Who may maintain an action?

10.

Action of Trespass for injuries to personal property b 3 to l 21

Action of Trespass on the Case arising ex Delicto b 23 to b 81

Rebêvein b 61 to b 82

Prerogative Writs—Mandamus, Prohibition, Habeas Corpus. Page 82 to b 104

Readings b 104 to b 401

Readings in Chancery b 401 to b 456

Public Wrongs b 456 to b 535.
Action of Trespass
for Injuries to personal Property.

The action of Trespass is here treated under
a decision different from that found in my books,
where it has been included under one head,
which has here been divided into 3 heads.

I Trespass to y Person, or assault and Battery,
and False Imposition.

II Trespass to Real Property as Duere Clausum
Segis, or duere dominum segit.

III Trespass to Personal Property or things
Personal which is about to be considered.

The Term Trespass in its most comprehensive
sense, at Lk denotes any transgression of
the Law, short of Trespass. Felony & Misdemeanor
of Trespass, so yet it includes all Misdemeanors
as well public injuries. 3 Dea. 308. Bac 167.

But in a less comprehensive sense it signifies
any evil among committed with force to y
injury of another person, or property, and in this
sense it includes assault and Battery, False
Imposition, or any forcible invasion
of another’s right, of property Real or Personal,
and y more general acception.

The class of cases now to be considered comprehends
only forcible Injuries to personal Property of
another. So Trespass to y Person is Assault and
Battery or False Imposition.
The rights to personal property, it will be presumed are subject to 2 species of injury. 

I. To its abuse and damage by chattels involuntarily while its possessor continues in its legal owner.

II. To their amanet or deprivation of profit.

3 P&L 145.

Personal property may be injured in a great variety of ways without altering a profit or killing another animal, by mortening him or inflicting a personal hurt on him or wound upon them, or by any other act or general, such taking away from the value of a chattel. 3 P&L 153.

The remedy afforded by law for even such abuse, while its ownership continues, of such act committed with force and immediately injuring it is action of trespass, sometimes called trespass vi et armis, a qualification appended to a bond to distinguish it from trespass on the case, yet its alteration is wholly unnecessary and technical. 3 P&L 153. Holt v. Leck. 3 P&L 158.

The action then lies only for such immediate injury as are committed with force, and wherein injury complained of is immediate consequence of a forcible act. For any remote consequential damages accompanied by any tortious act trespass or case is the only remedy (i.e. bench or law) because the latter action excludes the idea of force.

Further distinction, Poot.

As of a man creates a nuisance by throwing a log,
int y street and go log faling that strikes y honor of B. or injure his property, y remedy is Trespass.
But if afterwards y body is at rest and B. in traveling had hurt himself or horse or his carriages by want of care, Trespass, on the Case, wald be of another action, for the latter consequence of forces such consisted in throwing the dog into y street.

If y party mistake his remedy by bringing Trespass when he shd have bilt case, or case when he shd have bilt Trespass, y fault is radically incurable.

A verdict in y Plft favor, where there is this defect on the declaration, will not save him.

6 Tre 125, 2 Mod 131, 2 Pll Ch. 141. 95.

The reason why such a mistake was fatal is derived from 2 different species of Injuncty originally rendered at Law. In like cases. So when y Plft recovered in an action founded on force, y Judgment was a "Capitation pro fine" in virtue of wh y Plft was taken into custody and imprisoned till he paid his fine. But where y injury committed was without force or in obedience, he. y Judgment was "in manus iudex", and a mere nominal amercement was laid as in Case of plaintiff. And now the ye cause dont obtain in practice at present, till it is y general foundation of y distinction between Trespass and Case, and y incurable quality are both mistakes in choosing ym.
It has been said, at p. 24 Sec. 8 of Injury to Personal Property, so far as they are remedied by the action, is motion or dispossession of your own goods, or an unlawful taking away. For an unlawful Detainer or Conversion of goods is not remedied by this action, but by Trover. Detainer or some action on the case, for an injury then consists in the nonfeasance, and not in misfeasance, and this omits what price. The action of Treason cannot lie, 3 Bl. 132.

This action must be to recover a specific redemption of goods, but to recover damages.

There is, even in every case, where Treason will not lie for an unlawful Taking, nor any other action at Law of a Taking of Goods, as herein, and a reason is. It is a question of power, and does not depend upon either Municipal law, or a Land, but on the Law of Navigating, and is triable only in a Court of Admiralty; where a party injured, must seek his remedy, and not at Common Law, 3 Bl. 6.

But taken in General Acts laid down, there are some instances, in which the original taking was lawful, in such cases, as yet there any authority to take another as goods, as given by the Laws itself, a subsequent forfeiture abuses of them. makes every Part so doing, a Treason, or "ab iniuria", or as it is sometimes called "by Relation" so that he may be subjected in a new charging, yet he unlawfully and with force and arms, took and carried away your goods; when in point of fact, there was no such forfeiture and unlawful taking away, Bulst. Cro. 314. 1 B. 20. 3 Hil. 20. 1 Tac. 12. Cro. 283. 482. 283. 1281.
As if a man's leave is taken as an Agent, and
determined Damage Servants and a party taking part
of amends to labour, not only while an action lies to
him, but an action of trespass as for a taking
what authority and illegally, and yet a taking
was legal. Those y def. becomes trespass by Relation.

There are various examples of ye kind, in form
exceptions to y General Rule.

If a traveler enters an Arm, and he has a Legal
right to do, & afterwards commits a Trespass, as
if he steals property, not involves a Trespass, he becomes
a Trespass "at initio" and is liable in this action
for forcibly entering and seizing y goods. And
y original Entry was by license of Law. 221 84

So if y Shf. having taken goods on Cdt. scarce or
destroys ym. he becomes a trespasser by Relation, for by
y subsequent act, y Law Judges "for amano" y first
entry was made, or 822 levied.

Thus it appears that y doctrine of Trespass by
relation is a fiction in Law. Talk 221. 8 84 46.

The principle of My Rule is. yet in every such case,
y subsequent wrong extinguishes a reapplicant y license of
Law, and y wrong does, is adjudged to have done,
y original act, not in virtue of y knowledge given
herein in Law, but for y purposes of committing y
wrong. Thus in y cases of a Shf. seizing property
under y Cdt. and afterwards applying it to his
own use, and the traveler who enters y Arm,
and afterwards committed a Theft. These subsequent
offenses "for amano" y license and authority of
Law were excused.
But to constitute a trespass by Relation, a subsequent abuse must be of a tortious character, as Misprision, and not merely a NonSeuance in itself a Trepassing act. Hence if a traveler under circumstances above mentioned, instead of trying, she adjures to pay his bill, that misprision being but an mischief will not make him a trespasser originally, and in this, and similar cases, a subsequent abuse is remediable by case, except when Detinue will lie, 2 Pet. 4 Pet. 33. 1 Pet. 2 13.

There is one case, which has been supposed to come within a case of Trepass by Relation, and to form an Exception to it last rule. It is where the Plaintiff having taken goods in lawful process, don't return it, but, when the law requires it, and it's barely subjected, as is supposed, as a Trepasser by Relation.
2 Pet. 05. 5 Cal 459. v. St. 632. 5 Barr. 162.

This case has many times been treated of, as one in which the Plaintiff is made a Trepasser by Relation, but that is undoubtedly an Error for Rule already laid down, requiring a tortious fort to constitute such a Trepass, admits of no Exception.

The Principle of the Plaintiff's liability, is yet y precedent not having been returned, ye due from, is VOID, and therefore not legal, but of y lawfulness of y original taking of not, y only proof ye can be offered, is ye y breach itself, under which it was made, and that in this case not being matter of Record, from y want of a Return, ye no Evi at all, it is a Mere Carta Blanche, from which it don't appear, yet y original, acc
was done with authority, this case therefore don't arise an exception to a General Rule, as to trespass by Relation.

On ye other hand where ye owner of ye property gives another license to take his chattels, ye latter can never in general be a trespasser by Relation, for any abuse of that license - This Rule is not universal.


If ye gives 23 authority to take his property and 23 abused it, it has in his remedy in trespass but in trover -

The principle of ye distinction in these cases, where ye license is given by Law or by consent of ye party, is this, that in ye former case, ye law conferring ye authority, without ye consent of ye party, who may suffer by it, will protect him from the abuse of it, but in ye latter, ye sufferer himself having given ye power, whereas choosing to whom he will entrust it, if his property must take action himself y abuse of it -

The Rule last mentioned holds in ye common case of Bailees with one exception, for if a Person to whom goods in Personas shall have been delivered, by the owner himself, wantonly destroys them, she action lies to him. Here y Bailee becomes a Fodderer "at inicio", for such a wanton accosting either the Bailee, and shows that he took y goods originally not for y purpose of doing charging his duty, but with intent to destroy ym. and therefore cannot avails himself -
Who may maintain this action?

He and be only, in which y 

step was done 
y
actual or constructive, in fact or in 

law, at y time, y 

injury was done, for it is immaterial in 

which it is at y time of bringing y action. 11 El. 480.

7. ibid. 489. E. 639. 11 El. 380.

It is asked why Interest or property alone would 
support this action? It may be answered, yt

Trespass was framed for injuries to Property

and not alone. When one has Interest, he can

not mention his remedy. He he cannot maintain this action,

and the reason is y same, as why debt will

not lie for a Trespass, because debt was not

framed for Trespass.

Hence if a lets a chattel to B. as for six months,
to be used, De dec. 4 Palk. 489. In this case

for Trespass held, that Trespass was lie, lie,

but subsequently 7. El. 3 a different decision

was had.

Constructive step in y. PLL at y times of y

commission of y Trespass, is made, as ws a Stranger,

but not vs a Bawice for he has a Special

property. Hence if a deliver goods to B. as a

mere depositary, retaining a right to demand

them whenever he please, ys give him a step

in law during the whole period of y Bailment

and if y goods are taken by a Stranger he may

maintain Trespass vs him.

To of a Common Carrier. 4 T. 489. 7. ibid. 3.

1. ibid. 480.
Yet if y' Bailee a cans or had converted goods to
his own use. It did not have maintained. Ursin. In
hme, for he is not a stranger to y' Property. I because it
was be absid to say yet to Bailee. y' Bailee
had y' iPods when ye y' former. has both y' actual
Fos and y' right of iPods. and y' wrong complained
of is a mere breach of Trust. The constructive
Fos of y' Bailee is only on ye y' Stranger, for
in a General Rule that any person having the
Genereal Property as contradistinguished from y'
Special Property may sustain y' action, is a
stranger. The Reason of wh whi is abundantly explored
Lzech 214. 1 Rule 26b. 1 Tha 4882. 2 Role 537.

And here to avoid mistakes or confusion it 's
not to be recollection, ye The General Property must
be adecumme with a right of Present iPods.
For without y' qualifickation it cannot support
this action. Of it however in each case y' Bailee
may maintain a Special action in the Case
for y' Tresury done to his beneficiary, Interest
1 Ch. Bt. 187 3 Lev 207 3592. 2 Bll Bt. 133. 4.
8 Bohl. 432. 4 Tha 380.

Case don't require iPods either in fact or law.
It is a General Rule adapted to y' circumstance
of every Case. Bul 357. 7 A. Bt. 976. 17 B. 58.

As between y' owner of goods and a more Stranger,
This distinction don't exist. For if there be iPods
actual or constructive. Tresury will lie
n' without either. 1 Tha 480. 7. Tha 8. 4 Tha 483.
Tresury will not lie. These Tresury iPods are
Concurrent
The who has a Balcace property with an actual
may bring this action to a Stranger. In the books
this has been held only of a higher class of Bailor
But now it extends to every Balcace. A lawful
loose alone presuming some degree of property and
gives a right to go action. The Draf of a Balcace is
lawful. Co. Lit. 504 & Co. 84, 2 Iam. 47.

An agitating Farmer may bring Treason for
an unlawful Taking of y cattle. He is bastioni
at this. Vide Bailor

If a Balcace of goods deliver them to a stranger,
y Bailor cannot maintain this action to a
Stranger for accepting them, for a acceptance
is no Treason, and he having received them
from one who had the lawful poss. is not a
Tort Treason. But if y Balcace had no authority
to dispose of y property y Bailor may recover by
Trespass after a demand and refusal, and here
y wrong consists in y Delinter not being a more
distinct, a bastion but not a Treable Tort.

Bac. 164, 76. Trespass. 3.

When goods are sold or given to one, he may
have Trespass. No a Stranger for taking ym
before he has actual poss. 2.

However if Treas. be by Gift, it must
be something more than mere paper. It must
possess all y qualities necessary to keep y right.
The Trespass is founded in Poss. 2, is general
property being in y Donee and vested after it
right of poss. 2. But in y case of a Sale
a Gift, not the delivery, y benedec or Donee
can't maintain Prophasis. as Vendor or Devisor.
for y poss. of y Devisor or Vendor. was originally
lawful, and y assign. complained of y Profollowing.
to deliver. y retaining of y goods. was y unjust-
taking. Hence after y demand. this was y proper
terms. Talk. 214, 3 Bae 146.

If goods belonging to a Testator be wrongfully
taken away by a stranger, before y Bill is
sold, y Ee may tamen maintain Tres passa.
after it is sold, provided he has a Probate
at y time of declaring and it in y possession.
yt he had not a letter when y taking was
done. for y Law he had a Constructive probate
upon y Testator, before y proving of y Bill. nor
does y Probate create in the Ee any Interest
or right, but is Ee only of that right... an
Ee unless Indemnible. 2 Bales. 268. 17 Rep. 480
3 Bae 164.

The Legatee of a Specific Chattel may support
his action for any Trespass. after y Ee has
answered to the legacy. but not otherwise.
(Supra.)

But a Legatee cannot maintain an action
for goods bequeathed before actual delivery, even
after the Ee assign. his y legacy be Specific.
for before delivery, there are no goods in
particular. this belong to him. (Supra an
Testator here)
If trespass be for goods belonging to 2.
persons, tenants in common, both must join.
as Plff and if either sue alone, y Def may
defeat y action by pleading y
Non-joinder in abatement, for if he plead to
y action as y General Issue, y Def will
prevail, and y reason is simply this, y fact
yet there is another — who ought to be joined.
"does not appear from y Plea of not Guilty"
wh only denies y taking of y goods, of y Plff.


Contra. Talk 4 overruled.

There are cases or some cases, where neither.
Trespass nor any civil action will lie for a certain taking
of another goods. Such as Theft, Robbery, or where
y unlawful act amends to felony, and these are
found on the doctrine of Merger. yt y Civil
Injury is unimportant in y Public offene.

Exempts 12. 147. Text 90. Lord 83. Lord 82.


The Rule we at first seem arbitrary, and it is.
It is derived from the Civil Principle, that felony
works a forfeiture of goods, and chattels, y Telen,
and if unaided in his Real Estate:

and then, abounds all y means of private
Redress.

Exempts 2d 121b. Text 31. 387. 172.

Here since y doctrine of Merger obtains in this
country is not known, in Comm't. statute
causes act "Lett" for felony and to cause a
forfeiture of y offender's property, nor of his life,
except for heavy crimes, and ensue: a civil action
may and frequently is brought instead for theft be.
In your declaration, goods on which were your subject matter of your action, ought to be described with convenient certainty. The sort of goods ought to be mentioned.

If your declaration charge with conveying away every good of your Def. or of your Def's goods, without a description of the species or quantity, it is insufficient and ill in demurrer, and even after verdict, for a recovery upon such a declaration, we shall be no bar to another action, for some injury, as there, ed be no many of determining for what in particular it was had because the def ought to have noticed from your face of your declaration, if yet to wh be must answer, otherwise it is impossible for him to justify. Ed 406, s. 4 Ed Ray 1410. 4 Burr. 2405. 5 Ed 30. 637.

