to take an assignee if the bond
being the act of the assignee in the name of the obligee.

why will order the assignee need to plead that the assignee is sued
on here that the debt is done wrong, but if the case was
just right as was paid the whole was only fifty, they will
Powers of Chancery

order the other obligor to pay the whole & issue an injunction to prevent the co-obligor from pleading a payment in
an act in a Ct. of Law on the Bond. In this case the
Master must enforce the agreement between the
obligors implied by Law from the facts or they exist.

A Bill will therefore be retained on the hand of the man
who has paid the whole on the ground that an indictment
to show there would be no necessity for a Bill if

law & justice be united with law for money

and goods & improvements & from some debtor in the book,
if none the debt would still be owing.

And if the same has paid the whole as kindly

the oath is given in this favour for money paid for

him use - But where it is a simple bond as in the

case first mentioned then one can have act of court act.

With regard to the equitable cause in which they

will intervene the equal rule is that equitable in

equity适用 to all cases when the subject of the contract

is the parties to it are within the jurisdiction of the Ct.

for the state act, as well as person as in rem.

As the rule stands in the debt it is incorrect for

It cannot mean that although the subject on the factor

are within the local limits of the jurisdiction it will

provide relief. If so it would have no reason & all cases what a lot of law could be - But it certainly has as such

cognizance. The rule means then that unless the matter
Powers of Chancery

...is defective in such a manner as to require the intervention of a court of equity, to be bound on the subject matter of the contract in such an instance, within the jurisdiction of that court. The rule in the Book, that there have been expressed in the negative, that equity does not intervene where the subject of the action is not within the jurisdiction of the court.

Thus, suppose A agrees to convey land in B to C in the Kingdom. This is such a contract as requires the intervention of equity for the decree of specific performance of contract. This is within the rule for all cases where it is within the U.S. still the land is the subject matter within the jurisdiction. But it is not in A's

If A in B, agrees to convey land in C to D, B: this will enforce this, because it acts in personam as well as in rem. By process of execution, process of attachment, process of contempt,

This is enforced to specific performance in the case of Gov. Town v. Ed. Baltimore in case of the boundary between Pennsylvania and Maryland.

But where neither person nor subject matter within the jurisdiction eddy to cancel interfere whatever the nature of the case may be, formerly it was Latiun that this court could not act in rem, i.e. it could not specifically enforce it in rem. Latiun, but that it could only act in personam.
Powers of Chancery

The case long since been overruled but it is now settled that chancery is the proper process to settle a dispute in person of land within its local circuit, upon injunction or suit of restraint in the suit, as well as in praecox. While the old opinion lasted that they would not act at all on

1827, 91, 92
Nov. 8-9
28th, 275
— 285
28th, 273
Feb. 404

the subject matter of the contract it would have been necessary for that to have made a decree reflecting the sale of lands. The practice of acting in cases first began in Dec.

I have considered the good ground in which they interposed but I have not the particular case under those good grounds in which they will interfere.

Gently, however, they will decree a specific performance of agreements properly falling within its jurisdiction in those cases gently those only where it is clear that will give damages for the non-performance of the agreement.

On the contrary, they will not decree a specific performance where it is clear that will not give damages, unless it may falls within its jurisdiction.

Nov. 10, 418 and they will not decree the specific performance of course because such will give damages for its non-performance. It must fall properly within its jurisdiction. Hence arises the reason of this distinction.

or is there any reason for it? I think there is an obvious one which may be furnished by a reason to what has been before been said.
Powers of Chancery

Specific performance is given only as an aid to the remedy furnished by law, or in other words, the power is created principally for the purpose of giving a more complete and adequate remedy when the law before gave an incomplete and inadequate remedy. The principles in the two cases are quite the same, the only

case being different in proceeding.

In pursuance of this, it is not enforce a
voluntary agreement except between husband and wife
because of the breach of a voluntary agreement. A law
would give no damages, or even in case of court
undertaking, and they will not raise a right which
the contract does not raise, I think a voluntary agreement
is a law a common
contract.

But there are exceptions on both sides. The rule
on the specific performance will not always be enforced
in every case of law would give damages for a non-
performance of the agreement. Then suppose that
after an executory agreement is entered into for the
conveyance of land to a third person not knowing of
the agreement should become a tenant for such a
legal title. Here they will not raise a
theoretical performance because it would be unjust to
the vendee. He has paid a valuable consideration.
Powers of Chancery.

...was ignorant of the executory agreement. The
sense of some obligation and notice to the oth-
er party. If an obligation has become
impossible that it should be specifically perform-
ed in the view of a duty. Yet in this case a
claim will give damages to the reason of the un-
read ability. The equity is
equal on both sides; it is a rule that where the
equity is equal, law shall prevail.

For an agreement to convey is on a valuable to
adequate consideration, if this will limit the subject
as of intervening present creditors because they know
not a specific item before it. Frame of the consideration
of the agreement is very inadequate. It is a spec-
ification or encumbrance upon the land, but the
executory agreement is a specific item and shall have
theSummary. This is right from a direct conveyance
as a third person.

It also where the bill is to compel a duty to
accept a conveyance. If the consideration money
they will not decree a specific performance where the
title of the land is under encumbrances not immediately
removable, the damages might be recovered at law.
It would be inequitable to decree a specific performance
again according to the rigid rule of law. The executory
agreement upon the court for performance.
Powers of Chancery

Lec. 4 1st. I yesterday observed that Chancery would enforce a specific performance of agreements failing parties within its jurisdiction where damages would be given in law.

I mentioned some exceptions to this general rule that there were exceptions to the contrary branch of the rule viz. that they would enforce a specific performance where no damages would be given in law.

An instance occurs in the case of a bond given before marriage to convey lands after cohabitation. Now in law that bond is destroyed by the intermarriage of course no damages. But Chancery would compel a performance of it as where a person made such an agreement to convey lands to his husband. Instead of damages, could not be given. For a breach of the agreement in law, but Chancery compels a specific performance of it. The reason is a plain one. The most obvious conclusion is that a civil act should lie between husband and wife a recovery in a civil law in strict sense. Therefore, even might go at law Formally. But in Chancery the accrued claim to this property only...
Powers of Chancery

The remedy is process in thekt which will act as a person. The decree acts as soon as the is bound only to the extent of his property. For the is not liable under the decree as a stranger would be - the covenant is considered as binding only as the subject in the extent and only in a to. Of off 

To also in the case supposed the inducted wife is to the contract to convey lands to her husband. The decree as a specific performance of the agreement attains the same as if he held or guardian contracts to it, it was made on good consideration.