But ye Rule holds only, where your injury to your goods is a sort of your action, for where only alleged, by way of aggravation, it is immaterial, how general your description be. 3 Will 392. Ed 406. 126 Be 555.

Even a general description is sufficient, when your injury is a sort of your action, if it be made particular by reference to something which is certain. As if the sale for taking several keys. The action was particular description of your keys. Yet as you defect described a particular dwelling house, of which your Def was refereed to alleged as your Def had taken your keys for opening the door of certain rooms of your said house. Your action was held to be well brought, for by referring to your house there ed be no doubt what keys were meant.

Salk 364. 1 Vent 114.
There are certain kinds of Trustees of a Permanent
mature 15. capable of a continuance, or renewal.
Wh may be liable to a continuance, yet the Plat
need not be tendered necessity of bringing a special
action for every days respective offence. But this mode
is peculiar to injuries to Real Property, at least
as Exception as to Personal Chattels, is known.

If a continuance is liable where it ought not to
be, y fault is invariable and cannot be remedied
even by verdict Talk 638. cp 408.

The debt must then contain an allegation of y
mater. Plat op d a right of d Plat 640. cop 46.

If substance 4 IR 496. 1 and 480. 2 lev 186. 
47 48 480. 130 480.

It is further necessary the value of y good shal
be alleged, not the absolute value, but some
supposed value, for if y good be without value y
Plat is not injured. The original object of this
Rule was to furnish y Party with a Considera
tion of damages. But this is not y case. y Party
will not be governed by the Plat. Statute
except so far as not to go beyond it

(Shi same Rule holds in Trover) 2 lev 480.
Cps 129. 1 bent 14 17 317. 46 407. 566 387.

The measure to allege value is added by verdict.

y by implication it not appear, y Plat
had proved y value of y good, and y Party
therefore made an account of damages in his favour.
1 Bl. 39. 5 Buck. 138. 6 Cr. 405-7. 4 Cmst. 2405 where
y Plaintiff is admitted arguendo. See 36 El. 129
where it is doubted an y verdict will aid y
Stead.) 2 lev. 250. 2 Bou. 174.

The Plaintiff must alledge a certain, and it may
not be y true day when y trespass was committed,
he may ever lay it in a different year and
a different day and month and prove y contrary.
Bull. 17. 40b. 104. 40f. 40f. 221. 314. 415. 4ro. 6. 92.

The Plaintit of y time committing injuries,
"In Deeds" is seldom material. They must be
alleged to have been committed either on a day
subsequent or anterior to that stated in the Deed.

If a Defendant pleads a Release on a day
subsequent to that laid in y declaration leaving
a space of time intervening between y day of Release
and y time of bringing the action, y Plaintiff
has a right as above stated to prove y trespass
was committed at any time before or after
y alleged in the declaration and before y
commencement of the Suit. Otherwise Judgment will
be awarded as hirni, as for want of a Plea.
As to y time, it is now only matter of form, and
an omisston lateral on The school Demurrer, only.

The binding of another Suit is y same party for
y same offenses, is a good Plea in abatement, but not
so to y action. 5 Co. 2 61. Cal. 12b. 1 Buck 13.
The pendency of a Prior action is a Stranger, is not pleadable at all, either in abatement or in
Bar. To y action, if a Fresdars was committed
by 2 or more persons. y Plf might proceed
vs them in a Several or 4t action 18. he may
sue one or any number of ym. shot of a whole,
or y whole, but a recovery of a Judgement in
one action will be a good Bar 100 damages,
in another. 7th 13. Is. 120. 5th 19. 3 Edw.
73. 15. 18. 6. Deo 534. 4. 16. 48. 1. See More, 60.

If a Judgement be recovered by 2 or more deft.
and one of ym is embelled to pay y whole amt.
he can't oblige the 2nd to reimburse any part.
and Nrs Rule is common to all Acts. 8 P& R 185.
Card 164.

The Reason is, y Law will never raise a promise
of Indemnity or any other promise between y
Parties to an illegal contract as it does between
Note: who are jointly concerned in a legal act.
for the Law presumes an agreement on y part
of each to pay his proportion of y loss incurred

Where y defence consicts in a Justification, it
must be specially pleaded, and not given in
Ev. under y General Evidence Power. Thus if y
Def confesses y taking and relics upon y fact
yet y Plf gave him a licence or 4t as shz
he took y goods by virtue of a Process, he
must give either under y General Power, for y
General Power claims y taking, while y
Justification acknowledges it and they thus
become inconsistent with one another.
Co. Litt. 282. 7. 66. 1 Ed. 411.
And in an action vs 2 or more Deft. of one, make default, or suffer Judgment by 'Hin Grice' or on his several Pleas be found guilty, but if the pleading any justification, or defense whatsoever, which shows the Pltf. had no cause, a right of action vs either. If Plaintiff be found guilty, finding Judgment cannot go vs y former.

Thus, suppose A and B be sued, and A suffer a Default, or be found guilty, but B pleads license, release, and it be so decided by the Jury. y Pltf. can't have go Judgment vs A. for it appears from the whole record that he had no just cause of action vs either. Hol. 84. Ed Ray 1374. Elb 421. 1 St. 610.

By the C Law it is necessary, yt y declaration contain y words 'Let it be dmerd.' For there are powers of substance, y omission of ym is fatal.

The Reason of wh. is, that there were 2 Species of Judgment rendered at C Law, in Civil actions, where y Fort was Commited with or without force. In the former, y Judgment was 'a Capiasatio nova fine'; wh Od must be awarded pec y Defe alleged 'with force and array.' In the latter, it was 'Marci candida,' when no such allegation was necessary. S. Co 3d 2. Litt. 636. B. & B. 463. 1443. 12 6-36. Elb 408; 4. Dec. 11.

Now indeed y Judgment of Capiasation was abolished by 5. 1722 and many and anst now in use, in the country. Still as it is. To substitute a different proceeding for 'y Capiasation,' a distinction still remains, ask smaller it necessary to insert these words, in the deed. Yt's not for y same reason. 2 Litt. 636. 5 Bae 191. Contr. Ed Ray 1802 mot. Law.
It is the same reason it is necessary to set the deal 2 contain y words "contra pacem". These two words of substance and without them y word "vi et armis" are indifferent. The trespass implies a breach of peace, nor can there be a breach of peace without force, nor motion force without breach of peace.

C. 908. 2 Thal. 626. Carlt. 66. C. 8. 426-43.

The omission of these words is a defect now aided by 16 of Amendments. or Section. 16, 17. Ch. 24.

Hence y omission is not made good, while it remains, but only authority is given to amend y deal 2 by inserting these words, after wh judgment may be rendered. Thal. 428. C. 438.

In Count before these phrases have been regarded as matter of form only. The Chief reason for considering them essential never existed here. There never was any difference between y judgment when y wrong complained of was done with force or without force, Or is otherwise in many of the States. However even here y want of ym in Tatsal in Specials Demurrer.

The derivation from form is always denomina as form tends to preserve y boundary between y different actions.

In pleading a Release. def shall plead, guilty as to trespass before action lost, and allege Release as to ym. but specially traverse all trespasses antecedent to action, and plead not guilty as to ym. or motion subject to Release.
Action of Trespass in the Case "Among Co Delicto"
The action of Trespass on the Case of
answering to Others.

This action lies in 3 classes of cases.

First: It lies for malicious acts not committed with force or violence, slander made known.

Second: It lies for culpable neglect of one who occasioned an injury, as for a Misfeasance, under a former statute, held by wrong complainant.

Third: It lies for recovery consequential damages occasioned by acts not done for the immediate injury occasioned by forcible acts of Trespass, and et ami, to a person remedy.

Bd 74. 3 B. 1622. 2 167. 2 1618 395.

This action lies for wrong not committed with force.

This latter is an action of Trespass on the Case. Here wrong is a conversion, but not committed with force.

An action for malicious Prosecution is a same made by a person by an Act and et ami, and et ali, held by a person.

The second class of cases is those of culpable neglect, or nonfeasance, as in the Case of a Negligent Servant. This is a Nonfeasance but still a wrong.

It lies no Bailee for neglect of duty. It also lies for any servant of full age for neglect of duty.
II. It lies for consequential injury occasioned by acts not are committed by force, or with force, and is laid in declaring with a "per quod." Thus if a bag is lost in a highway, and B's chattels or horse is injured in consequence of the bagging, B's remedy is an action on the case, with a "Per quod" Pr for consequential damage.

Again if A's servant is beaten, and it brings an action for the consequential damage in loss of Temple, y proper action is case of Trespass. Trespass has always been broad, and y reason is y form of declaring is like that in Trespass.

If the servant himself sue, y proper remedy is Trespass, for y injury to him is y immediate consequence of the force used. 5 T. R. 167.

Actions on y cases are generally derived from y Equity of the It of Westminster 3 3 Edw. 1. Thi do in regard as the Parent of actions on y Case. No such thing by 3 Edw. 3 Flc. 57. 3 S. L. 38. 248. 2 T. R. 129. 2 Lev. 20.
3 Flc 123. 3/1441/2.

In Count a distinction has been made in y form of declaring between actions on the Case of Count.

Trespass in the Case of Tort. But no such distinction exist. All actions on the Case are actions of Trespass on the Case. 3 Flc. 208.
3 S. L. 38. 248. 234.

The distinction between Trespass and Trespass on the Case; is radical in law, and if Trespass is b'it, when case is y proper action, y declar y defective, and nothing can aid it. 3 Flc
good even after verdict. Judgment may be amended.
The Reason why the mistake is that haled is
founded on y 2 different forms of Judgment rendered
at Court. On every action for an injury committed
with force, y Judgment is a Capiaiter "foro finis" [120].
When y injury is not committed with force,
y Judgment is a Mijencia. 5 Bac. 101, 3. 4 ibid.
11. 6 102. 12 Mod. 131.

In determining when an action shall be trespass
and when case much difficulty has arisen.
When there is no force in any part of y
transaction, case is always the proper remedy.
But when y original act, wh occasion y injury
is forcible, Trespass and sometimes Trespass on y
case is y proper remedy.
The Rule of distinction simple but there is much
difficulty in y application.

Rule, where y forcible act is immediately
wrong, and y remedy sought is for that
immediate injury. Trespass on y et aminc is y
proper remedy, and y only one. But if y
injury is consequent, not y immediate effect
of y forcible act, Trespass on the case is y
proper remedy. the y not occurring y injury, as forcible.

As Dr. A commit a Battery on B. and B
one, his remedy is Trespass. for y gift of y action
is y corporal injury, and that is y immediate
consequence of y force. So if A falsely imposion
B. for y injury is committed with force.
If a forcibly destroys B's property, or forcibly takes it away, trespass is his proper remedy. This trespass will lie by section.

But suppose A's servant is beaten, and that the consequence has entailed a loss. Here is no proper remedy, for the injury is consequent.

Suppose that it cast a rock into y highway, or ye casting it, he is injured y body or property of B. B's proper remedy is trespass. But if after y rock is at rest to the drove as is and injured himself or property—his remedy will be trespass on y case. Here y injury is consequent.

If y force has terminated, before y injury complained of had commenced, y injury is always consequent.

2 Be 1 Ch 133. 6 Tel 123. 33. 4. Beul 3o. 32. 48. Beul 176. 2 Tel 176. Ed Tel 1832. Lack 893 2 45. 450.

The injury or damage complained of need not necessarily be instantaneous effect of the force used to be an immediate effect of it. If a force is act produced by an unlimited time of injury and effect, an injury to another, it is considered as an immediate injury.

As suppose it casts from hand an object, body, etc, y ground not the time and return 10 time; and then strikes 10. Here y injury to B is y immediate effect of y force 10 y remedy is trespass.
The bid impresses first communicated contains throughout. As a Ball bounds and rebounds on a parent, Trespass is a proper remedy, &c. See 2d. Jest in The sphere.

But where y original force has ceased before y injury or damage commences, y damage is consequent, and y author thereto liable at all, is liable in Case and not in Trespass.

Now if a shot thows a stone at B. and hits him, Trespass may be y proper remedy, for y injury is y immediate effect sawed.

But where y injury is produced by the intervention of a 3d person, he being a rational agent, he who first set y Instrument in motion, will be not liable. -

We suppose A. shot cast a Football on y ground, not shot bound, and rebound, and break y window of B. Here B's remedy must be Trespass, but if A. shot throws such a Ball on the ground, and B. shot interfere, and give it a new direction, so that it breaks C's window, A. is not liable at all. It is y act of B. and he is liable in Trespass. Here y injury is not y effect of force impos'd upon it by A.

To y Case of a Brit and

If A. fires a Ball at a mark, not after glancing any number of times, injured B. he is liable in Trespass. So if in Cutting Timber, he permit it to fall upon y lands, in building of B. he is liable in Trespass. He is considered as y
author of y force by y tree, since ty made to strike
y building B. of B. They 40. 1 Mud 24. 3 East 528.

Of a erect u Spout under y caves of his building,
so yt when it rains, y water falls uppon y land
of B. B's remedy for this injury, is ease, not
insecure, for y Injury is the instantaneous
effect of the forcible act of A. for y act of
a ceases before y injury commences. I a new
distinct cause. If y rain is necessary to compleat
y injury. To 636.

But f A shd cut down a head of y tree,
so that B's land is deluged, B's remedy is
insecure, for y Injury in this case is y instantaneous
effect of the forcible act of A. The Case is y
same, as if he cast y water uppon B's
land of B. by y means of a Pumph.

B. C. 362. Test by Shephard.

The Case of Shephard is a leading
case in this doctrine. A threw a squib into
a market. It fell upon the Stale of B. B was
protected himself, and y means of B threw it
across the market house, and it fell upon the
Stale of D. who thrust yt off in self defence
and yt struck y Phef in y face, and put out his Eye. Shephard lay in A. I was
not considered in brushes it off, as a national
voluntary agent. He acted from necessity
and self defence.

A y owner of a Mad A. turned yt into y
street to make ther. The srvry severely injured.
B. by going him. B. bit Trespass as A. and
recovers. A set y or in motion, and y case
is y same as if he had set in motion an
mammal body. 2 Bl. 292.

But where A. impropertly rode a wild horse
into a place of Publick Right, and y horse ran
away with him, and injured B. Bedgery. Decided
y trespass, was y proper remedy, for so far
as regarded y force. ub injured B.. A now merely
Passive, y act of A. was therefore present hit
act. HIs liability arose merely from Imprudence,
1 Bent 293. 2 Loe. 172. case.

If a in driving his carriage, wilfully or negligently
arose y y carriage of B. B's remedy is Trespass.
The form of y action does not depend upon y
fact of negligence, or wilfulness. It depends
upon y act and not y intention. It depends
upon y fact, an y injury is y immediate effect
of y force, or not. Here y act of driving wild
carriage by B. (change y letter) is an act of
violence y y injury is y immediate effect of
y violence.

If A in defending himself from an assault
unintentionally strike B. being him. Trespass
lied, fo y injury is y immediate effect of y possible
act. 2 Bl. 282. 2 N.R. 117. 2 East 593.

There is one case, not seems to militate to the
distinction viz. A in driving his cart negligently
let it run with force on the horse of B, and
slamed him. Case now boiler, and held to be y
proper remedy. 2 N.R. 117. But the decision
in yt case was founded on y peculiar form of y deed. in wch was. Mat- y case of y def. he driving negligently, ran in y home of y Plf. and lamed him. The Decls. didnt state y injury as occasioned by A. it didnt allege y acts was y act of A.

Lee y above case commentes upon 3 Case 532, & T.R. 838. Same reason given. Had y decls charged y Def with negligence driving yc. y decls wa have been supported.

A discharged a gun y round of shot lodged near B's barn. caught in combustibles and burnt y barn. Held yt case was y proper remedy. . Corp & T.R. 

Here y possible act of A terminated before y damage commenced. The burning of y barn was a distinct intervening cause.

If I dig a trench on my land, and that anert an ancient watercourse from B's land, care is y proper remedy. Here y proximate cause of y damage, is not y continuance of y force. The proximate cause of it is not foreseen, it is merely negligeable. 2 a failure of y stream. 2'd Hit t'd. Lab 533. To R. 533.9.

A case B, alleging B's vessel was negligently arren'd in he. (A) vessel. It was so negligently steere'd yet it ran in de Plf. & B's vessel.

and the Ct held yt case was y proper remedy. Now if y Def had negligently steere'd his own vessel and it had ran in the Plf's. variance in wht dont wa have been y proper remedy. A'd beet probably steere'd y vessel. & There is a difference
between cases where one is sued for his own act
and where sued for his act of his servant. 8 Hil. 188. 3 East 523. 3 Comme A. 91. 2.

The Rule is where injury is immediate effect
of a physical force used. Trepass is a
proper remedy. holds only where action is
bist on a person
who committed the wrong. i.e. employed the force.

If a Servant in driving his master's carriage,
caused it to damage another, you, you servant
is liable in Trepass. But a Master is liable
only in case, for he is liable only on grounds
of Respondeat. In employing an unskilled Servant
6 Hil. 128. 2 Pl C. 442. 3 L. 1649. 1 East 120. 103et
P. 472. Ex 1083.

Upon the seconded Case was held to be a proper
action, where the Ship sank over your Ship's boat.
This of negligence of your Pilot. 2 N. 426. 7. Hil 73.
1 East P. 472. Pilot was liable in Trepass!

Where case is bit for consequential injury arising
out of a foresee act, you declare is not irritate.
by alleging that your act was committed with
force and arms. This allegation does not make
a deed in Trepass, for y allocations is only
the
matter of Inducement. It is only description of
manner in which injury is occasioned.

Indeed where you damage is y consequence of y foresee
act, it is proper to state y force and arms.
2 Reeves 8 Hil Eng. Law 241.
Whether y organic forcible act, wh occasioned y damage, was itself lawful, or not, does not determine y form of y action to be brought. And it it has been entertained, yet where y act is itself unlawful, it must have in all cases y proper remedy.

This cannot be the intent in civil actions. E.g. cases of an assault in Form 32 and 2 Bl. 802. be.

In what cases it lies?

It lies for a great variety of Misfeasance and Non-Feasance, for a great variety of acts not forcible, as culpable neglect, & omission; and also for consequential damages occasioned by forcible acts. 11 Eliz. 44, 5 Wil. 3, 182.

Fraud, slander, and malicious prosecution are all actions on y case, these have been distinctly considered.

An act neglect for wh this action lies, on y ground of a wrong, or tort must be a neglect of some duty imposed by law, and not a mere moral duty, and that neglect must be followed by some damages to another. 1d Ray 37; C. B. 219, 86. 300.

In C. 219, it found bsp, wh was allowed to decay and injure, said yt a word liable for any neglect. Their proposition and correct. The finder is bound to use proper care.

I. This action lies for any neglect of any officer of y law. be y injury of another. As is a 75
for neglect of his official duties, and to all ministerial officers generally. 1 Coke 93. 25 B. & C. 1353. 159065

It lie as an agent for any neglect of legal duty on his part to a person of his principal, as for neglecting to effect insurance according to instruction given by his principal, in which case he is liable by operation of law, precisely as an insurer was have been.

In some cases an action lies as a foreign correspondent for neglecting an Insurance.

I Where a correspondent abroad has effect of a principal at his hand, and neglects to make insurance according to instructions given in case of a loss, he is liable. Indeed a correspondent having effect is in quod y effect an agent.

II Where one has been in a habit of affecting an Insurance for another who resides abroad, and having given notice, yet he shall dispence y practice, he is liable in case of a loss, if he fails to ensure according to instruction.

III Where one accepts a bill of lading in addition of affecting an Insurance for a correspondent, and neglect to ensure according to instruction, he is liable as an insurer and have been, in a case an insurance had been effective. March. 15, 380. 6 Pam. 303.

7. T. 157. 12 id 188.

If that voluntary agent who receives no reward for his agency, if he proceeds to execute the trust in that character, and does it negligently, by reason of his employer, is liable. 209. (Reed) 219. If he does not, however, to enter upon performance.
of a gratuitous undertaking or promise, he is not liable, except to any action for it imposes no obligation or promise, he is not liable to any action for it imposes no obligation or promise. Except if he commences performance.

As Master of a Ship undertakes to carry goods, ransport, and receive any in personance of agreement, he is liable for subsequent neglect and the ship not having been on the promise or agreement had he not commenced performance.

C. B. 24, March 206 7. 3.

A person performing business for another, in his line of his professional business or occupation, is liable either for neglect or unskilfulness for he in such case agrees to perform a work skillfully.

But if y work to be done is not in y line of his profession, he is liable for neglect only, and not for want of skill.

He undertakes merely for fidelity, if there be no express agreement to perform it skillfully.

An tailor undertakes to make a Garment.

2d. Blacksmith makes a similar engagement.

C. B. 24. 2 Will. 358. Ch. 60.

If a Surgeon by neglect or gross ignorance, injure his Patient, he is liable for y injury in yo actiun.

Mala Praeia being one under action on your case. 2 Will. 359. 3 East 148. 21. 212 Exp. 212.

But if y Person undertaking, and makes Physic or Surgery his profession, it is said he is not liable even for negligence, for it, said to
to be y patients folly to employ such a man
Esb. 681. 3 (Bc. 122. 180 at true doctrine) 21 R 154
This Rule cannot be Law. He ant liable for
want of skill, but he like every other person,
implicitly undertakes to use care and good faith.
Es/ had no authority to support him.

It lies in general to any one, by whose art or
endable neglect, y health of another is injured
or imbarred. As if any one who sells butter wine
or bad provisions. So if any one who carries
in a mercantile trade, in a neighbourhood by why
health of a family is imbarred. Tert. 133.
I Esr. 10. 52. 3 Bc. 122. 186. 1 Role. 905

As regards y Sale of provisions, it is a Rule.
yt where one sells provisions of any kind, he
implicitly warrants ym to be good and whole one.
This Rule is peculiar and dont hold at y
sale of any thing else at C Law. 1 Tert. 6110. 3 Bc. 1886.

Yet mischief done by a dog biting and it is a
Rule. yt if a dog was adduced to mischief
of this kind and y owner knew it, he is liable.
But with such knowledge he ant liable.
at C Law. Esr. 350. 2 Thulk. 66l. 3 ibid 12.
Esb. 681. 2.

In y last case, thence ni y owner is of y guilt
of y action and if y deed? ant allege it it is radically defective and not aided by
verdict.

If y owner had previous notice of y damage
sustained of a similar kind, his repson a different
species of animal, he ant be liable. Not
necessary that y mischief shoule be y same quall
y subject a animal injured. Talk 622. 2dRay
202. 4 Co 184b. 3 Talk 62

To is said in Co. 186. yt yt allegation of
seecess ny ye deed is not traversable
By yt yt meant is not y subject of a

For an injury done by an animal (fora matter)
y owner is liable even without notice, for such
animals were are always supposed to be
addicted to mischief. The Law consider that
y owner has notice before hand.
2d Ray 626.
Co Ch. 234.

It lies for a disturbance 18 for hindering one
in y enjoyment of a lawful right, and yt right
is generally an incorporeal right. 1 for a corporeal
right trespass lie. As diverting an ancient
watercourse. To for obstructing a right of way.
Co 7 648. 3 Lec 260. 2 Co 136. 246. 1Bents. 376.
2. 282 136.

It lies in case of Escapes to any person, officer
of the Law, who per dem an Escape either on main or
on final process of one legally arrested.

Anciently 2o action was y only remedy to a
Shift for an Escape of any kind. But by Eq 1
Rich 2. y Shift is liable in debt, for an Escape
in final process. This doth not for Escaped
in main process, for ye damages are in such case
presumptive. 2 Bae 240. Co Ep 18. 2 Jp 126.
Co 509. 2 1Bt 273. Shift and Goalor. 8 Bct 1048
If a person arrested in the name of the President refuses to take bail, when tendered, he is liable to an action to recover the bail money. But in such cases, it is his duty to take sufficient bail when offered. Case is a proper remedy for abuse of his authority. When a person of a government is, not a proper and effective act. 2 Will. 3 & 4 Co. 146, 156. 2 Moore 31, a Co. 145 in. 1 Ser. 188. This rule would not hold if final process or party not being entitled to bail.

If a person arrested in the name of the President is received with order in favor of the President, or of the President, the act of the President is, not a proper act. Has been in the court, or by the President in the intervention. 1 Bl. 62, 5, Moore 21, 4 Co. 180, 16 El. 412. El. 839, 1036, 1129, 12 El. 227.

Thus care Gaeden.

Suit in Co. 180. Yet either proceeding case will lie. But there, as to Treasury.

For rescue or release in a case. The President, or order, has no action for release. In such case below him from liability in the case of the President. If the President, he must, the President.

But in case of rescue in a final case, it lies, either in favor of the President, or in a process. An officer from whom a process was received, for an officer in that trust to the President, having being

Thus care Gaeden. 1129, 12 El. 227.

An action to the rescue. In favor, may give Co. 60. What damage? May release. I, of course, it is, Bell 62. Exception in all cases, for a President to show, if he can, yet a party received in advance of all of death of President.
If upon Peace when final proceed, Pt's sued in Receiver, & Def't is discharged. Having made his election, he is bound by it. So said by C. 60. 11. 4. He has no authority to support him, but it's plain reason able.

This action lies for making a false return to a Trustee, and may according to its nature of the false, be sustained either by the Def't or Def. in ejectmt. If he falsely return non est inventum, or nulla Poema, he is liable to y Def't. But if he return of servis, and y servis proceed, he is liable to y Def't. Mil, 335. 115 658. Coh. 140. Pro C 773.

It lies for an officer for omitting to execute legal process, when it was his duty to execute it. As for not executing a process of ejectment when he might have done it. 2 M. & B. 234. 1 Ch. 331.

Attorneys are liable in this action for a neglect of duty injurious to their clients. They are liable for professional misconduct, injurious to y adverse party. C. G.

1. 44. Any neglect to appear for his client, or to be in attendance, if client is entitled to y action, no here. 2 Mil. 325. 4 E. & B. 207. Earl 36. Ch. 145.

4. when after a drawback suffered by the Def't to the Def't an action of ejectment is brought against him, the client is entitled in his own name to y action, being an ejectment. C. 12. 28. 1 Ch. 618. 3 Mil. 374. 1 M. & B. 109. 3 C. 160.
Of me by cause upon a & of Justice injunction the another, he is liable to his action as to persons, & to the & of Justice, and enforces in that character, & may have his action for it. 1 Roll 103.

In lies as magistrates - As Justices of Peace for refusing to perform any special duty as refusing to take bail in a bailable offence. Refusing to certify the acknowledgment of a deed. To sign a writ when it his duty to do it. To take depositions &c. as law requires. &c. Rolt P.C. 90. Cb. 618. 1 Spin. 323

If a Pllf or a writ to settle a controversy, before a writ is returned, and the Pllf neglect to countermand a writ, &c. as &c. if it is refused to suspend by a return, he cannot in his cause have a return to the Pllf, for it is not his duty of a Pllf to countermand a writ. The def which have made a stipulation to be effect.

This of all parties have put an end to that by consequences, a Pllf that proceed in the suit, he will be liable in Malicious Prosecution 1 Be & P 38. 2 Bk. 302.

This action lies as an officer or corporation for making a false return to a Mandamus, because as return is conclusive on a trial of a Mandamus, (i.e., writ) The adverse party cannot at law controvert the Return.

But now as by the Act of Ann, such a false return may be traversed on the Trial of
In Count this action never lay in such cases, for the mere act of theft, yet our own law have adopted the Rule under the 16 of Ann., as a Rule of y Common Law.

This action lies for a Breach of Trust by a Bailee, in a great variety of instances.

It lies vs bailees on y ground of negligence in all cases of Bailement, when y property is injured for want of that degree of care, wh y law requires of y Bailee, and wil he himself stipulated to use.

When y action charges the Bailee with neglect, it is founded on Tort, but when it merely states y contract Expres or Implied, and charges a breach of y contract, it is founded in Contract. Bailee has generally his choice wh courts to pursue.
3 Case 62. 4 Co 83. Talh 26. Ch 618. 2 La Ray 300.

This action lies vs y owners or masters of a vessel, for goods lost or injured, and y master neglect. The Liability of y Master is an exempt case, allowed for general convenience, for y owner, and sometimes in another country.
Generally a Servant is not liable for mere neglect in his master's business. Table 420. 3 Camp. 623.

It is said yt if y owner be sued, must all be joined as Defts, and if y action will lie to one, or a part of ym only, for it is said 'that y right of action is quasi in contractu. Table 420. 3 Camp. 623.

But yt Rule is too general, yt true one is, yt where y action noe y owner, sounds in Tnt. 15 alleages negligence, all must not be joined, Secum if it sounds in Contract. Tpts are severall. Contracts are Point. 3 TTR. 642. 37. 3 East 629.

For any damage occasioned by a neglect of duty, or misconduct of a Postmaster, he is liable to y party injured, 15. he is liable for his own actual fault, and default.

So are ths under Servants liable in y same way.

But the Postmaster is t not liable for any misconduct of his subordinate Deputy, injurious to another, 15. y General Rule as to Masters in Secum. 3 B. & C. 308. 310. 752. Table 17. Edw. 824.

Formerly it was supposed that the Postmaster was liable in such cases. But he is not a concern. There is no contract between ym and y party depositing a letter. He is an officer of Government, and liable like other Public officers. He is answerable to the public only, same as y Secretary of State, and if he select unskilfull officers, he may be removed.
In keepers are liable in acction for alle property belonging to their guest, or is lost or destroyed by theire conduct or neglect, of the keeper, or of such goods, as are kept for want of a degree of care, by which they required of such persons, &c. 32. Bail. 13. 3 D. 6. 210, 1687. Jones 30. vid. Bail. "In keepers",

The liability of an innkeeper for any property of his guest, is substantially the same as for a bailee, though chargeable for y loss, he is regarded as bailee.

For any deceit in y sale of property, he y enquiry of y vendee, yx action lies as vendee.

It lies also for a false warranty, or affirmation of soundness, and in case of an express warranty, the warranty is liable. Yd. he was not guilty of any fraud on his part.

If however he is guilty of any fraud in making y warranty, &e he may also be sued in action for y fraud. 20. 20. Salt. 211. Gell. 20. Co. 14.

Whether this action lies for a fraudulent affirmation respecting Real Property sold, y opinion are all not agreed. It seems however that by the Co. Law, such action will not lie, as vendee must take y necessary covenants. Co. Litt. 524. a. n.

1. 366. Grant. Dig. 38. 3 Wms. 173. 2 Day 128.