Another instance of this kind is where one lends money to an in debt to purchase necessaries. He actually expends it in necessaries. Now in law the money that is used to be repaid by the debt. Because this privilege is not to be destroyed. And if that privilege would be subjected only to the cost of the value of the necessaries, therefore there is no danger that his privilege will be impaired. In this the lender or consignee on the like of the necessaries, complete justice than is done in the debt, yet he is subjected. This is a case in which relief perhaps will not specific.

To also where the agreement is made under the act of 18 of self itself, this 24 will enforce the contract.
Powers of Chancery

This a lot of law would give no damages, for a breach of trust, as in the case of a judicial sale of an estate in 1744. The
purchase indeed acts for himself, but the seller acts for
his Co. He therefore a judicial proceeding. A lot of law
cannot interfere, because it never ousts the
proceedings of Co in any other independent jurisdiction.

It is common for the Chancellor to order the matter in sec
all estates & incumbrances so as to give effect to his
accrue. The sale is called a judicial sale.

Further, where the condition of a bond is destroyed
the binding force of a contract extinguished at law, the
obligor becoming 62 to the obligee. It will enforce the
contract in favour of those who have title claim
than the obligor. It however could not be enforced at law

Thus it executes a bond to B who are making at
for B. at law this obligation is extinguished, because
it cannot be enforced. The reason is the same reason
would be both C & D & E a man cannot be himself
But no one can in this case save A trust himself
C & D however order him to pay it to the E in
legate of necessity, you so is considered an their trustee
 & C & D having cognizance of trust, decrees a
performance.
Mr. Powell states the distinction where City will not decree a specific performance where damage would not be decreed at Law to be this: If there is good agreement in substance but one which is insufficient at Law — by reason of a formal defect. City will decree a specific performance — e.g., care of infant, rape, etc., etc., etc.

But where it is inequitable at Law by the non-happening of events as provided for by the agreement, City can give no relief — e.g., husband covenant to withhold on the death of his mother, i.e., coming into possession the never comes into possession, agreement not decreed.

The latter is the distinction in question. The former does hardly convey the idea intended, for by formal defect are not meant mere mistakes in the promise, it often means an inherent defect in the thing, all the cases before mentioned are related as formal defects. The in not using language as we should use it.

I have observed that a lot of City will merely decree a specific performance where the subject falls within its jurisdiction; yet it is to be observed that if the damages given at Law would be an adequate remedy, they will and may decree. If there fall, not within the jurisdiction of the Court, an adequate remedy can be obtained where there is no necessity of going into City, etc., etc., etc.

It is necessary to state in a bill in City, that adequate...
Powers of Chancery

relief cannot be had at law—else the Bill is deniable.

But the only contract is in its nature such that
an adequate remedy might be had at law if any could be
had yet if under all the circumstances of the case it appears
that a Bill of Law cannot give adequate relief Oly will interpose
whatever the nature of the contract may be. There are
certain cases where Oly interferes of course because
relief cannot be given at Law. There are other cases of
interference on account of the nature of the contract being
such that Law cannot give adequate remedy—there it
requires jurisdiction collaterally. Then therefore it is
said that Oly will not interfere where adequate relief
may be had by damages at Law, it is not meant
that Oly is ousted of its jurisdiction under all
circumstances of the case.

another general rule is that Oly will not
quite secure a specific performance of a contract
reflecting personal injury, because Oly of Law can
give an adequate relief, the damage given are grants
an adequate remedy, but damages are not to be asserted
by the Chancellor conscience. As of contract
for money there never is any need of going
into Oly.
Powers of Chancery

This is not an universal rule; it must be regulated by the particular circumstances of each case; it qualified or modified by this great exception—that where the ends of justice plainly require a specific performance, the court will decree it although it relates to personal services to the party wishes it. This is the exception that makes the law. An adequate remedy for a breach of a contract respecting personal property, but this exception may be rebutted to specific performance required—thus, where a contract to save a flame from certain acts. It is not to perform an act respecting third persons at a distant time. Only decrees a specific performance because justice requires it. If the remedy were to be at law, it would require an act by it for every circumstance of which it engaged to save the flame. So the act must first be done so it in all these cases if the court doth have in mind some of all the cases where the court was an agreement to sell on one hand to purchase on the other 800 tons of iron at five years’ installment. Now there would be many acts bid at law in the contract, therefore the court will decree a performance by which this is prevented. Perhaps too the credit of the purchaser depends upon the fulfillment of the contract.

Another exception to the great rule is where the contract respects personal service that might well at law be where fire is united with the case over 183.
Powers of Chancery

there is a specific performance - as where there is a claim of damages & a counter claim on the other, & a further one on the other - as where it brings an action at Law, for a breach of Contract, to file an injunction of it, if only because the contract was made by fraud. Now as B has led him into it, A may file his cross bill, the party relief, Sec. 78, if they find no fraud will decree relief in this case damages might have been given at Law.

And if to a bill but on a contract of a personal nature the debtor does not appear on the ground that relief ought not to be had in this but file an answer they will decree because Debtor waives all rights to the objection & jurisdiction is admitted.

on the other hand if the agreement respects an interest in land or tenements for some act in these to be done, DEBT will regularly decree a specific for performance because damages at Law are not of course an adequate remedy.

In voluntary agreements - however of this kind will not generally be enforced - the fact that suit must be understood with the qualification for mentioned.

If the A enters into articles of agreement with B in which he consents to give a farm of land to him upon delivery of consideration within a limited time & afterwards refuses D will compel him to convey the legal title to him by Bill of
Powers of Chancery

In this case, a court would be to recover damages which might not be an adequate remedy and where the remedy in one case is the performance in the other, the court will decree specific performance by a party held by another, and this is just and equitable. The same it ought to be open to both parties if they are not mutual.

But here I would observe that a covenant or agreement to entitle the party to specific performance must be specific in particular itself. Hence a joint contract to convey lands with mentioning what lands will not be specifically enforced in chancery. The intended seller is a trustee to the intended purchaser, and therefore the latter has a lien upon the lands. But in this case he has no lien upon the lands because they are not specifically the lands are equitable title, but more than there can be a legal title in lands, not specified in a deed. The joint trustee must be an equitable lien.