S. G. Brinl. yet it ought to lie in a new country like ours. For his opinion on this subject, see "Covenant Broken"
Where an express warranty, without any stipulation, and y warranty is false, at y time of making it, y bendee may support an action on the warranty, without either returning y property, or giving y warrantor notice of y defect. As y cause of y honest warrantee sound, Se Se.

for y warranty being false, when made, y bendee is broken "in instant" yt it is made. Of course nothing is necessary to consumate y bendee right of action. 1 H. & B. 17; 2 H. & B. 745. 1 C. & R. 13(39) 2 C. & R. 191. w.

But when y warranty is accompanied with a Collateral stipulation, yt in case y property prove unsound, y bendee shall take back y property, and refund y bendee paid, y bendee havn't any right to sue, till he has returned y property, and given notice yt yt it is unsound, for y term of y contract makes that act necessary in y bent of y bendee. 2 T. & L. 748. 1 Campb. 174 n. 2 H. & B. 573.

The Returning of y property in y last case reserved y contract. But in y former, y bendee by finding in y absolute warranty, affirmes y contract. In y former case, y property still belonged to y bendee, and he recoveres damages merely on the warranty. But in y last case, y property bought to be y bendee, from y time of y delivery, and y bendee paid, then becomes money had and received by bendee. In the use of the bendee. Of course he may maintain "Undebitatus Aequum" and where y contract is not receivable, that he may sue on the warranty. 1 T. & L. 133.6 Campb. 518. 2 Doug. 23. 7 T. & L. 181. 6 East 1449. 7 Campb. 274. 1 Com & C. 58.
When y contract is not rescinded, as when it can't be, or at least is not rescinded by a return of y property, y is action for damage, I may be lost: on the warranty, or special agreement. And in case of fraud, it being a fraud, 3 Eliz. 112. 6 Eliz. 2. Ch. 42. 4 Masi 135. 7 East 274. 60 p. 813. 2 Doug. 24

And if goods are merely warranted sound, without any express agreement for rescinding the sale in any event, y vendee has his choice of 2 remedies:

First on the warranty.
Second, he may return y property without vendor consent, and sue in assumpsit for y knee paid. This last is a very recent doctrine.

3 Eliz. 83. 1 Eliz. 688. m. g.

Formerly held that the vendee can't rescind.
The rule proceeds upon y same principle as y warranty in policy of Insurance. The truth is, the warranty is a condition precedent to his right to retain y money, and the acquisition of title under y contract.

But many vendees return y property, as soon as y unsoundness is discovered. IE, as soon after as it can be conveniently done; he ain't allowed to retain all, but must seek his remedy on the warranty, as in case of a house of vendee after discovering y house is unsound, work him o bee to come him. Contract is rescinded.

3 Eliz. 135. 4 East 440. 7 Ch. 244. 74. 1 S. R. 260. 3.
Ch. 82. 4 Ch. 90. 2 Ch. Pl. 101. m. g. 7 East 24.
The law as to the sale of personal property has been much altered of late, but it has been done advisedly.

The action lies for a false & fraudulent affirmative concerning goods. An affirmation is no contract to a warranty—it is a mere declaration. As vendor affirms an article to be sound, knowing it to be unsound.

But it lies not for a false affirmation, if y vendor himself is guilty of any folly or neglect in confiding in that affirmation, if by using ordinary care it might have been ascertained y falsity of it. As D. G. falsely asserts yo it was jawed 100 sole.

So where y defect is visible to common sense, & ye lies not, as a horse has but one eye, and is warranted sound—So if he has but 3 legs. Ed Ray. 029. 030. 118. Esp 029. 30. 1 Torb 110. 1 Galk 24.

A sells a horse to B, having but one eye, which a general warranty of soundness. Def pleaded 6 to the action, because for the plaintiff he was entitled to judgment. This was somehow qualified by D. G.

With regards to warranties, a general warranty will not bind vendor in case of visible defects. But if vendor thinks, a special warranty will bind him. The y defects are visible.

As A sells to B a horse, whose ankles are sore, with visible ringbones, warranting him sound. He is not liable. But if he make a special warranty, as yo y ringbones shall not injure
his travelling, he will be liable.

But if the defect is one, not most necessarily
injure him. Vendor ant liable on his Special
Warranty. & if loss of a leg.

This action lies for artfully disguising defect
in goods. for ye is a fraud when the vendees,

But the vendees may declare for y Vendor.

itself, stating that disguise, or he may declare
on an Implied Warranty, for he held wilfully
disguising known defects in itself an implied
Warranty. 2 Rolf 835. 1 Pea 129. Ch 88. 32.
Pea. 100.

formerly held in Count, yt if one without fraud
or seemand sells personal property for a sound
piece. The Law will imply a warranty, yt y
property is sound, ni y vendor expressly agrees
y risk of its being sound. 2 Root 407. 2 Tasc 220.
160.

The Rule of C. Law is directly y reverse.
If there be 1 no fraud. 1 no Warranty. y
massein "Caveat Emptor" applicer. 2 Tasc 757.
Rial 119. 23. 1 Cow C. 146. 23 East 314. 1 John. 274.
2 Eden 179.

Exception at C. Law to this. Massein in case
of possession. Here is an implied warranty in
such case. that they are sound. 3 Pea 186.
1 John 110.
The verdict of warranted goods does not by
selling y goods. lose his right of action to y censer.
even the sold to a common buyer. The right of action
was complete when warranty was broken. The
Sale of the subject dont vest y right. 7 P. 14.
1 C. 36. 17

Decided in N York, ye if A sells goods to B,
with warranty of Title, and B sells y same goods
to C. without like warranty. B is sued on hi
warranty may sue in A. A has warranty to
appear and defend his suit, and if he does
appear and defend, a record in Mat into
is conclusive in y suit by B. 10 A. 1 Selm. 37.

This is a Rule at Law in a case of Real Property.
Lead dure as to y propriety of extending it to
Personal Property?

If y vendor practices any fraud by a false affirm
respecting his Title to y goods, ye action lies, if
it is said that science in y part of y vendor.
is necessary to subject him, if he must have
have known it to be false, because he is liable
only on the ground of fraud, an affirmative
being no contract. 3 Bl. 30. 2 Bl. 32. 32. 10.
32. 31. 37. 1 John. 128. 2 East. 445. 20th. 200.

Title
Title however when a personal chattel is sold
y very sale implicates a warranty of Title in y vendor.
no y sale is expressly extended to be a bar of
hazard. 1 C. 36. 37. 1 C. 3. 34. 3. Robert
1 Cen. 528. 20 Bl. 37. 474. 1 John. 374. 1 Note 20.
This Rule is well settled, y act of selling mispries not what I sell, is already mine.

Now a true rule is, yt if y acton is built upon a false affirmation, treating as a fraud conceived in y Del. er indiscreetly. Therefore, there is no fraud. But the y vendor had no knowledge of y vendor, can recover on y Iniplicit warranty. So need in no action of forming a false affirmation, for it is always advisable in yt fact will tend to show yt vendor need not to take y risk.

If goods are sold by a Bill of sale, there can be no implicit Warranty, of soundness, even thou the vendor intentionally concealed an defect in Bill of sale is a deed, and y whole contract is supposed to be in y deed, so yt a bond stipulation can't be annexed to the deed, it being of its own nature. Vendor may sue for fraud. 1 Sam. 563

And y law will not only not imply a warranty in such a case, but even if there is an Express bond warranty, it will not support an action in the Warranty. So bond qualification can be annexed to a deed. John 44. 1 Cor 248.

But if y vendor is induced by fraudulent representation to assent with a warranty and assumes a risk, as to y quality of y goods, he may sustain an action on y fraudulent representation. As it is selling a horse to PP says, "I will not warrant a horse, but will give you my word of honour, he is sound"
but if you take him at all, you must take him as he is. for I don't practice making narrow, and at y same time, knows y have unamend. y ladder. & is liable for y fraud. & John. 11.

is held in Count,

This action lies for injury, occasioned by false and fraudulent affirmation. in a sale of property. this is partly making yun has no interest in y sale. as I falsely recommends. a proof of yd.

This action lies in it at y suit of y party injured.

But to have ye effect y affirmation (must have been been both false and fraudulent. making y damage with fraud, or fraud with damage) won't support ye action.

Formerly in cases like this, ye action didn't lie. it will now. the first action in ye subject is, 3 P 7, sec 1. East 10c. 2 D 10 18. 12 ibid 632 s. 1. D 222. 3 43 et 33. 397. 3 John 27. 6 ibid 81. 8 ibid 20.

So lie 30 20 for falsely and fraudulently recommending B as worth of credit, when he was not in favour of a party injured by the recommendation. & all of first case in this subject.

But it is material ye it in y case subjected had have acted fraudulent, for if he really believed B, worth of credit, or a man of property. he is not guilty of a fraud. and no one is liable for giving his mere opinion respecting his reputation, circumstances if he act honestly.
It lies for common cheating, as playing and procuring many more false dice. Col. Ch. 30. 
Ch. 63. Edw. 32.

So of one person to another, and vice an act.
This may reduce & bate, & former is liable in an action. Col. Ch. 30. Col. 633. Edw. 32.

It is settled, when an action is but to recover the price of goods sold either on the Quantum venditum or on an express agreement, to pay a stipulated price, & Def. may reduce the price claimed by showing defects in the goods, or labour done.

This might always have been done in any former case, but not when there was an agreement to pay a certain price. 1 Cor. 1:43. 5 R. 48. 1538. 1540. 1543. 1547. 1565.

Formerly when there was an agree or to pay a fixed sum, y Debtor must say that sum, at all events, un a prize done to his own action or y Promisor, or pro rate for y defects in y goods.

They all are of modern usage. 8 John. 478. 1942. 43. 1684. 1686. 1757. 1776. 1807. 1809.

Further if Def. does not insert in y claim (under y modern rule) by showing 2 defects in y goods, & but permits a recovery to a full amount, charged, he must bear y cost. He can't afterward maintain y price action, as he might formerly, for y defects. De. 1 Cor. 1:45. 5 John. 478.

If Def. by a wrongful act make an innocent person liable, to a $2. he is liable to such innocent person to the am't of $ by wrong sustained.

As it turn, Edw. 32. calls into Edw. garden, where
If my servant acts as set by my command, and he exposes I have a right to command, when in fact I have not, and he is subjected to my party, I'm liable over to him.

If I agree to indemnify a Thft for serving his property, on an Ex. of B, supposing it to belong to him, when in fact it is property of B, and the Thft is subjected, as he may be, I'm liable liable on my account of Indemnity.

So if there was no no express contract of Indemnity, if I direct him to serve such good as my order, his liable over to it a Thft.

Cox 177, 8. Watts 183.

Whenever a public's right is obstructed or violated to the injury of an individual, he may maintain his action in his person, but in such case, he must show special damages, for no individual can have an action for the violation of a public's right as such.

The inhabitants of a certain place have a right to pass a ferry toll free, and ferryman refuses to carry me toll free, an individual injured may have his action stated, the injury damages. See 1 Park. 12, 3 Co. 723. Carr. 183. Co. 390.

If support a public's maunder, or elevating railroads damages, a party injured may have his action to construction on a highway or over a bridge. See
But in ye case of a part or injured might by
ordinary care, have avoided y injury, he cant
have ye action - as hole dug, by he side of a room
leaving room daily to haf. De not in care, and
a person yet into yt is 2 daytimes. See ye

Thee held yt if he fell in in 1 or 2 daytimes, a person
making to hole, ye now be liable. Not now however,

It lies for any injury occasioned by any nuisance
as by obstruing ancient lights. 1 Co 38. 3 736 216.

11 East 330

Formerly held yt ye enjoyment of these ancient
lights, must have been immemorial. But now
holds yt yt no long enjoyment, and not immemorial,
as for 20 yrs. warrant y duty in assuming
a grant, or any thing necessary to convey yt knowledge.
Cp 636. 2 Gauna 576. d.b.n. 1 P. 11 490
11. East 372. 1 Conn 497. 8

But ye enjoyment of such lights vs a tenant
of y adjoining adjacent land, will not conclude
y land or y, without or yt he knew of such
lights were erected. 11. East 372.

C Gow casd cant see how y landlord,
knowledge of y existence of a light, shd make
any difference, for y land is not ut he's light.

C cant enter.

C is unable to see how for thus night is acknowledged
in this country or in Eng. at present.

Were did it mean forgotten light.
If a man having built a house on his own land, sells it, neither he nor any one claiming under him, can at any time, (however short) erect a building so as to obstruct y light of yt building. The land continues, to it must even remain open, because by building it was to obstruct y light: (it is said) impairs y grant. 1 Lev 122. 1 Benet 289. 37. Bk 636.

This is a very strange doctrine, at least I very doubt, whether it will be considered as law. The benees, if he apprehended any such inconvenience, sha make it a matter of contract.

The obstruction of a mere prospect however valuable however valuable in the estimation of y owner, is not actionable. 1 Co. 39. 5. Bc. 37. Bk 636.

But a house on y line of y street (public) is on y street side immediately entitled to all y privileges of an ancient mansion according to y first rule. It matters not even if y street commissioners sha sell y land, to a private individual. If y owner of y lot in front raise any obstruction, it is a nuisance. This is a very reasonable Rule. 3 Will 465. 2 Bc. 18. Bk 634. Chp 635.

The recovery of damages for a nuisance is no bar to an action, for any subsequent damage occasioned by the same nuisance. The 2 recoveries are not for y same cause. The 1st for direct damages in y 2nd action. Every continuance of a nuisance is a continued wrong. 6 Co 84. 2 Lem. 103. Chp 637.
The original author of a nuisance cannot discharge
himself from subsequent liability, by selling, leasing, or
assigning the nuisance, and the land on which it
is erected; for he does an illegal act, is forever
liable for all consequences of such act. But
the vendee is also liable for any damages occurring
after the sale. So for he continuing the nuisance,
Corb 378, 379, 380, 637.

This action lies for obtruding an noxious
bodily in favour of lessee and lessee, for it is an
injury to present holder and alter by inheritance
4 Burr 2540. Corb. 237 or 320, 1. 2 Cr. 372. 630.

Overhanging Plfs. houses, is to cast y water
upon it when it rains, or upon the land to
y injury of ym. is an action for cast up action
lie. Agin e. Tullam eyns est breque ad Bolom.
There must be Special damages to render it
actionable. 3 B6 216, 1 Pint 107 5 Co. 101. 1 S. 634.
634.

Youudes. Many cases of overhanging sides
subject of action in an action.

So i one to places a Stowt under $ lay of
his house, as to cast water at anse, it is
actionable, and it dont overhang. In 634

The action lies for obtruding a private right
of way. This indeed is not a nuisance, but a
of a right, ye, and it is unnecessary, ye of allies, had a beeloved, ye such grants were in point of fact, ever made. They are warranted in finding it as as a presumption of law. The Rule is founded on principles of public policy, to discontinue and dormant claims.

Rule 74. 3 Co. 529. 26 640. 11 East 372.

And in favour of ye Public, a right of public way has been presumed by the act of 35 C. from an incess of 6 yrs. standing. 11 East 372. 11. C. 280. Whereon what premises? Do not appear. ye case is not reported fully.

The action lies for diverting an ancient watercourse from Pllf's land, to his mill, to his injury. 1 Mills 174. 4 Co. 54. 1 Co. 5 6 East 208. 2 Co. 33. 384. 1 Root 530.

But a right adverse to ye original and natural right of the Pllf, may be acquired by 20 yrs. In Eng. and 10 in Court, unintended and advent. to. The stream in. 36 Co. of a Corporation above diverted, 38. and the whole of the stream, from the Corporation below, for 20 length of time, y Et will presume a Grant. 36 East 260. 36 2 Co. 400. 1 Co. 263. 20 241. 6 213. 8 136. 1 382. 1 384. Root 530. 5 East 358. is an instructive case. Little Lake in land De Cie.

This last Rule supposes ye stream to have invented the watercourse from the premises at below, and ye. ye latter has acquired in such diversion for 20 period of time, for if he has continued ye point ye former acquires no such right.
This action lies for injury affecting the rights of persons standing in the relation of Husband and Wife, Pa. Child, Master and Servant, and growing out of those relations, for which see More Tittler v. Boule 78. 2 K. & S. 501. 38.

For actions by Husband, see 3 Wils. 18. 3 Binn. 1878. 2 D. & K. 100. 12 Hay. 1832. 2 L. & E. 337.

For actions by Parent, see 2 Saund. 166. 2 C. L. & P. 337. 3 B. & C. 340.

For actions by Master.

The action lies for violation of any legal franchise. An action for a violation of the right of voting at an election. The violation of the right is remediable in the action of a legal voter tendering a vote by the President or returning officer. He is liable in such action and in damages in such cases are hereby presumptive Talk 18. 3 B. & C. 647.

No same person is a candidate for an election unless may have this action for a returning officer. If a latter refuses to take or return of the vote for a former. 2 B. & C. 260. 1 B. & C. 260. 2 B. & C. 39. 3 Th. 208. 2 D. & P. 632. 2 C. L. & P. 646.

And such officer is liable in such action to make a false return, prejudicial to the Candidate—1 C. & P. 23. 2 C. 647.

The wrong consists in a violation of his franchise. But in case of a false return, it has been tendered a civil action will not lie in favour of a Candidate to the returning officer. In his right to the seat has been decided by the Parliament in favour of a Candidate owing, or unless a question can not be determined, by reason of it is desirous. Talk 208. 3. 4th. 48. 2.
But ye doctrine has been very correctly denied
by Sir William. Parliament undoubtedly have a
right to declare, who shall be entitled to a claim
at their body, but ye Judges ye face can't
be admitted in Cit.
To deprive one of an action on these grounds
and be to deprive him of Trial by Jury.

The action lies at 2 Law for a invasion of
rights of literary property, and an author
may have ye action as any one, who's publish,
his Manuscripts nowhere. 4. Burr. 2383.

Now this might be secured to an author by certain
Act regulations both here, and in Eng.

This right is secured to him in first instance.
for 14 yrs., and then if he sues by that means,
y right may be secured to him, and his
Representatives, for another term of 14 yrs. If then ye right
become public. Under Laws of Congress Title
Copyright Right.

When a similar annoyance go action lies for ye violation
of a Patent right in favour of a Patentee
Title of U. S. Title "Impropriant."

This action lies for injuries committed by one
person while in ye employe of another in ye case,
As of an agent in conducting ye master, because
injury another by reason of his negligence, or
want of Skill, ye master is liable.

But if The Servant who wants it, and wilfully injured
another, ye master can not be liable. In this
case ye master is liable on the ground of negligence,
i.e. not providing faithful servants, or will he is.
he is an Answer; but he is not an Answer to y effects of his evil dealings. Ed Ray, 180. Talk 441. To 1833. Ep 50. Master and Tenant.

This action lies for an obstruction of legal process. By S. I. resist the Shiff. or by compelling him to
hind from assisting B. in serving, in favour of A.
and an action eventually is not amended, A
may have this action vs. B. Ep. 291. 358. 353.

Case in New Haven County, Shiff held an Ex
vs. A in favour of B. Proceeding the Shiff going
towards y house of A. knowing his business
ran into A's house, and while at y knowledge
botten hi door, and thus prevented an arrest.
Held that C was liable in this case to the
action to y Shiff in the Present

No Specide action in the case admits of any
process, precise form of declaring, as there is no
formed acting. By formed acting, is meant
all actions known to the C. law, as Debt.
Opinion. Thereby there is such acting the
form of wch are preserved in the Register.
But there can be no precise form to acting
on the case, because they are indefinitely
various in their nature & circumstances.

(SR 541. G. is R. 132.)
Reflexion of Cattle taken Damage Against 68 2/5
Personal property seized under process of
Attachment 74. Reddings 78.78
Replevin.

This has been defined to be y delivery to y owner by legal process, of his cattle or goods when distrained for any cause when his giving security to try y right of distrain, and to redeem y goods if y right is decided to his. Co Lit 149. 2 Bl 341. 4 Tae 372.

According to ye above definition, ye action is confined to cases of distrain, but in many other cases, see infra.

This action is ye only means by what property so taken, can be specifically restored to y owner.

A distress is ye taking of a Personal Chattel out of ye hands of some other, or party in default into ye custody of a party injured to be held by y latter, till compensation is made for y injury. But following thereon, ye a distress is not an action.

The Term Distress is said to signify either y act of taking y goods, or y goods taken. 3 Bl 386.

According to y above definition, and ye subsequent opinion, this action will not lie for goods taken for a mere trespassing act, but for such only as have been taken y by distress.

Hence if a wrongfully take y goods of A, B can't have ye action to recover ye specific goods themselves, but he may have an action to recover damages. 3 Bl 372. 5.
But according to this opinion, you action lies to recover the bonds of goods, you have in any way, been wrongfully taken out of the bonds of your owner. This last seems to be the only rational Rule for there are many things of little vital or really great value, as family pictures. In such cases, damages awarded by a Jury may be merely nominal, and yet your owner may consider them as alone and the Defendant will lie in such cases, yet may remedy may be uncertain, and Abatement being in any alternative. 1 John. 140. Bull. N. Com. 232, 233. 35. 82. 39. 2 Edw. 89. n.

The suit is granted only upon security given by the Plaintiff, in your action to try your right under why goods are taken, and to receive your provided, your rights being acceded to him. 9 33. 147. Co Lit 148. Co 34. 54. 5.

In your action under your Count, the Plaintiff gives security to try your right of your goods, he and also to answer all damages, if your right is directed to him, but not to restore your goods themselves. This is never demanded. There is no specific restoration by the Plaintiff for the security. If your bond is regarded as a substitute for your goods, it is, thinks, made provision for in this Statute, preparatory to the Eng. O. Law, rules, and in modern time, there are several Eng. O. making similar provision.

By the O. Law, if your Plaintiff does not try your right, or fails in your action, a Judgment for recovery being awarded to your goods or restoration to you. Or he then he is entitled to have you, like satisfaction, made. But at O. Law he can
Sende of sufficient amendys, before distress made render y distress unlawful. Hence if after Sende he distress, he is liable wi' strict and for his only object of y distress is to obtain yeing for some debt, or a plea, or satisfaction for some damage sustained by the Distreiner.

So if after distress actually made, but before commitment, y owner of y goods tender vate amendys, a subsequent detention of y goods is unlawful. Hence if y Sende is not made, after commitment, for y goods, are then in y custody of the Law. 313o 1s. 6 Co 147. a.

So if after Dopping for distressor in his action, he is tendered sufficient amendys and vake retynge y goods, his subsequent detention is unlawful, and Dopping may have Detinuer, a trover for ym. 3b 387. 6 Co 76. a. 3 Role 59.

If y originaly distress is unlawful, ac where made after Sende of sufficient amendys, trepara sole he wi' Distreiner, but where y originaly distress is lawful, and merely y subsequent detention unlawful. Trepara he, not, the trover or Detinuer doe.
Where a distrin to be sold, it is at C Law in all cases, to be impounded, animal, in a bound rent, manumitate chattel, as goods, at a pound Court. The distrinor may not at C Law retain your in his hand. 3 Pct. 12, 3 Sect. 47.

In Court we have a pound Court, but no pound Court. Here animal, are impounded in a pound Court, but manumitate chattel remain in y hand of y distrinor, till y right is decided.

At C Law, a distrin being in y nature of a Pledge, so security can't be sold by the distrinor. He can only keep it as a means of compelling y owner to pay y debt 3c. 1893r 388. 3. 3c. 18. 13.

So too by C Law of animals are distrin, damage Isavan, y distrinor can't sell ym be can only hold ym at pound, till y satisfaction is made.

Secue under our Law, here they are to be sold.

So in Eng. now by several Sts. y distrinor is in most cases, empowered to sell y good distrin, but even now cattle taken damage Isavan can't be sold by the distrinor. He can only keep ym impounded, till y satisfaction made 3 3c. 18. 13.

There were however some cases at C Law, in whick a distrin might be sold, see C 41. 12 330.
Whenever there is a distress taken, it is a
pleasing
point to remember, as a matter of right upon
suffering the necessary pledge. The law can
exercise no discretion in reducing the mortgage
of the estate.

And if the grantor include a clause of a right of
distress in his mortgage, the mortgagor
must understand
its clause. It is proper to good policy, for in
good way the landlord might practice great
injustice. 2 Co Litt. 140, 1 H. 6, 370.

The principal cases in which distress may be
taken at law are two:
1. Where cattle are taken. Damage Garant
2. For nonpayment of rent, tenant.

In the last case under the law, distress may be sold. 3 Co 107. 2 Co Litt. 46, 4/30; 64.

There are certain other cases in which a person
may distress, but they are almost all distress
for nonpayment of some feudal duty.

In Court distress, for a second cause are
not in more cases. The question here is whether
may be considered as Eme et le loco et vo. To go
such distress cannot be had in Court.

In Eng. the distres of Replevin may come out
of the law, or (by an ancient Act) it may be issued
by the Sheriff and even by the Sheriff verbal order.
In the latter, in Replevin, is sufficient in Eng.
D. 355. This is not so in Court.

By the law or statute, in all cases of distress,
even when the distress is founded on a coparcry in non-tenant.

In Count the want may arise by R in all ease, or in sch cattle or goods are unbound, where until attached or delivered me when search is made, or on an warrant for such or rent, or when some cause tried in y maratime etc. But it seems according to the practised construction given by the St, y cases are not acceptable, since it are only 2. 1st cattle taken Sequest, and 2ndrly cattle taken under a wish of all at time.

I Replais of Cattle taken damage Sequest.

In ye case y owner of y land has his Ectioin, either to bring an action of Trespass or y owner, or to dismiss or unbound the Cattle.

If however he does dismiss, and y cattle escape, his his own fault or neglect, his remedy is forever gone, and he cannot afterwards sustain Trespass, but having once made his Ectioin, he must abide by it. And this Rule is general in cases of Ectioin.

But if y cattle escape witht his fault, as by reason of the Insufficiency of the pound, death, rescue, he may still have Trespass, as the owner, for in the last case he don't voluntarily abandon his estate, remedy. Exodus 1. they die by his fault. 11. Mod 685. 63. Ed Ray 120. Luke 245. 5. Rule 178

Sung analogy between taking y body of a Suscom detto in Poss. and distraing of cattle damage Sequest. The body in y one ease, and y body in y other are regarded only as Security for y debt, & in both case, so long as the pledge.
is retained, there can be no other remedy — 12 Moz. 663. 

Where ye cattle are in bounded, and notice given to ye owner, it is his duty to see that they are fed. Hence it after notice, they shall die, for want of sustenance; it is his care, and not the disseminor. Unless if they die before notice.

By the C Law alow y' owner of cattle disseminor must support ym. mo. They are but into a pound Covert. & BC 13. C. 24. 47.

And by Count 26. y' owner must either redeem a reprieve within 24 hours, after notice, or he incurs a forfeiture of 17 £ 2s. per head, for every day's neglect; besides, The Exence of keeping.

And these forfeitures are applied to satisfy damages done, and the Exence of Poundage. If they exceed the amount of damages, &c. y' disseminor is to be divided between the town treasur and the Pound keeper.

When ye owner reprieve, the cattle disseminor damage Peaceant, and Judgment is rendered for Disseminor at C Law, a judgment "de torno hatendo" is awarded.

In Count. if the Def in Reprieve prevails, he recover a sum in damages for Judgment of wit, both he and his pledge are liable; but there is no restitution of his goods as in Eng. If he don't satisfy the Judgment, a Def. i.e. may mose no his pledge.
If y' Pleas in Replication is taken in Coz,
and escheats or even dies, in person, his Sureties
are still liable on the Recognizance,
They are not discharged by his death.

By our Law where e owner of cattle, distrained
damage Tenant. Is unknown distrainer must
give notice.

Where one Person's cattle enter upon y land
of another, it doth necessarily follow, yt they
are liable to be distrained, or y owner of you
is Free to do Damage. To make him or ym
so liable, y act of entering must have an
amount d to a Trespass. Hence if B3 cattle
enter on A3 land, and y insufficiency of A3
fence. B3 is not liable.

So if part of A3, hence is insufficient, and
t cattle pass thro' y insufficient part, B3 is not
liable. Unless if they pass thru' bare with y
water.

If y cattle of A3 enter by the Highway upon
y land of B3, it is erroneous at Law an
not fence was or wanst insufficient, for at Law
it is unlawful to permit cattle to go at
large on the Highway, 2 H 36 327.

This Rule needs some qualification, for it
if A3 is driving his cattle on the Highway
and they enter upon B's land, this is indifferent of B's fences. B (as owner of a field) has no remedy. Lewis if they go at large on the Highway without a driver.

The principle is such as owner of cattle is liable of course for all trespasses committed by him or by his agents. That is mischief done by animals from a disposition common to their whole species, he is liable without notice of you. Then having done so before and yet for an injury committed by an animal from a disposition not common to y species, y owner is not liable without previous notice of his having done so before. i.e., if he had a dog which killed an ox of B, A is not liable without notice of y dog was addicted to it before. La Ray. 606. Bp. 681.

When an animal is driven on damage Gravant, y owner is not permitted to raise y animal and if he does he becomes a trespasser "at iniurio" i.e., a taker B's R. by a trespass, and he works harm, y user amounts to a conversion, and we deal it constitute him a trespasser "at iniurio", for where one person takes, hopes of prosperity of another, by licence of Law, any subsequent abuse of that licence, makes him a trespasser, "at iniurio" 3 Bk 13. Gd § 143.

An action to land may incidently come in question in y action of trespass, since have called it a Real action in such cases, but y is very incorrect, it is strictly a personal action as much as as a debt. An action can properly be called a Real action, unless the trespass may be recovered, which can't
be done in Reploven. Comb. 27. f. 152. P. 4 Bac. 473.

It is a Rule of the C. Law. (as founded on reasons of policy) yet all actions must be taken in y
daytime, and in y case of cattle damage Yeavant.

This execution is allowed, it is said, because
y beasts might escape off y land before day.

Where ant it allowed to prevent further damage. 7. Co Litt. 142. st. 1. 3 Bl N. 1. 26.

A action of cattle damage Yeavant must be taken
while y beasts are on y land, during y time he
has a Tithe on ym. but no longer. 12. so long
as they are upon his land, he has a right to
seek, and hold ym till satisfaction for y
injury.

The Rule was formerly y same, as to action
for Rent. 16. y court entitled ea action on
y land, but not elsewhere. They however is
now remedied by an Eng. Lt. 9 Co t. 22.

In case of Rent Linear, a Landlord might
at C. Law. action to any ant. This rule being
considered a grievance, is now altered by the
Co of Marlbridge. 12 Hen. 3.

By this Co y Landlord is forbidden to take
an Excessive, or enormous altogether dishonested
action, and if he does, he is liable to an
action on this case. As if he action 2 open
for 12. Hence.

If there were other actions nearer y value
he might have diitnted. 3 Lev. 48. 3 Bl 12.
Co 582. 1 jetent 104.
But for an offensive distress, trespass will not
rise. Case it is only remedy, because where is working
loanis of gold or silver, came, who has a certain
and known revenue, in that case it seems, a trespass
will lie, for as to any thing more you cannot
see, he is a Monger. *At instant 1 idun 80s.