I have been endeavoring to inform you what contracts under what circumstances a court will enforce a specific contract. Further, an equitable lien who demands the specific performance of a contract must show that he is ready and willing to perform his part - or in other words, he who seeks equity must do equity. In a lot of law there are what are called conditions precedent and those which are called conditions subsequent. Now here it where the Off's right of set-off is to secure to come out of his own. He must save performance on what is equivalent to it. That in other, he who seeks, the specific performance
Powers of Chancery

of a contract, must show that he has performed his part, or what is equivalent to it, in other cases besides where the condition is precedent, or when he is not bound to do certain things before a remedy can be had in favour of the other party. Then it conveys to convey land to be who conveys to pay for it. Now at Law it may be 13 or 17 &c. without averting performance, but in this case City would not decree a specific performance unless there was such an omission or its equivalent.

This omission is not founded upon a difference in construction in the two Acts. Yet in this the remedy at Law in strict jurisprudence Law must interpose when such a covert in action at debito gestantis. But the Chancellor interposes not according to his discretion. The party, therefore, must do equity before he can have it.

Another great rule under the general branch of the title is, that where the Cpa to a Bill in City, Can come in front of what he is bound to do it is frustrated by subsequent event from performing the service, he cannot obtain a decree of the other party. Thus, where I agreed to pay £1,000 within two years in consideration that he would marry his daughter & settle a jointure upon her. But the did within the two years, after her death. Could a Bill in City to recover the money from the latter. But the City would not interpose & dismissed the Bill. The Cpa has consent to do two acts, one of which only he performed.
Powers of Chancery

There is no mention of any agreement or contract in the text provided. The page contains handwritten text in English, but without the ability to transcribe the handwriting accurately, it is difficult to provide a reliable representation of the document's content.
Powers of Chancery

They had gone after the goods. Had been at offence in making a virtualising the ship's hands therefore they could have subjected the freight. They would not have been in statute one they might have been cozen.

I showed enough good will that his acts sealed the incapacity performance of the contract must then fast by the bond the bond in that which is equivalent to the statute the evidence to perform is equivalent to an actual performance. This is the rule both at equity and law. If then the party seeking relief has been ready to perform with the other party would not receive the performance or proceed to your performing. Yet will not have a cause in his favor. But a tri of this will not decree the specific performance of a written agreement if it has been misconduct by both. It is a good rule that past evidence admissible for the purpose of rebutting an equity to the even of a deed. This rule is peculiar to Equity. But a foreclosure will not discharge a deed in the. The Chancellor has a right to intervene by reason of his extraordinary power. i.e. In Per a right to intervene exceptionally on the ground that past evidence is admissible for the purpose of rebutting an equity. But in the case you deedinned, why this not make to the deed. The testimony is introduced to inform the Chancellor whether the parties requiring a specific performance has destroyed his right to Equity by a past discharge.
Powers of Chancery

The Chancellor upon finding the deed to be the case only refers to instances of cases in which the deed is not destroyed, for a recovery may be had at law upon it as a part discharge to the contrary notwithstanding.

As if A vendee under a deed to convey land to B in six months B discharges him by deed. Afterwards A brings a bill in Equity to compel him to perform. Here the part discharge may be introduced to rebut the equity. If

again — where the party in Equity claims a specific performance of an agreement that for many years past it has without insisting on performance, he is not entitled to a decree for a specific performance unless the delay is explained by special circumstances in the case. In circumstances like this the right to sue is presumptive. In cases on this ground vacate the agreement. A different rule and a different construction is required.

But a delay of this kind may be explained by circumstances which sole the presumption of a delay the reason of the agreement was a near marriage to purchase real estate within three years. Consequently, the wind is made of it and money or by reason of the circumstances could not have it. Be quiet, hence it is difficult to find such presumption as this.

But no weight of time will prevent this from achieving as a fraud, no fraud is there. In such cases, if injunctive relief is given, the decree for specific performance because the party will give damages. But in the case of fraud, this is not true.
The document contains a page from a book discussing the "Powers of Chancery." The page contains handwritten text discussing legal principles, specifically about the necessity of the party performing its part in a legal action to maintain a right to relief. The text mentions a rule regarding the performance of duties by the parties involved in a legal dispute. The handwriting is clear and legible, with some annotations and references that are typical of historical legal texts. The content is detailed and provides insights into the legal reasoning and principles of the time.
Powers of Chancery

For it is with having done what the covenants do, the children can obtain a specific performance of the covenant from the parent in Chancery. The reason is, that the children are in no fault for the non-performance of the covenant. They are no covenant breaches as the parent. Ordinarily the person who requests a decree in Chancery must having done his duty, the answer is you have not done your duty. But in this case the children were not controllable to do anything. They were not bound to perform what their mother covenanted to do. Therefore there shall have a remedy.

The rule is precisely the same as it respects the wife, if she is not a party. Thus suppose the parent is the covenantor and covenatee. The parent is also a party if the wife is not - now the wife's father dies without having performed his part, or is insolvent. He then have a remedy at the Land and in Chancery. He will decree a specific performance of the husband, all the Land to do to entitle himself to this remedy was to marry -

Lect. 6th. I have been treating on the power of a Chancery to decree a specific performance. I have laid the

case which I would suppose that it often an executory agreement entered into a Statute interfering which renders a complete performance impossible, by may decree a

partial performance (required) that is consistent with it.
Powers of Chancery

Thus where a lease was made by a corporation for terms that afterwards made it impossible for them to make lease for more 20 years. If no party since has this lease been good for 10 years. This is enforcing what is called the 'cy præs.' as near as may be. In the Law this could not be done now any thing like it. If the party had resided

for a non-performance it would have been a good defence to have pled that a performance of it was now made unlawful & as a Law cannot abrogate a contract it must therefore have given judgment for

the lessee.

The same is true where complete performance is rendered impossible by accident or the act of God.

Thus if a covenant to convey to B a house of humiliation 1 before the grant is actually made, a tenant should blow down one half—here the Law will compel it to convey the residue—In such a case they will compel the party seeking a remedy to pay in abatement to the

last performed.

This doctrine of cy præs. is recognized at Law where the contract was

for a term of years. Here a lot of Law will excuse the contract to be good & that it will stand. Thus the former rule is not to

allow it to enforce B to limit certain warts to whom B sold the

remains when the lease is

lifted. The wife should die immediately

the party returning. It should be done. If not the wife

2nd. 1st 48.
1st. 2nd 48.
352.
Powers of Chancery

This will be good limitation of power. It would be necessary why would argue to enforce it.

This interference 1747 would seem to militate of the general rule that a contract the performance of which is rendered impossible is made unlawful by that act.

But when a false construction of this sort is erroneous, it will render performance unlawful as in the case of a lease for 40 years, for so long a time.