A distress for Rent arises, is at Law, incident
to common right, in these cases only, in such a
man hath also a reversion of a land,
where he has no reversionary interest, he cannot
distress as of common right. The Law does not
confine any such right, when he may.
Of course he
cannot distress me by virtue of such a clause
for distress in a grant, &c. As Grant of a
whole Interest, reserving Rent, 1st, with and 2d
without a clause of distress. *At 2 Ser. 18. 8th
148. 3, 2 Bell. 42. 6th 150.

Now by 5 Geo. 3. you might to distress for
Rent, amount in damages to all rents, whatever,
as well as to cases, where a Party entitling has
not, as where he has a reversionary Interest.
2 Bell. 45. 8th 8. 6th 350.

In some cases the Judge may *The return non habend
be taken away in the Law, and a
recovery in damages, instructed.

By 8 Geo. 3. Ch. 34. if Def. in yo action prevails,
he recover costs and damages, so much as yo
property distressed is worth, provided your property
is less yo am't (ie. yo value) yo yo am't of
Rent due. He may afterwards take a second
distress, or bring another action for the Rent.
If of equal value or greater, Def recover under ye
To y whole amount of Coint and together with cost,
but he can recover no more. 3 Th. 140. 148
2 Th. 30. 3 Th. 150. 2 Th. 116.

II Personal Property seized under process
of Attachment.

By the 3d Law of Comt & Property

When Replevin is lost in these cases, it is never
an adversary Suit. The Plff claims no damages,
It is merely a means of recovering a posses of the
good, to the Plff by the process.

This process of Replevin is called a MANDATORY
process requiring the Plff, or an officer who
attaches y Goods, to deliver them to the Def
in the process on Comt. Let Thef. that he and
his Surety will answer.

The security given is substantially that the Plff
in the process of attachment prevails. Def in ye
process will answer all such damages, dues and
demands, as shall be recovered by him. To yo-
ye Replevin is merely a Security for damages
in this attachment.
The suit of Replevin must in this case be directed to y same officer, who seized y goods on y attachment, requiring him to redeliver and to give notice to the adverse Party.

The Writ must also be returnable to the same Ct for wh y Writ of Attachment is returnable.

This suit of attachment then becomes a suit of y same Ct and the Bond is recognized with y Pleas upon it. It is to be entered in the File of the same Ct.

The bond must be taken in favour of the adverse Party, & Def in Replevin. Thou it be no security to him, as he canot sue upon it.

In Modern practice, a Writ of Replevin in such cases is in a great measure, superseded by the practice of resealing goods attached in Chancery Proceeds. When an officer attaches goods in Chancery Proceeds, it has been customary to deliver ym. to the Def. in his securing a responsible Receivtsman. Thi y officer is warranted in doing.

It has been decided, that y magistrat in taking bonds on the Writ of Replevin, acts unreasonably, and if he takes Pleasages, wh are insufficient at y same time, he is liable to the Def. in the Ribs Proceed. Aso that the Damage is not Inductive. But 61 Lib 35, 64, 65 348.
If the pledges were receivable at any time, he is not liable. Nor they are afterward. Indeed, it has been questioned, an Oath, own bond may lawfully be taken by the Magistrates in the sight of the Judge. But it has been decided that such bond can't lawfully be taken by the Magistrates and that if he does take such Bond, he is liable for the Judgement recover'd, if it is not satisfied by the Debtor. Indeed a contrary Case will be absurd. But it is

It has been held in this State, if a person's real is by mistake seized on attachment or the property of his, to be, it cannot bring the Judge for he may have Treasure for it is now to the Judge or attachment is not an accessory Suit and no one may be for the attachment can be brought as good as attached. V. S. 310

See there. If the Judge will be for a Tortuous taking. In such case it will lie. Here is the Judge's not for a mere Tortuous act.

If the cattle, if of a Term sole are distinguished and white they remain under dower, the name, her husband may die in the Judge alone, and what goes still further, she may not be joined with him in the Suit. For the property is in him or her subject to the Suit of the Tenant. It is a right in her, and not merely in action. Consequently, it is vested by the manor's absolutely in the husband.

But such a declaration will
be good after death, because it is said, it will be presumed, yet they were to Tenants of ye cattle.

There can be no licefulness of this presumption.


If a tenant or taker of goods or moveable goods or goods of several persons are taken by me, and the same district they cannot join at one suit, but each must bring a separate action for their interests are several. Tho' a more persons cannot join in one suit me to enforce a debt, but there can be no debt, nor right, nor there is also a debt interest:


If goods are distrained in a foreign country, they cannot be recovered in this country, and vice versa. They can be recovered in a country, in which they are distrained, for it is said, a debt may have been lawful where it was made. This unlawful here. D Show it.

Ex 37: 37.

God's words, as to their reason may not the law be engaged of

Do not because of a debt, it shall be allowed, nor shall the debt be allowed, as the law are all equal.
Replevin lies not only for things Personal, and not for Chattels Real. Moveable Chattels only are subjects of Replevin.

Hence it has been held, not to lie, not for Title deeds, as they are the Monuments of Real Property. Tit. 3 Eliz. 2 Esd. 372. 4 Bac. 385.

The reason is insufficient. Same question was for the proper deed. Same question was applicable to Trover for Title deeds. If however it lies only for goods, distrained, then it follows it will not lie in this case, for Title deeds cannot be distrained. But if it lies for a Tortious taking, then, I think, it may be lost for Title Deeds.

This action is said to be founded on my rights in the property or interest of the Pllf. Whereas Trover is founded on the injury to the goods. Hence it is a good plea in Replevin, yet property is in a stranger, and not in the Pllf. This however now be no plea, neither in Trover, nor Trover.

Properly it said to be a plea in abatement on no Bar.

Fed. Duer as to it, being a Plea in abatement. 5 Eliz 3072. 2 Lev 92. Park 174. 148. Yolke 94

_Pleading_"
So y from see 3 Ch Ch. 364.

When there is a trial in Repilevni, y Def. may either deny the taking, or justify it in a plea in non suum. 2 Bda. 388.

The taking is denied by the General Issue, "non suum," but under this plea, y Def cannot claim a property in the goods, nor give in any facts amounting to justification.

If he were justified, he must do it by Plea. He cannot claim a property or justify in such case, because a justification is inconsistent with the general Issue: for y one virtually admit, while y other denies the taking. 1 Bent 540, Bul 54.

1 Calk 8, 2 Lev 80. 6 Mod. 81.

If Def justifies in Repilevni, for having taken, damage subsequent, he is called the avowant and his Plea an Avowary, provided he justifies in his own right, or in right of his wife. But if he justifies in right of another, he is said to make Cognizance, and he is called a Cognizant. To call, from the form and effect of the Plea, 3 Pum 63. 2 Cana. 103, 3 Pum 366.

The action of Repilevni is as regards y pleading directly "bui generi." The Avowary has the effect of a Plea, and a deed. It is at one and same time, a plea to the deed in Repilevni and also in y nature of a deed to the plea in Repilevni.

To on y other hand, y answer to y Avowary
Do it in the nature of a Replevin and also of a Plea in Bar. Hence it answer in generally. Called a Plea in Bar to the Answer.

When a party avows, each party or stands in relation of accuser or Def. to y other. Each party claims a recovery for 
m of other. As Replevin for less or less. Taken damages. Feasant 2 Mod 112.

When the General Issue is pleaded there is no 

An Answer is in the nature of a deed in 

In every avowy, y avowant 

2d The Plt in Replevin may plead an abatement of y 
avowy. Precisely in y same way, as Def. in other 
action, may plead.

3d The avowant who in y nature of a Special Plea 
needs not conclude with a verification (et hoc est 
paratus) etc. but closes with a claim of recovery.

Lastly of he proves it, y fruits of a declaration.

16 a Judgment for a Rentum. Cor for damages.

2 Mol. 175 6 Mod 15. Ch. 32. 70. 76. 22. 32. 78.

3d Tenants in Common lease land, and action 

for rent arrear. and Replevin, but as you they impre 

and indeed must make several avowys, for their 

interests are several. The rent due to it and due to B. Tenan 

in case of it Tenants. They must avow jointly, because their 

interests are it and not several. Case 3 3 2 Pi 3 3 3 3. 3 3 3 3.

1st Mol. 423.
Prerogative Writs -
Mandamus, Prohibition, Habeas Corpus.
Mandamus is a prerogative writ, issuing out of the
et of the King's bench, in Eng. it was formerly
supposed that the et of the King had y power to issue
this writ, but it was decided sermon 170: yt
it had not y power. This power is generally
given by the Common Law, et of y higher
jurisdiction. 3 Bl. 116. 2 Bak. 22. 166. 170.

This is called a prerogative writ, because it contains
a command to some inferior et or officer commanding
by virtue of higher authority of y et to issue
y writ. y performance of some legal duty in a
common inferior et. All the judge does is to
award y Indictment of the law, but in y case
of a Prerogative Writ, it is y authority of the Court
itself, and not a mere pronouncement of the sentence
of the law.

This writ is granted mostly in those cases relating
to the Public, and the Government; and only
where there will be a failure of justice. 3 Blae 327
4 Blae 287. 2 Doug. 406.

The object of this writ is to enforce obedience
to y acts of the Legislature, and in Eng. to y King's
charter, and it never only in those cases where
there can be no other adequate remedy. 3 Blae 327
But if therefore a general rule, yt it cannot
be issued, when any other adequate remedy can be
had by action. Doug. 326. 1 Car. 418. Cond. 377.

In this state, it is granted by the Supremo et, but
must by the et of Orion.

This writ is used to restore a person to lost
corporate rights, or franchises, not concern this.

Public: 11 et 98. 3 Blae 327. 21 et 66. 67. or to admit
but to you.
This writ issues to some officer in Deansworth to commanding or performing of some official duty, or corporate duty: and can never be issued to a person in his individual capacity.

3 B. & C. 328. & Mod. 32.

This writ is demandable of common right, and, if not bound to grant it, but there must be some foundation for it, but the Court have not y discretion over it. 3 B. & C. 328. Mandamus. Title.

This writ issues to compel y officer of a corporation to call meetings to hold eleciton, and to do any other corporate acts, as is a town that neglect to choose Selectmen. This writ might be issued to compel them. 3 B. & C. 1157 & 120. 31 Geo. 3d. C. 58.

This writ to restore any person to y corporate office of not he has been displaced illegally, as by a corporation that at an illegal meeting removes a town clerk. This writ might issue requiring his restoration to office.


This writ issues also to command Persons in authority to do their duty in all cases generally. As to the Owners of an inferior Ct. to proceed to Indictment, when he refuses to render Indictment. 3 B. & C. 336. 6. 17 Geo. 3d. 2 Edw. 7th.

So it goes to the Owners of a Robate Ct., or Trounces commanding him to grant letters of admittance when he refuses to do so, upon improper application. 3 B. & C. 357. 18 Car. 2d. 437. 60th. 330. & 302. C. 662.

So it goes in Comt. from y Superior Ct. to y Ct. of Com. Plead commanding it to do its duty.

So he, the clerk of a corporation, commanding him
Above deliver over to his Successor all Books and Records of the Corporation, when he so refuses to do, 2 Ch. 8:10. 
O 13 5355. O 158 063 057
I before observed that, the Mint was in Cases only, relating to the Public and the Government, but as it is so difficult to determine what shall be called a Public Officer, or what relates to your Acts of Justice, and as this point has of late been extended to a great Variety of Cases, it will not take much time to enumerate them, all, it will be proper however to mention a few more, to have the case of late been decided, or if it will, will be for a magistrate of an Mayor, Alderman, Common Council, Town Clerk, Committee also in Eng. a Parish Sexton.
2. Rule 112. 1 Rent 143. 133. May 21. 1 R. 552. Talk 70. 
Corpo. 531. 577. May 74.

This write let be notice one to a Office of which it is, but he has been discharged unfaithfully. 3 Ben. 70. 3 Ben. 112. 70 Rent 143. 133.
(Le 24. 3 1 Bar 5330. 2 R. 54. 3 Rent 143. 133)
May 69. 1 R. 552. Talk 50. 1930. 1 R. 54. 3 1 R. 5330. 
16. struck from 1 R. 532.

But your Office, or your restoration of which you write, I think must be of a certain and Permanent nature, hence an Office, under an Institution depending on voluntary subscription, is not entitled to this Mint, such as Trustees depending upon voluntary subscription.
1. R. 146. 1 1 R. 531. + 1 R. 126. 1 R. 5. 666.

An Office, whose Office is an annual one, and has been attached to it, may have 30 Mint. 1 R. 9. 666. 
1 R. 146.
This may be said for all Public officers appointed by law, such as Constables, Thuman, Selectmen, Town Clerk, for these are all annual at least.
This must lie in功率 as a County Treasurer.
Commanding him to pay any money due to a creditor of his county, when he refuses to do so, also it lies on a magistrate refusing to levy or lay a county tax, when in his duty to do so.

Where the offense is of a private nature it can’t arise to restore it. ( Bent 148. 缉 B. D. 666. )

This suit will not induce to enforce an act while it is uncertain, an officer or the act has a right to do an act. Where it is not in writing, the suit may arise. ( Mill 266. 缉 B. D. 666. )

Neither will it arise, where there can be an adequate remedy by action, hence it cannot arise, to a 1821 and commanding a transfer of stock, when there has been an agreement to transfer, as a remedy must be bought by action, Doug 676. 缉 B. D. 666. 缉

Neither will it arise to compel a Co. to do an act, when doing so is discretionary, as to adjourn grants a new trial, continue a cause, &c.

If several persons by the same unlawful act are deprived of their offices, they cannot join, but must demand the suit severally, for their interest in several. Catr 653. 缉 B. N P 650. 缉 B. D. 652. 缉

As to a model of claiming this suit, the party is to apply to a proper Co. when a Co will generally direct a party complainant of to show cause, why the suit shall not issue, and if he show no cause, the suit itself is issued. 3 Eliz 528. 缉 B. N P 190, 208. 缉 B. D. 662. 3 Eliz 111.

This rule however isn’t universal. The suit sometimes in some circumstances, unless the suitor, upon first instance upon an affidavit by a Party complaining,
A Rule to show cause why it had not been issued. To issue it, it will issue in your first instance, when the circumstances are well known to the Court. Dib 3 568. 3 Bb 111. Sulgo. "called Ron Carter."

Nor will the Writ issue, till a default appears in your party or whom it is demanded. B N P 189. Dib 3 570.

The Writ is issued to y Ct or officer, whose legal duty it is y act required. Dib 3 572. Talk 889 436.

Where y act required to be done, is y duty of a part of an Aggregate Corporation, it may be divided in the whole or more, whose special duty it is to perform y act. Dib 3 573. 3 Bb 111. Talk 889 01. 9 Tr 039. Dib 3 572.

If not shown.

When sufficient cause, why the Writ has not issued, as then issued in the alternative, either to do y act, or show some cause why it was done, under this first reason. If he has shown good reason why it was done, he is excused, and by the Law his return cannot be traversed, but if y Act was false, y party requiring the Writ, might bring a Special action of Falsity in the case. 3 P 177 41. 3 Bb 111. Dib 3 648. 3 Bb 111. Talk 889. Doug 139. 3 Tr 411.

But by the Act 3 111. y Ct, under a Rule 3 Bb 433. Dib 3 643. 3 Tr 411. Dib 3 643.

Nor will it, if any of our own have adopted the Rule of your Act, and now y return is shown false, y Plaintiff may have a Special action of Mandamus, to do y act inquired. 3 Bb 111. Dib 3 643.
So also if the return is true in fact but appears insufficient on y face of it, a Preliminary Mandamus is awarded. 23. A. P. 201. 3 Bke 111. 30. 8. 680. 648.

At Law the only remedy for a false Return was, an action on the Case. 11. A. 33. 3 Bke 111.

When a false Return is made by several, y action may be brought against each of them, for the nature of a Tort, and this action may be maintained as well for suppressing the Truth, as for a positive falsehood. 3 Bke 344. Caris 172. 197. 9. 669. Song 14.

But if there are several Defts. when a false Return is made, and it appears yt. one of ym was imposed, to such false Return, but was overuled by the Majority, he shall be acquitted. 16. May 354. Caris 172. 198. 9. 680.

Upon a recovery in this action for a false Return, a Preliminary Mandamus Issue, of course for y falsity of the Return is assurably by the Judge by the action. 3 Bke 344. Talk 439. 40. 8. 680.

This action to satisfy the Return is br$t in yt Co. out of 90. with y Mandamus Issue. Talk 428. 39. 8. 680.

If a after Preliminary Issue to return the Mist and the Mist is not returned, an adjournment is immediate unless for contempst of Co. you will recollect. Mist Mist is reserved to y person to ye whom it granted, and he thus having it in his power might destroy it. 3 Bke 111. 3 Bke 457. Talk 429. 34. 40. 8. 680.

When this Mist goes to several, y adjournment for not returning, must go against all, and if
in fact, either of def. we have made a Return he will not be punished under the Act attached. 
St. 808.
The means of coercing a to have for compelling 
obedience and not returning, are vary to compel a true Return. as they can find. imprison the party complaining. 4 Bde. 287. Co. Ch. 246.
The party is punishable for any disrespect in his 
Return. 5 Bde. Com. III.

Writ of Prohibition

This is a prerogative Writ coming out of 5 Bc of 
Rings Bench to prevent Inferior Co from trying 
cases where not within their Jurisdiction, as to 
prevent them from deviating from any Established Rule of Statute. Law 3 Bc. 112. 1 Bl. 176. 12 Coke. 
88. 4 Bae. 240. referral.

This writ generally issued from the Rings Bench it may however issue in some cases from 5 Bc of 
Chy. Com. Plead or Exchequer. 3 Bc. 112. 

This writ is directed to some inferior Co and the Party prosecuting, and is founded on a 
Pragitation, by the Co is deviating from some Act Law. Regulation or that the question before the Co is out of the Jurisdiction of said Co. 3 Bc 112. 
2 H (9 Bc 10.

The mode of obtaining this Writ, is by a Rule 
granted by the High Co, upon motion made to 
they cause, why it should not be granted. by the 
In many cases an affidavit is necessary.
when however it appears from y Proceedings, yt y cause is out of the Jurisdiction of y Co, an Affidavit is not necessary. When it is not apparent however, y Affidavit must be made of y Fact.

* La Ray 1211.

There has been some diversity of opinion as to what was demandable of right, or an issue devolved with the Co. y general opinion i yt in an ordinary, Hob 67. Ray 3. 4. Salk 30.

* La Ray 320. 373. 86. 7 Ray 92. 4 Bac 242.

* Radin 7 4-3

Ray 3. 4-

None of Jurisdiction and a deviation from established Regulations, are said to be y only grounds of issuing a Writ, 2. 4 Bac 103.

The Method of obtaining it, is yt y Party apply arc in the Court below, to the Governor Co, setting forth in a petition upon Record, y nature and cause of complaint in being drawn ad alumn.

Commission by a Jurisdiction or manner of Process disallowed by the Laws of the Kingdom, unless that of y Co, alleged to be the Co sufficient, yt y writ of prohibition immediately issues, commanding the Judge not to hold and the party not to prosecute y Plea. Hence called a prohibition 3. 66 Com. 118. 112.

So far as this, effects in party, is analogous to an Injunction of a Co of Equity. If y sufficiency of y cause be doubtful. y Party complaining is directed to declare in prohibition, i.e. to procure an action by filing a declaration against the Co. Upon a suspending a fiction of y Co is not traversable yt he has proceeded in the suit below temen.

y writ of prohibition and if the Co shall finally be of opinion, yt y matter suggested is a good and sufficient ground of prohibition.
in some of cases. Then Judgment with nominal
damages shall be given to the Party complaining,
and the Def and the Co (informer) shall be
prohibited from proceeding any further. 3 Pitt 114.
Co. C. 72s. 4 Bae 242. 1 Cen or Civ. 125.
4 Moda 157. 2. Barker Note 198.

But if no cause suggested, it seemed insufficient.
Then Judgment is awarded in favour of Def, in
the petition's action, and a writ of consultation
is awarded, and the cause is remitted to the
Pit below. 3 Pitt 114.

Sometimes however the writ of consultation is
awarded or ignored, when there has actually been
a writ of prohibition granted.

The party prohibited may make a declaration
persuading the Suggester and traversing the facts,
in which prohibition was granted, and Co then
recommends prohibition under the abatement of consultation.
3 Pitt 114.

And sometimes the Co itself avows any action
or declaration award a consultation, after prohibition
has actually issued, when after mature deliberation,
y Co is satisfied, y cause suggested was not
valid.

The mode of enforcing obedience is the same
as in a writ of Mandamus, as by home 26,
for all obedience is considered a contempt of Co.
4 Bae 262. 4 Bae 268. 3 Bc 283. 40. Rob. K. 20
Tit. 3.

And if y Party prohibited commences a new 4 Bae 262.
suit for y same cause, and in the same Co.
he is punished for contempt, for Tho it acts
literally a disregard, still is an Evasion of y Command.
If a Bill in Chancery Co. does proceed and is attached, the other Party may, upon an attachment return, costs and damage, for any injury done him by the subsequent proceeding, for such proceeding is a vexation, suit, and he may be kept in prision till he pays the costs and damage.

Yet, it shall award, and he may also be punished for contumacy of Co. Co. Ch. 35 Gr. 1 Bent 3d. 3 Dec 360.

There are a Order vesting the power of issuing a Writ in the Emperor Co. Co. Co. 3478.

**Writ of habeas corpus**

This is a prerogative Writ of a first importance.

By my word, any person restrained of his liberty may be tried before the Emperor Co. for some specific cause. They may be tried on application by the Party himself or on application of any other person having a right to require his appearance in Court. 3 Ref. 1251.

There are various kinds of this Writ as the first is the Writ of habeas corpus, proceeding as when a man has a cause of action in one place it is continued by the process of some Emperor Co. in order to remove him and charge him with yet another cause of action in the Co. above. This, as used in Court, 3 561 127, 3 Bae 2. 5 May 124.

The Second kind is a Writ ad satisfaciendum—this order, when a Process has been brought against him in an action, and Party wishes to bring him into some Emperor Co. is charge him with Process of Co. 50. 1586 2. This necessary in Court, 3 561 129.
The Third Scotch is, The Plaintiff and the Defendant are fremen in
et respendandum. This is issued when a person
is sued in some inferior Court, and
i demand of removing the action into the Superior
Co. In this case he is removed by Process
and the proceeding's by a Certiorari - This Mit
is sometimes called a Habeeb Cause Cum causa
3 Bac. 2. 3d. 1 Moda 230. 3 Moda 135. 3 Ott 130.

The Mit is demandable of common right, and
while a motion it suppresses all Proceedings.
i The Inferior Co. and any subsequent Proceedings
in that Co. are void, as being "Non Coram Judge
and the power of such Inferior Co. is terminated
moment the Mit issues. 2 Moda 305. 3 Bac. 15. 3 Ott 130. 3d. 12 Moda 675.

But this ye Mit is matter of common right,
it will not be granted or proceeded on, when
consequence was be the Abatement of a rightfull
Chite, for in such a case the Co. was awarded
a Mit of Pendency. Thus, if a Sone Cole
is due in an Inferior Co. and having married
"pendent Chite" she attempt to remove it to
y Superior Co. y Chite must abate, if the Mit
is granted, as she could then plead the
non domain of her Husband wi Abatement 3 Bac. 15. 3d. 8.

Neither is this kind of Mit used in
Counts. As a person has a right by Law to
apply to a Superior Co. Of he chooses.

Another kind of Mit is, The Habeeb
Colone a a Testificandum. This issue, when a
person having a Chite in the Co. below, wishes
to procure a person to testify for him, if he i
lost up all the head of the Turt it will be considered voluntary an escape. 3 Bae 5 3 Kib 67, Comb. 574.

When y et itself is held not within y bounds of y Pramary, y practice it in Connec to bring y person als by a verbal order only. As y a cause was pending before y Co in Leicfield, Tho Brage was for the Chiff to bring als the Prisoner to testify and remand him to Prison.

It was once held in Eng. Mad if a Chiff bring als a person on the Birt, he will be liable for an escape. This doctrine however has been hortfully exploded, for it was but only a hard case. If the Chiff will be punished for disobeying the Birt, as he might be and be punished for recieving it as according to the doctrine he was not liable, an he must his up or not. 3 Co 44. 2 Bae 338.

But if the Chiff shall give the Prisoner unnecessary and unreasonable Liberty in that he escape, he will be liable, and it has been decided in Eng. Tho where the Chiff took the Prisoner round a circuit of 60 miles, out of his direct course, he was liable for an escape. The Rules is, yf the Chiff should bring him up in the most convenient time and way. 1 Mod 116. Co 14. Hobart 302. 3 Co 44. 2 Bae 338. 2 P. 44. 2 Bae 338.

This unit never lies to bring als a Prisoner of War as the Com. Law it have not y power to issue it for such purpose. Doug. 403.

There are as number of other kinds of this Brirt. But as they are not much in use, I shall omit your you will find them. 2 P. 2. and 3.
The law and only one of all this habeas treaty, is the writ of Habeas Corpus an extraordinary.
This writ is directed to a person having in custody the body of another person, commanding him to produce the body of the prisoner, with cause and cause of theCaption and Detention to do submit to, and receive whatsoever judgments or other actions may be brought in his behalf. 3 Bl. 131.

This is a common writ in favor of the Liberty of the Subject, and it is a great writ by which a Release is obtained from any illegal confinement. 3 Bl. 131. 1 Burr. 631. 1 Bent. 92.3.

Where a person is committed for contempt by either house of Parliament, he can not be discharged upon this writ, and indeed every legislative body established in the principle of Legisprudence, have a right to punish for contempt, and the Exe of this right cannot be interfered with by any Exe of Justice. 8 9 R. 34.

This is considered a writ of so much consequence, yet every facility is afforded for obtaining it. By 2 Law, it issues from a Exe of Kings bench, and Chy. and by 16. St Ch. 1. it may issue from the Exe of Common Place. 3 Bl. 133. 1 Bl. 543.
4. 2 Bent. 24. 2 Bl. 539. 3 Bl. 131. 2. 1 Bl. 144. 1 Bent. 92.3.

Where a person was committed for some criminal matter, a Exe of Kings Bench and Exchequer, could only take Bail for his appearance at Court, but since 16. St Ch. 2. a full benefit of Exe may be obtained. 3 Bl. 132. 2 Mod. 138.
There has been a great diversity of opinion, in this point, whether it arose out of the Court of Chancery, or in the Court of Exchequer, or in either of the two Courts. It was decided by the Chancellor in the case of this writ, in the following terms:

_3 Ch. 132._ 3 Bae 3. 2. 2. 4. Pl. 147.

This writ is directed to the Bail, or person detaining the Ponderer, commanding him to produce the Body, with the cause of detention.


The Person and cause of detention being presented to the Court, he is either discharged, admitted to Bail, or remanded to Prison.

If the detention is illegal, he must be discharged. If lawful, and he is entitled to Bail, he will be bailed. But if it is lawful, and he is not entitled to Bail, he must be remanded to Prison. _3 Bae 134._ 3 Mod. 22. 11 Bent 338. 46.

The object of this writ is to give specific relief to persons restrained of their liberty under lawful cause. In certain cases of the misconduct of certain persons, the necessary benefit of this writ was lost by the superseding of the Judges to the Crown, as they had frequently evaded the law.

But these causes were entirely prevented by the Act 31. Ch. 22, which it renders the writ more remedial than it was at first law.

_3 Bae. 7. 8._ 3 Bae 138. 6.

By the Act, either of the 12 Judges of the Exchequer, might issue this writ, in vacatio.

_3 Bae. 131. 136._
This writ may issue by any Person in favour of the King, his Privy Council or Secretary of State.

3 Bc 136. 6.

It is sometimes suspended as in War, Rebellion, for as the Parliament had the power to authorize the writ, so it has y power to suspend it.

3 Bc 136. 6.

But this writ never issues for a Relief of Persons committed upon an Act or Conviction for if the Judgment be wrongful, he must seek his remedy by other means established by Law.

Neither can he be issued when a Final sentence and in cases of Treason and Felony, y writ will not issue see Ec 31. Ch. 2.

3 Bae 2. 3 Bc 136. 10 Med 410. Tar 142.

But according to the description above of this writ, it lies not only where a Person is confined by a Chief, but also in favour of any Person whatever who is illegally confined. As where Children are confined by their Parents, a woman by her husband, it lies in favour of Guardians, Warder, also Servants.

3 Bae 15. 3 Kes 526. 2 Lev 128. To 682.

And y writ may be issued out by any friend of y person confined, as well as y Person himself. To 682. 1 Bun 555.35. 5 Med 21.

This writ is executif in Court by the Chief 

 Ct or Ct of Common Pleas or the Chief Justice of 

city, in Vacantare. To Court Vol 2. Title: Habeas 

Corpus.
Obedience of the laws is punishable by fine, imprisonment, or corporal punishment.
3 B. c. 10. T. H. i. B. 68. 12. Mod 666.
Pleadings 107.

If the Declaration or Count 123.
If the Plaintiff of Parties, 134. in the declaration. Of Joint Causes of action. 139. Miscellaneous Rule 147.

Dilatory Pleas 155. 1st to the Jurisdiction of the Court. 156.
In what cases actions are local 157. II. Disability of Plaintiff. 159.
III. Pleas in Abatement. 160.
Mode of pleading in Abatement 191.
Restraint of Pleas in Abatement 206.

Pleas to the Action 207.
What defences are admissible under the genus? 221.

2nd Special Pleas in Bar 235.
Requisites 238. As to the modes of taking advantage of such pleading 241.
General pleading 245. Traverse 248.
When is a traverse necessary 256.
Protestation what is 265.
Incapacity 280.
Profession of Bar 285. Departure 293.
Demurrer 298- Demurrer to Evidence 311.
Mode of demurring to Evidence 318.
Writ of Habeas Corpus 318.
Repleader when awarded 333.
Defects in a Verdict 347. Exceptions 348.
Bill of Exceptions 343
Confined to Special Point 351.
When to be tendered 352
By Point Parties 359.
Some of pleading in abatement 363—to a writ of Error—A writ of Error
not a matter of right 364—Does not
lie in discretionary proceedings 364—
Don’t suspend debt or judgment
366. Bail’s Disability 366.
Inmitting according Bros 366 Costs &
Causes of granting new Trials 380.
1st Want of due notice to Def of
Trial 380.
2nd For defect or mistake in the
Judgment 380.
3rd For defect of the Jury or their
incompetency 382.
4th Misconduct of the Jury 382.
5th Finding General Verdict vs
direction 386
6th Verdict vs Evidence 387.
7th Verdict vs Law 388.
8th Smallness of damages 388.
9th Excessive damages 388.
10th Mistake of Counsel in pleading
as wrong plea 392.
11th Absence of Material witness 393.
12th Discovery of new Evidence 394.
13th Misconduct of a Party 395.
In Ejectment 395 Criminal Cases 396.
Pleadings

Pleadings in civil actions are defined to be mutual allegations between Plf and Def in a suit, made out in legal form, and delivered in writing. 3 Blc 283.