The rules are therefore strictly consistent.

Here one acting under a former conveyance grant, and knowing that he has a right to convey, the conveyance or grant will be good in this for so much as it has a right to convey.

Thus if 1 owns a right to make a lease for 10 years.

Two years one for 20. This lease is good in 1748 for 10 years, for in 1748 it is not.

And there is a very material distinction to be taken between the construction which will give to certain words in an executory agreement a construction which others 1747 tell will give to the same words in a contract executed.

The distinction extends to certain cases where real estate in limited to one or 1747. A grant or the other. This is a rule of law situated in the time of 1747. What shall the conveyee by grant be entitled to? It is to an remainder 1. A lease to a body. 2. A lease an estate shall be granted when an estate is limited to one year.

2872. 252.
Powers of Chancery

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remarries, the heir is quit a special duty, to whom the life estate is limited takes the inheritance. This is the construction given to the words in a contract executory. The reason why such a construction is given in law is numerous and well founded. For instance, the terms of limitation not ofpurchase. On the contrary, the terms of limitation not of purchase. On the contrary, they cannot take or remainder as is made by the words of limitation. For instance, they cannot take or remainder as is made by the words of limitation. For instance, they would take only a life estate for want of words of inheritance applied to them.

If remaner in executory articles to convey, the same word are used, as a trust for life, remainder to the heir of the body. If not, the conveyance to settle the estate whereupon it for life of the person whose the estate now is, or in failure of issue or the heir, there is a second son or the issue is.

There is a great difference in effect between the construction of these words in a contract executory and executory. In the former case he may defeat his own by devising a five a son taking a common recovery, but in the latter case he cannot use it. For the Law will follow the intent of the grantor or division you to not particularly. But it will still to construe the instrument as to give effect to the particular intent of the grantor or division. Now in the case supposed where the contract is executory it shall be taken in both the particular intent of the grantor is followed since his children will most probably have
Powers of Chancery

But in Chancery it shall lie but for life only to his children shall not by any possibility be depressed of the estate above the particular interest of the grantor or devisee is followed. As the articles themselves do not in the case of an executory agreement convey the title, Chy will do it to give effect to the intent of the person making it.

And they will go further, for it is presumed an executory agreement made before marriage a settlement should be actually made after marriage, Chy will set it aside and another to be made; and the reason is, the words in the grant after marriage have a different construction from the same words used in the executory agreement, they do not thereby consider the agreement as performed.

And if in pursuance of such an agreement as this, before marriage, the settlement should be made after marriage, Chy will not set it aside, unless the settlement is expressed to be made in pursuance of articles contained in the agreement, because the parties being sui juris, the Ch will presume they made a new agreement but when the presumption is done away by the expression used in the settlement, they will not set it aside. It has been said that these rules obtain only in favour of males not in favour of females. There is no reason for this distinction; it is now denied.

In carrying executory agreement into effect specifically, it is a great leading principle that Chy considers as
Powers of Chancery.

One that which ought to be done... the time at which the agreement is to be entered into, unless some other time is appointed. This rule leads to many important consequences so that it has been called by Sir Joseph Redfern

the "omnipotent rule."

When this ground is such that an executory agreement becomes a specific lien upon the subject of the agreement, it becomes a lien where the party contract about. Since the vendor is considered as trustee for the devisee, he is an "alius titui" or "lis trustee." Thus when it comes to convey the land to the court pursuant to such a lien, when that land--the intended purchased is vested with the equitable title--it is considered as trustee for B. There is nothing to legal title, but it may claim to obtain it out of the hands by applying to a lot of title.

In pursuance of this great principle, it is settled that if any person enters into any articles by which he binds himself to lay out money in lands, or if he device money for that purpose, then, the heirs shall have the money as real estate at the it was never actually laid out in lands. It is considered as real estate from the time of the articles entered into. It makes no difference whether the money is by itself or if it can be identified it shall go to the heir.
The same rule also extends to the incontant consequence of a woman before marriage. If a woman before marriage has bound herself to lay out money in lands, & the man she dies before she has actually completed the purchase, the husband shall be held by the curtesy of it. He may will order that the sum required shall be laid out in lands which shall be conveyed to him for life & then to children, or it may order that the shall have the interest of it for his life. The reason is grounded on some quantum certain by which it may consistently proceed.

It is now become a good rule of Equity - yet in this case if it had been husband instead of wife, she could not have been left an owner of it. In fact a husband may be left by the beauty of a trust estate but wife can't in blank of

Therefore, the money thus allocated to be laid out in lands will have in a sense no real property, in the other hand it will not pass as present interest to a LEGatee.

And it makes no difference in cases of this kind whether the money is identified, or whether it forms a part of the good man of his personal property - be both cases it is treated as land.

Lect. 7th. I observed yesterday that in this consider a donee who ought to be done, where money was agreed to be laid out in lands it will be considered as lands that may own to the order to agreement to continue - do I do intent to money to another to remain in his lands till it might be done if for life either to his daughter dies, it was intended
that the money was still nominal only for there was no act been agreed

first if a man should enter into an agreement to rest a certain sum of money in the public funds or in land upon his own at the election of the same, if before he makes it, say, a year, it will go to his next of kin. The

person bought.

All these rules Lord's concerneth for if a man

having land agree to sell it for money a die, it shall go
to the Crown on the act of it as present estate and duties.

This is in pursuance of the great principle that they consider as done is

It follows from this great principle that after an agreement for the sake of profit such an one as equity will enforce, the vendor under the articles should be liable for all the contingencies which happen to the property from the time the agreement is entered into, the vendor doing no fault.

Thus, as one corsswears to convey a plantation in lands

before the conveyance was made, the great earthquake destroyed it. It was held that the intended purchase should suffer the loss. At made an agreement to take a lease from B for three lives and to take a conveyance of a certain estate before the time arrived one life failed. A there he per

formance was enforced in title. The ground is from the
time the articles are entered into, the purchase is considered as a conveyance of the estate in the manner of the purchase money. There is a case in 26 Ch. 217 where the phrase

"While it seems to deny the doctrine of surrender, that it is more evident, as there is no recoverance of the specific performance of the contract, because it was a matter of mere title, a desire of avoid[ing]

"There is one of three cases from which it would appear that the doctrine was denied, but from examination you will find that there is nothing in it contradictory.

Pound remarks, if the contract is not properly a contract of sale, but merely a contract for a life-time agreement with respect to the subject, the party is not charged in Equity, but these consequences do not follow from it. By this is meant where the agreement is that one of the parties shall have the free condition of a life.

With regard to the rule that money advanced to be laid out in land is regularly considered as land from the time of entering into the articles, it is to be observed if the one who is to have the land when purchased it to be in the possession of it, he may at his election retain the money or have it paid out in land as he pleases.

Thus: A conveys to appropriate $5000 to purchase land in the name for his son. Son if the son dies, his heir in law will have the money. Still the son may waive the agreement if there is no objection from
Powers of Chancery.

The opposite party, if he does not receive the money will go to his loss. In this case there are no third persons who are to be injured — but in the case of a free tenant it is different, for the issue and remaindermen have a claim.

But still to take this case out of the general rule even when he who is to be benefited by the purchase would be bent in fee simple, he must show his election to consider it as money; for if it does not decide it, a contention arises between his heirs who it shall be considered as Land. It is necessary then that in some way or other he manifest his election — thus if he declare in his will that it shall go to his son or son, shall go. If it devolves away as to much money appropriated for the purchase of lands, it will go to the legatees. To hand proof of fact or his own declaration that he intended it should be appropriated in the purchase of lands is evidence of his intention. So if the legatees want of the money for this is to rebut an equity. This election is confined to the bent in fee simple. It personal lives with him. As between his real and personal representatives one cannot make an election in reference to them others. There are the leading distinctions on the subject.

I should yesterday that the great principle was that if the consideration as transferred from the time of entering into the agreement, only in those cases where an equity will arise in specific performance.
Powers of Chancery

A want of mutuality in an agreement is a decisive objection to a decree for a specific performance in chancery, for uncertainty in the terms of it, which would make it void at law also. Yet at law more certainty requires where, where A agrees to sell an estate to B for £1,000 less than to any other person, B did not bind himself to take it. Upon a Bill for a specific performance it was admitted for two reasons. It for want of mutuality, No body knows how much £1,500 less than any other purchaser would give, is 1/3rd for want of mutuality. B has not bound himself to take the less.

But if the agreement was originally mutual, no subsequent event which occasions a want of mutuality however laid it may be will be any objection to a decree for a specific performance. This is evident from the case cited before where the subject of the contract was entirely destroyed.

And where the agreement was to convey an estate in consideration of an annuity, before the first installment becomes due, the annuitant dies, the Chancery Court requires the party to convey the estate.

And where there was an executory agreement for the sale of stock at an enormous premium, to be given, stock being high before the conveyance was made it fell to below a specific performance was decreed in chancery - any clear rule of remunera...
Powers of Chancery

This you must recollect to the power of Chancery to enforce the specific performance of executory agreements.

With regard to Penalties.

I observe that in at least will not suffer an advantage to be taken of a penalty. As it considers only as the means of enforcing the contract.

From this it is laid down as a rule that when application is made to this for specific performance of an agreement, the non-performance of which may incur a penalty, it is necessary for the party in the suit to move to enforce the penalty, else the suit will be determined. To such a suit the defendant must be joined to answer, & the reason seems to be this, that if he answers & confesses a violation of the contract the other might resort to law & when the confession of the defendant of the whole penalty, the reason is not because it is necessary to enforce the penalty that they may not enforce it for this they never do.

It is not universally true that they will not allow advantage to be taken of a penalty — where the substance of a contract may be enforced without the penalty, they will relieve of it, by an injunction of necessary in such case will never enforce it — as in the case of a penal bond.
Powers of Chancery.

Were they when payment of principal interest & costs will occur the subject to assist from an actual breach of the contract does it happen that the substance of the contract can be enforced with the penalty?

I observe that in good where a compensation can be made for, or breach of the condition according to a clear rule of damage, the subject of the contract can be enforced, as in the last case of an annual bond. There is a perfectly clear rule of damages in this case.

So in the case of a mortgage, this is not considered as a purchase, but as a pledge. With the accident the payment of the money to the principal. Here then the object of the forfeiture is obtained: by the payment of the principal interest & costs.

LOCHIE 8th I observe yesterday that they would not suffer advantage to be taken of a penalty, where the subject of the contract could not be enforced, so that the substance could be enforced where the rule of damages was clear.

I would further observe where there is no rule of damages they cannot relieve of a penalty. In such case then cannot be any compensation according to a clear rule of damages, as where the tenure cannot not to relieve with the consent of the lessor but a penalty in annuity were of the lease-there is no other adverse part of the lease to which they cannot relieve of it, because in this case there cannot be any clear rule of damages.
Powers of Chancery

If this is a rule of damages, a new reason of intervening events, no compensation can be made as a substitute for the penalty, they cannot relieve any of the penalty.

As where it in marriage articles agreed that if he did not settle a jointure upon the wife within two years, he would forfeit his marriage portion, if he died before the two years expired, here the jointure would be the rule of damages, yet the wife is not alive to receive the compensation.

According to the rules then laid down if there is no rule of damages in which a compensation may be made, or if there is a rule yet there cannot be a compensation. By reason of intervening events, they cannot relieve any of the penalty. These rules are not inconsistent with general law but subordinate to it.

Where one party voluntarily stipulates an advantage in favour to another on certain conditions, the latter must lose all advantage from the stipulation unless he strictly adheres to the condition, else they operate by penalty.

Thus if a creditor agrees to take ten per cent his debt to be the debtor will pay it at a certain day, he must pay it on that day or he loses all advantage from the agreement. The stipulation on the part of the creditor plainly protects the condition is in the nature of a penalty, but it strictly does not in the case like this of partial maturity. With this will compel a man to be just in spite of a formal bond it will not compel him to be counterfeit.
Powers of Chancery

It is also a general rule that where the writ returns, if a penalty is due in favour of one party, it will secure its performance.

And on the other hand, when it will not return, if a penalty, it will not enforce a specific performance. This is founded on principles of justice. If one acquires the benefit of the advantage he might take of the penalty at law, it will compel the other party to do him justice, i.e., to perform the rest of the agreement.

If it consent to convey land to the under a penalty, they will receive all the penalty, at the same time compel a specific performance.

So on the other hand it will not decree a specific performance where it will not return, if the penalty, because the penalty in the substance of the agreement is therefore good everywhere. Justice does not require that relief should be had at it. The party can enforce the penalty at law, which being the substance of the agreement, this will not interfere, because it would give the party a double advantage.

It was formerly holden that where an executory agreement contained a penalty, the party bound had the election to do the thing agreed to be done or perfect the penalty. This is now the rule at common law, but this may be the one or the other case in this. It is
Powers of Chancellor

Thus laid down by Lord Thurlow: Where the penalty seems to be a security for the performance of some thing collateral to that the enjoinder of the collateral object seems to be the one intended to be secured, they will relieve of the penalty on one side, to enforce performance on the other. This rule must be understood with the qualification before mentioned, viz. whenever the circumstances are such that performance on one side cannot be enforced, or where the substance of the contract cannot be enforced with the penalty, they will not relieve of it as to the said rule, see the case of a grace bond which is merely in honor.

To in the case of a mortgage which is in the nature of a penalty.

Relief is generally had by an injunction ordering the breach to cease for the penalty of $50. This however is not done unless the other party does what he is bound to do.

But where the same to be had on the non-performance of the agreement is in the nature of personal damages, the court relieve of it. In such a case as this the penalty is not considered as a security for the collateral object, but as a compensation for the loss suffered by the party bound by the agreement. As this is his election either to perform the agreement on his own stipulated as a compensation for the non-performance were the court to apply,
Powers of Chancery

Thus, where in a case the lower court treated a person who had the right to recover for every acre of meadow on the estate of another. But could not return of it, because from the structure of the agreement it was evident the effect of it was to be an absolute right, the court will not injure the nature of the damage. In such a case they will not decree a specific performance, nor enjoin the party not to plough.

But if the lower court said, "I agree for myself to not to plough meadow" at the close of the present a penalty is imposed, then the court will enjoin the party not to plough, if he should plough on the same principle it would relieve the damages.

Thus, much of the nature of the difference between a penalty and the penalty is considered to turn in the nature of the damages. Whether the sum in the one or the other of these, depends upon the construction of the whole instrument. Its object must be the same to make sense consistent.

I said I said it came from where in a certain statute for a limited time the work was supposed to be given. The law knows nothing of the damages.

But now by Stat. 317, 46, Mary. 49, 18 I, 466.37

Of Law and in certain cases allowed to Chancery jurisdiction.

The penalty is usually double the sum due. It is very

Valuable to ascertain the damages.

In this some cases have been chanced by lot of law.

Under the equity of a Stat.
Powers of Chancery

With a lot of equity, unless at General Term, presently does an issue of quantum damnum curat at Law, decrees according to the verdict. In many cases this is not necessary. But in many it is absolutely necessary, to get it for breach or non-performance of conditions, or where the damage was in any degree accessory. In this case the remedy
never does, it indeed he cannot assess the damages.

Sec. 9. There have been considering the cases where they will recover the specific performance of contracts; and the Equity exercises the power of setting aside agreements in certain cases. Suppose there have been that when Oly sets aside agreements, the relief is specific. In Law where a contract has been suitably obtained, after the law enforced the contract it will give the party damages, but Oly will set it aside. The relief is therefore specific.

Suppose a Bond is fraudulently obtained from another. Here is a lot of Law, fraud was not statute, but a recovery may be had on it. Yet a lot of Law will give damages. For the other case. But in Oly an injunction will issue to prevent an act on that Bond, the remedy in this case is superior.

It does not follow Roman, from a lot of the requiring to decree a specific performance, that it will grant relief of the same contract. And if it claiming under an agreement presents a bill for a specific performance, it is dismissed, it does not follow that by a bill may have this agreement rest and be Law it is not so. The contract is
Powers of Chancery.

It cannot refuse to interfere. But it is discretionary with the Chancellor to interfere or not. There are many cases where only it can interfere.

Thus, in a Bill for the specific performance of an agreement it appears to the Court to be unreasonable on the part of the debtor, it will not decree a specific performance unless it is not attended with fraud, or the thing will not serve any purpose in such a case.

There are many more cases where only will not decree a specific performance than there are where it will set aside the agreement.

If, in obtaining a contract, a good ground for setting aside is unreasonable, so it will not set it aside, and it is often attended with fraud, although every species of fraud will not set aside a contract.

Even, in the case of executory contracts by fraud, a Bill of Sale cannot refuse to carry them into effect by reason of fraud in the consideration.

A Bill of Sale is good by reason of this misrepresentation, gives more than doubt the real value when no value for the price of those goods, it will be no bar to a recovery that misrepresentation was made.

Obtained by fraud—then it is a great rule that it will relieve of contracts obtained by imposed Landship.
Powers of Chancery

In the mortgage a mortgagee agrees that if the interest is not paid at such a time as is annually
the interest shall be added to the principal to become
principal itself, by which means at
But if such an agreement as this is made as
between mortgagee and mortgagee, it is afterwards
freely satisfied by the mortgagee, in knowing the extent
of his rights, that so can be relieved of the suit will not be
set aside. The agreement is not void, but only voidable
in equity.

In a lot of some contract obtained by any kind
of coercion not amounting to duress, is good, but
only any degree of coercion was to create the fear of one
of the parties, I cause him to act under the impulsion of that
fear, if it does not amount to duress will not set aside the agreement.

A portion of will relieve as a contract which
is deformed is also unlawful, as every previous contract
is, there are two grounds for relieving such parties,
theirship.

But the rule is different to illegal contracts where
both parties are equally guilty. The manner in which
its injury. Only its nature in suit a case, i.e. that it will go
as further than a suit in the case of an illegal
contract both parties are held in the wrong, in the case of an immoral
contract, but one party is crim at the scene. The Law says
not been the crime or guilty.
Powers of Chancery.

In cases where the parties act under a misconception or misunderstanding, or where there is a misrepresentation as to the value of the subject of the contract, the court will not enforce it, but on the other hand, will set it aside.

And a misrepresentation of a material truth, to the disadvantage of one of the parties, forms a strong objection to a decree in favour of the other party.

In cases of this kind, where the court has held a bill for specific performance, and it should appear that it could be but for setting the contract aside, it could be granted.

And in some cases where the parties act under a misconception or misconception with any fraud or unfairness on either side, the court will not only not decree a specific performance, but will order the contract set aside.
Powers of Chancery

As where an agent to sell an estate sold it at a less value by a mistake in the quantity of interest if was a free Lord, it was sold as a free Lord.

The rule on this subject however is, if the fact misconceived is the cause of the assent it will take effect, but if it was such a mistake as could not have prevented the contract from being made as it was made, it will not be set aside.

Here is another case which is a very strong

computer one - to a man to make, the misrepresenta-

tion arose from an ignorance of law, in such a
case they will not guilty in the place. The case is this:

one of four brothers died leaving a free simple estate.
The other brother claimed the estate as belonging to
him, the youngest brother claimed it as belonging
to him. They agreed to leave it to a friend who
had been in a book of that inheritance, always
descended gave it to the youngest brother. In consequence

of which the oldest brother entered into an agreement to

divide the estate with him. Thereafter being better

advised he had a bill in chancery to be relieved of the

grant. This is contrary to the general rule, both in Law

and Equity. For if an agreement is written differently from what

was intended by the parties, relief may be had in Law; but if

there is a misconception in Law relief cannot be had
Powers of Chancery

...it is a just rule that they will not enforce a voluntary agreement. Such a one is not binding at law. The interference of the Law is for the sake of giving more adequate relief than a Court of Law could do. But in the case of Law could give no relief, the Court will not give any - for it is a just and equitable rule that the Court will not interfere where Law will give no relief.

But the compromise of a doubtful right is a legitimate consideration to support an agreement, whether it be a consideration, the agreement in equity to unenforce a voluntary...

Thus if an agreement is entered into between two persons, to settle the boundary of their lands, they will agree on a specific performance - This was the case written the Baltimore & Westminster case where in no agreement to convey three to money but could show that the agreement was voluntary. This case may be relied upon the minor is being analogous to the case of the Schoolmaster, but that involves no stipulations - a mistake in line of sight from the word a doubtful right. For in the latter case it may not be a matter of fact, but a matter of point which is doubtful - it is mere a matter of law. But if it is...
Powers of Chancery

When a suit is brought for one's benefit by consent, and one, instead of being able to defend, may be set aside. So if there are obtained by means of undue influence they may be set aside. Then where is for a treaty of marriage between A. B. being a minor, the guardian would not consent to the marriage unless the father would release the liability for the same. The benefit of the wards while he did it. Only set aside.

But more practical these concessions are neglect itself, a second on which relief may be had. But if the concession is made for the benefit of obtaining the consent, it would be set aside.

Intercourse in the party at the time granting into the contract is not a sufficient ground for setting it aside. Unless the party claiming the benefit under it judged the intercourse for the duration of obtaining it. The ground of benefit would be found under the intercourse for it.

And if one party should get the other intercourse they make a contract and if they all with a joint one, they will not enforce it. Because it came into this without them. Because it would not make it void on the power of position.

Again, mere weakness of understanding of the party.
Powers of Chancery


In legally conclusive matters is not permissible for either side to act in such a manner as to make a contract or to discriminate the parties in the interest of men. The various states of the nature of the matter and the effect of the understanding between the parties. No rule or doctrine can change this.

Section 10

It is to be observed that agreements derogating as a fraud or with fraud, are always set aside. In many cases the courts give relief when nothing intervenes therein. The latter case

Now 185, 174.
1 Pq. Co. 38.
1 Co. 156.
1 Term. 348.
2 Term. 375.
P. 95, 286.
2 T.R. 168.
2 Co. 103.
1 H. H. 342.
856-7.
Powers of Chancery

And where the agreement to sell the land agreed to be taken in lieu of the ground the Banker did induce some more rigid care to appurtenance than before in the agreement was indeed that there was a fraud.

Contracts of this kind do not admit of subsequent ratification. They are not in the same sense irrevocable because if they could be ratified they might impose a fraud upon third persons. When a fraud is practiced by one party to an agreement on another the other may ratify the agreement of the lesser. But it must appear when third persons in an agreement can never be ratified.

There being a treaty of marriage depending too was an objection on the part of the intended husband to relations because the wife had not was not large enough - it was agreed by the husband that he would execute to be a bond for $500. If one done or the clandestinely gave an instrument by which the agreed to deliver up the bond. To that the gave a release of the bond had it affected the parties were married afterwards the husband had his bills to set aside the release to it was set aside.
Powers of Chancery.

On the principle that marriage breaks all contracts, are void. There are such as where the party agrees to give another a certain sum of money, in which case the money is not void because they lead to fraud and undue influence in representation. It is true, however, that in such things I believe a Law which would be void.

Contract with heir at law, except for three cases:
- Where one is always in error, or, formerly they would not set aside under the terms of the contract.
- Where the contract is disadvantageous to the heir. But the rule is now altered. They are radically defective. All the cases where the heir at law was an infant or not at the time of making the contract. This rule is founded on consideration of good policy.
- Termination of contract by dissolution of sale to wife. They render heir independent of their ancestors' estates.

When either of parents.

And if after the death of the ancestor, the heir should perform the contract by actually conveying the inheritance. Only will in many cases set it aside; however, the rule is.

The rule is, if the original contract is shown to be fair, and if the contributions are satisfied. Likely, the heir has little knowledge that it might be set aside. The satisfaction must not be set aside—otherwise it will be the...
Powers of Chancery.

In one year. Old will not enforce a contract to do anything which will tend to of premission of faction or immorality. The thing itself need not be immoral, if it would tend to immorality it would not be enforced. I should think when a Bill for that purpose it would be not made. The case cited to establish the rule is one where the defendant to enforce a contract the bank would not enforce it.

In the same case the contract also stipulates for an assignment of the stepson office. This was not enforced because it tended to immorality, but it was not.

Then for the power of party to vacate or set aside contracts.

Why exercise the power of Decree a set off a Thirmam unenforceable to the Laws. Law. At Law the contract are entire & distinct, as where A owes B $1,000 for note 11% note at 8% for the contract. American note at 13% against at time. Law in deed a set off of this debt $1,000 by note, but two states 298 year. B he can this right. But they can decrees a set off. These suits are et cetera necessary where one of the parties is invalid. They will not always former decrees a set off.

In time. This is in the constant practice of decreeing set off.
Powers of Chancery

It is incumbent for a C of L in whom any principle of Law exists to consider a set off a any defence they have and to consider whether the contract was made whether it is a good one I whether it has been discharged. Because if the party had a debt of the C's then he is no longer or discharge the C's Debt.

Under this Stat. The subject of O.S. proceeding original proceedings in Equity are to be but before the Court actually when the money demanded exceed $5935 between the sum $500 due to take notice under $100 less I if I think there is no case but before they are where there was any objection that the sum was too large I indeed the exemption in the fact that the Crown

by their own opinions over $5935 as a discharge to the

in one O.S. proceeding there is no appeal from one lot to another but a writ of error will lie I the time is no writ of error but an appeal.

Here the value in question is doubtful the alleged value determines the jurisdiction

Powers of C by to give injunctions

The nature of an injunction has not yet been explained. An Injunction is a prohibiting writ the object of which is to restrain a person from doing a thing which is or to lie contrary to equity or Conscience.
Powers of Chancery

Injunctions are issued in a variety of cases. The most usual mode of injunction is not to issue of a bill to stay proceedings in some suit at Law, but this issue when some equitable ground is admitted to exist of Law, i.e., where some grounds, upon which a bill of Law cannot be brought, exist in the case of a bond, which is sued in a suit of Law. The defendant may bring a bill in Equity praying that an injunction may issue to stay proceedings upon praying principal interest + cost. But the court may issue no injunction in any criminal case whatsoever. The right exists in cases of the wrongs already done or done. Only may issue an injunction to stay waste, i.e., to prevent him from committing waste—such as cutting timber, demolishing buildings, etc. Lot of cases. Law can only give damages for the waste committed. But Equity may give a preventive remedy. The damage given at Law may be very inadequate. This injunction may issue either in favour of the complainant more or less.
Powers of Chancery.

But an injunction to stay waste will issue not only in these cases, where an action of waste will lie at common law, but in many others. In some cases waste lies only for the immediate remainder man or feoffee - in others a remote one may have the injunction. The reason in the former case is, if it would so at law; in the remote remainder, man would destroy all the intermediate remainder men, for he would receive the land. But in Equity the land is not divided. The injunction is only a preventive remedy; it does not bind the remainder men nor reversioners into loss of the land.

An injunction to stay waste will issue in Equity in case of a mortgage. A mortgagee inpossess can undo the deed by the mortgagee in an act of waste. For he may commit waste — but in Equity, the mortgagor loses only the equitable estate to which on he cannot commit waste. An injunction will therefore issue to stay waste — and it would interfere in the case of trustee for example, even if it were to be in the down and applied to the legatee of the Debt it would be the foundation of an injunction — at any rate if not so applied, it will issue.
Powers of Chancery

In the other land an injunction will issue in favour of the mortgagee of the mortgagee. An
injunction will not lie at common law because the
mortgagee is considered as tenant at will. Hence
when it comes to waste, he immediately determines
his estate. He is then in trespass, the privy of
contract being gone. But City will issue this
injunction for the mortgagee has no right
to diminish the value of the pledge. Since
a remedy maybe had at law in an act
of Abatement, but this might be inadequate
again an injunction of waste may
issue at law for life with impeachment for
waste as the case may be. At common
law no act of waste would lie with impeachment
for waste.

For cutting timber an injunction will not
issue. It will issue only for great and outrageous
acts of waste.

And in a case of this kind if the committee
waste by demolishing a partly demolishing a building
Powers of Chancery

Wm. 738.  Only will decree a specific relief for the injury
done, by ordering him to refrain the building 
and it in the plight in which it was:

And an injunction may sometimes issue 
to stay waste of him who has the inheritance 
at Law as a Trustee. See at law. If the 
act of waste has authorized him who has the 
inheritance of one who has only the estate 
for life or years. And the trustee has the 
inheritance, because the cestue que trust is
not known at Law. His title is a mere equity 
and not. If so, Cliff will order the trustee to perform 
the trust, as to convey the legal estate on to 
the waste which prevents him from violating 
the trust.

so act at Law will vest the title after possibility of issue extinct. But this 
in the case will issue an injunction to stay 
waste. This may is in the same plight with 
the waste is outrageous an injunction will
issue.
Lect. 11

Injunctions may also issue to restrain nuisances-as if one is about to raise a building which will obstruct ancient lights an injunction will issue to prevent it. As damages might be given when the building was raised. The lights must be ancient or no remedy will be had either in Equity or at Law. Ancient lights are those which extend beyond the memory of man. The right must be grounded on prescription or agreement of the parties or those under whom they claimed.

It may be here observed that the lights are not in point of fact ancient lights within the term yet where one has built at the lights took when another land is they have been enjoyed a considerable length of time a jury will presume an agreement.

An injunction may issue to prevent one from building on another's ground.

But will not however consider as a nuisance for the purpose of issuing an injunction, that which a rent at law. Law a nuisance for the purpose of

chaining an action.
Powers of Chancery

are the ground an injunction will not issue to prevent one from building a post house, for that is not a nuisance at Law. Law—

A writ of injunction will not issue to stay common trespassers, because damages given at Law are equivalent. Yet if they are continued for a length of time to as to become a nuisance an injunction will issue. But which in the instance was a mere trespass may by continuance become a nuisance an act will not be at Law as for a nuisance when it is a mere trespass.

Relief of our unconscience bargain or agreement is effected by an injunction, it where the remedy of the Deft at Law who is Cliff in the Bill

v 65 76 79

v 86 79 79

v 174 1—

Deft in the Bill an injunction will issue to stay the trial—

So also in cases where one Defendant in a lot of Law is not a Law to another between the same parties & there have been several Defendants all in favor of the same party & suits are still but if will issue an injunction to quiet the title of the prevailing party—
This is the case in an action of ejectment where the nominal defendant may be a tenant at will. The name of the tenant on the record may differ from the one in action, but the tenant may object to the suit for the same reason. It was once held that the plaintiff could not interfere in such a case, but the decision was reversed.

There are also other cases where an injunction may issue to quiet a person in the possession of his estate; as where a belief equitable title has been in possession for a long time—a century, for instance, who has had the possession for many years.

An injunction may issue except in the case of ejectment to prevent a multiplicity of suits respecting the same right. Where many suits are pending or are likely to happen, because one act cannot settle the question, they will issue in such a case. Thus, to quiet a question within its own jurisdiction is to settle it at once — as where there is a verbal tract of a manor claiming the profits. As where a multiplicity of suits are about to arise respecting the boundaries, the court will settle all the matters and settle the question at one
Powers of Chancery

and it was on a principle analogous to the fact.

One of concurrence of causes was decided in case 1 of 1791.

that where there were more than two parties or, on the

great would not lie of one of them, it would tend to

multiplicity of suits.

To also an injunction may issue pending

a controversy in the ecclesiastical clo

between two or more persons claiming to be Est by a third.

Power to restrain them from acting as Peces

until the right be determined. There is no other

way to prevent them than by applying to the

An injunction may issue where one

person invites one literary work of another. Many

issues in part of authors an invention to restrain

other from publishing their works or imitating their

invention. There has been a great sensation whether

at Com. Law there is an exclusive right to

literary work. I decided in R. D. Don. Rec.

The former decided 6 to 5 that the Com. Law

remedy took away that suit. The latter said

marriage was among the 5. Therefore think

the weight of authority of the last decision.

P. Hitchcock

S. C. Hitchcock

Sam. Hitchcock

I. Sam. J. Hitchcock