All Pleadings were originally oral, and delivered one to the other, or "prius voce" from one Party to the other. Hence they are frequently in Norman French, denominated the Parol.

But at his day, as necessary to all Pleadings and requests, either in support of his action or his defence, shall be delivered in writing. 10 Co 182. Bae Pl. 1.

The Pleadings and Indictments in books of report present 4 different languages, and more correspondence to the 4 different periods of Eng History: but Norman French, Latin and Eng. The French as its name imports, was introduced at y Norman Conquest, and continued to be the legal language till 36 Edw 3rd. Laws 23. 2. 3 Blc 317. 24.

The Latin was then introduced, and made an instrument of conveying and diffusing the Law. till 15 Edw 3rd. Laws 23. 2. 3 Blc 317. 324. but by 6. Geo 2. & 4. Sect 3, we are to be in Latin. 3. Blc. Com. 322. 3.

But what are these allegations? They are in setting forth on one hand, the facts which constitute in Law. y Plf's demand, and on the other y Def's defence. 1. Blc 159. Doug 278. 4 Bae 1.
Mr. Mansfield says, Pleadings are founded in sound sense and strongest logic.

Pleading is strictly a more logical process, and the Rules of Pleading according to Sir W. Jones, constitute a beautiful system of Legal Logic. Every good declaration (and every good Special plea) is substantially (if not in form) a good syllogism. For instance, the plea in a case of *Querci Clausium foriio* vs. him, who presently enters upon my land, I have by law a right to recover damaged, y Deff has presently entered in my land, ergo, Deff a right to recover damage from him. 1 Burr 319, 3 B. & B. 366, Laws 3 3 3.

The 1st a major proposition is not usually expressed, (as the Judges are supposed to know the Law as officers). Formerly it was. It needs not be, however, because the Judges being supposed to know the Law, y expression of it is of course superfluous. Ed. Ray 88, 176, Ch. 8, 184, 3, 234.

Particular customs and Private Claimment must however be pleaded like any private document.

The 1st and Major proposition, then, containing y Legal Principles in ask y Defy relieved. The Minor proposition states the fact, to ask y principles apply in the particular case. The conclusion is an Inference of Law, from the application of the principle to these facts.

2. On the Def's side, y Major proposition, on legal principles is to be denied by an Issue
at law. (or by motion in arrest of judgment)
Doubt or with denial it calls a Demurrer.
For denies y proposition is matter of law, y
denial must also be so.

The minor proposition must be denied by
matter of fact, E. by general (or Special) Notice. Case 10

The conclusion can be denied in wether of these
ways, for if y first proposition is true, ni point
of law, and y 2nd ni point of fact, y conclusion
is inevitable.

Suppose these both true, y Def must rest on
something collateral.

A Special Plea admits the law and y fact
but alleges some new matter, and a negative
conclusion. The Plea of Release is as follows. If
the Pltf upon whose land, Des forcibly,
enters, releases to me his right of action,
he is debared from his right to recover
damages. But he has released to me his
right of action, and is therefore debared
from his right to recover damages from me.

So too may be true, yet another, Plea may
be gone into by the Pltf, of y same nature, as
Dissess, and so on. The Pltf may demurr to
y lanceible, or allege, that the Release was
obtained by fraud. The great object of y
process, and of course of all the Pleadings, is
to simplify y grounds of controversy, so as to
make the suits defense as much as possible
on a single point. This is a short description
of the General nature of Pleadings.
The first stage of a suit commenced, is y 


Involve remark, in having, however ye when a 


But


By the Eng practice, and ye of most of our Slaty, 


The first stage in the Pleadings is y declaration, 


deanery


$n$ 338. n. 6. 4 & 9 Geo 136. s. 1 & 6.
The count or declaration is an amplification of your parts, adding circumstances of time and place. It also expresses the general complaint. The count expresses a complaint with particular lawes. 1, 2, 3, 4. Bc 233, 3, 301, 4 Bae 183, 1, 6.

The next stage is the defendant's answer to your declaration, for if he has not answer, judgment will go against him. 4 Bae 1, 3. 3 Bc 233, 301.

Please on your part if your defendant is of 2 sorts.
1st Dilatory Please. 2nd Please to your action.
Please to your action, and please in bar, and peremptory please, are convertible terms. Ibid.

1st Dilatory Please are such as tend to delay your suit, by questioning your mode in which it is to be brought, rather than by denying plaintiff's ultimate rights to recover, and will of successful defeat the suit. Ibid. 3, Bc 301.

Dilatory Please are divided by some commentators into 5 or 6 kinds, but they may all be comprehended in 3 following classes. 1. Please to the Inability of the Plaintiff.
2. Please in abatement properly so called.

All dilatory Please are frequently called Please in Abatement, but erroneously, for there is a material difference. 1. Tidw. 172. 2. Lawes 37. 3, Bc 302.

II. Please to your action. These answer the merit of the suit, always denying the plaintiff's right to recover, or a cause of action. The causes of action may be denied in either of your following methods:
1. By denying the allegation of the plaintiff, 2d by
The following Rules apply to Pleading in General:

1. On all Pleadings, 3 things are indispensably necessary. 1st. That the subject matter of the allegations be expressed in point of Law. 2nd. That no matter be expressed according to some forms of Law.
and omission of either of these requires, is a fault, and therefore a cause of demurrer. Hob. 164, Co. 683, Rae. 12. 2 Sc. r. 102. 11. reg. Ch. 57.

If the fact be insufficient, y fault is in substance, and may be reached by a General Demurrer.
If it be form, y fault is in form only, and can be reached only by a Special Demurrer. Co. 683, Hob. 164.

As a General Rule, it is necessary to allege matter of fact, and conclusions drawn from those facts. As, it is not necessary to allege y law upon y'm. It is necessary to allege facts in all pleading, and facts may be declared upon, y't exist only in fiction, The mere cri of a fact is not sufficient. The cri of a fact don't express its existence.

II Then from facts alleged, y law presumes a promise, y promise must be expressed. Thus, in an action of trover, it is not sufficient to allege a demand and refusal, y plea must express a promise to grant on demand.
2 N. P. 63. note. Law Ray. 583. 4 Manl. 487.

So y case last stated, there is a single Exception.
On a bill of exchange, it is not necessary to state, after all y facts are stated, a promise on y part of the acceptor. This is y Law. And y universal practice is, to conclude with a promise.
1 Salk. 128. Drawing a Bill, Law Holt says, i 'Law. 538.
In fact, a promise. As Bridger, the promissum itself is, must a allegation. Artb. Part 12. Pt. 244. 2 N. P. 63. R. B. Bills. 176.)
III. It is necessary, ye alle Plaundings that be alwed, and not argumentativew, or stating by way of
innference, in short alle the factre in ri and y Partry, rely, must be stated in direct Terms. Therves are issue can ensue. There being no direct affirmation or negative nath can constitute an issue.
It shd be direct. Iste for y sake of certainty and regularity. Iste to yd y opposite party may take issue upon ym. 8 T.R. 275. Lawes. 175. b. 131. 2.
Blow. 12 b. 1 Brist. 303. Bae Pl. 4. Lawes. 175. 6. 69.
Gelv. 233. 1 Lawes. 117. m. Cro B. 383. Rule requier
qualification, see Post 21. 2 Mag. 318. 4 Bae.
22. 3 Leon 303. Co Litt.

An avermte in Meth form now be good. "This", ye” or "quidem" "quod" "seint" 1 Lawes. 117. m. 154.
Blow. 105. 6. Gelv. 21. or 121. again, because "e" is sati, duece to introduce a material fact. So also y powde. "Sullict" "vide hoc" 50s. 1 Lev.
194. 2 Post 276. 8. Cro B. 383. Lawes. 47. 54.
2. 93 et P. 447. 1 Post 293. 2 Ch. Pl. 137.

IV. Each party admits of course so much of his adversary, plea or allegaion, as he dare
deny. Tulk 94. 1 Brist. 300. 456 234. Lawes 32.
1 Brist. 338. 4 Bae 273. The Party, in making
repelioneral allegaion to each other, and each
has a right to deny, and if three either admits
this right, he tacitly admits y allegaion, nath he
does not deny deny.

V. Each party’s plea is to be taken most strongly
as himself, for each is bournne to make y
best of his own cause. Post 177. 94. 4 Bae 278. Tulk.
VI. In pleading a traversable fact, it is necessary to plead it with time and place. The reason for this is found in what rule 107 requires carefulness in time and place, and necessity to allege y time and place. It is not necessary to allege y place in any action, not traversable.

The reason y place is, yt they may know where to call the Party. In transitury actions, it is not necessary to allege y time and place. It is not necessary to allege y place in any action, not traversable.

There is a distinction between alleging a place by way of local description, and alleging it by way of "herein." If it alleges that B committed an assault in y town of C, in county of D, it is not necessary to prove it. The place being in this case alleged by way of "herein" merely. But if, it allege yt B committed an assault in y house of E, in y town of D, to a Local description and must be proved as laid, Obia.

VII. The number, quantity and kind of things pleaded, need not be stated truly, except when a mistake will occasion a variance, a variance is an inequality, between what is alleged and a written contract. See Plea in abatement.

Thus he may allege y Def received 100 lbs of flour, and if upon trial, he shall prove but...
If, whilst a declarèd will be good, for it will occasion no variance. But if he declared upon a certain agreement, and stated it different from its true meaning, and even extend, he does so at his Peril. 3d. June 28 on his special promise to pay June 10'd. Sols. and forever a promise to pay it in 101. y. Ext. will be inadmissible, for ye will occasion a variance. Laws 4. 9. 57. 171. 3卷 252.

It is a maxim in Pleading, ye more subsheage, a necessary matter, does not vitiate a Deed, "utile per nunc iuxta no vitiation", but ye repugnancy is left eminuestion done. There is a distinction here.

Repugnancy at a material point is a fault in substance, and is a irreducible fault.
While repugnancy in an immaterial point is a fault in form, and advantage can be taken of, only by a special instance. Laws 44. 8. 12. 1. 2d. 332. 10. 4. 6. 42. 12. 39. 11. 52. 3d 515. 2d 28. 8. 43. 1d 28. 4. 1d 28.

VIII. Everything shall be pleased according to its Legal operation, And it shall vary from its own state, and structure of its thing. Since of one or Tenants who convey his interest to his Co-Tenant by deed, or lease. Thus if rent shall not be pleaded as such, but as a Release. 1d 44. 1d 332. 8. 22. 1. 34. 4d 53. 1. 32. 8. 3d 1d 2d. 6. 1a 2d 470. Ch. 45. 8. 15. 2. 2g. 1d 332. 5. 1d 2d. 8. 4. 1d 2d. 3d 4. 1d 2d. 6. 1d 2d. 470.
Again a c.d. c.d. payable to a person named shall be declared when payable to the bearer, for it is its legal effect. 3 1 R. 182 481.

This it is said, not everything shall be pleaded according to its legal effect, or significations, yet the Rule is not strictly imperative, for it has always appeared to me, if a contract may be pleaded as it is, and the Co will decide in what manner, it shall operate. But it is more lawyerlike way to plead it according to its legal effect. 2 1 H. 11. 12. Doug 542. 1 H. 113 3 19. 3 19. 3 1 R. 182. 481. Ch. 33. 183. 7. 984.

IX That it appears sufficiently obvious from the nature of a Recur it is, need not be formally averred, so if it were MX in Fox's. for taking and converting to his own use. 160. 1d. Thomas is, it is not necessary to allege g. value, for it appears from the Recur. Plowd 60.


X When necessary circumstances are implicit, in facts as are alleged, it is unnecessary to allege them, Co. Lit. 303 16. 1 Sum. 398 6. 2 ibid. 305 a. m. 13. Talk on. Laws 48. 2 Ch. 10. 214. As pleading a precontract Livery of Seisin, is pleading perfessed, and is somewhat singular, Butler's state that. (Examples are much to diligent and sure the facts, when in fact, no facts can be foreseen.) The observation has been frequently made, and I'm surprised to hear it from G. Butler, who was the most specific Reader of his day. see 'Doctrine of Judgment'
XI. All matters of fact and matter of law, so that they cannot be separated in an issue taken in that Pleading, is bad Pleading. As the Pleas in the first instance, that he is legally entitled to all the effects resulting by being in a certain county. This blends matter of fact and matter of law, for any fact is dependent on the ascertainment of what the law is.


XII. What is admitted by both Parties, in Pleading, cannot be more contracted, even by a verdict for a thing have no power to find a verdict contrary to an admission of both Parties.


XIII. General Estate, in Deempspe may be alleged generally, if he may ever almsly, he was sueve in Deempspe, without declaring how, or in what manner. But when a particular Estate be is pleaded, a commencement must be pleaded specially. The reason of ye dedication is not obvious. It appears however to be that a General Estate may commence with a Tort (as in ejectmency) and ye Tort is matter for a Jury to finds but a particular Estate cannot commence. It is always supposed to be acquired by some Legal Title.

The method of its acquiring it, therefore, is known and must be stated, with ye time and manner
113.

In y declaration a general mention of a particular estate may be affirmed, but when a particular estate is denied, and pleaded in any pleading, after y declaration, yt time and mode must be specially stated. Le Ray 331, 3. 4. 3 H. 1. 72.

Gay so. So Lat 302. 4. Bo Ch 338.

XIII 7 Be it a Clue yt yt immaterials averments when contradistinguished from important averments must be proved as they are alleged. Important averments never required proof. In a Special averment, where a General one may be sufficient.

The Rule is this, where a variance results from not proving it, yt yt it is necessary to prove it. It is said in a note in Douglass, yt y place of proving immaterial averments, extends only to Real and written contract. Doug. 649. 659. 669.

This note is as Devereux, y unnecessary averment it shall be to prove contract, for here may be a variance from a Past Contract.

The following is a case in point. A Land Lord brought an action for $500, for taking away goods from the Premises, so as to leave none for the rehose of the Tenant. The defendant's Title is by paying yt yt Tenant was to pay so much annually, ye latter clause was an immaterial averment, and unnecessary to be stated. It was not however true, but being necessary to prove it, when pleaded, he lost his Title, when failing to prove it—If yt whole averment can be struck
out without inquiry, it is Improperment. Le Mansu

does not mean Improperment, but
unnecessary. An Improperment Averment needs
never be proveb for it is wholly foreign to y Case.
1. N. 253. 2. Ch. O. 331. 3. East 446. 32. Doug. 668 n.
Ex D. 321. x new edition.

The contract shet not be falsely stated, and if it is
creates a variance, an y contract is writen or
shown (as Shown) a hard contract may be as
Special contract as well as a writen one.
Briston vs Wright. Doug. 668. An Important Case.
By referring to which we may see a distinction between
an Improperment and Improperment Awerment.

XV If y declaration or other Plaundting is writen some
only, as if they omit y necessary circumstances
of time and place, and y adverse party dont make
Special Demander, but Pleads over, he Cures y
defect. In like manner if he pleads doubt,
and he pleads over, y doubt is cured. But if either
Party makes an Error in substance, it is unaviable—it
cant be cured by Pleading over. By substance,
is meant such matter of fact, as constitut y ground
of action— it is y foundation of the averment, y
defence, and matter of form is merely y method
25. a. Co Let. 303. Talk 319. 2 Bent 222. 1 Le 195-
XVII. If y pleading or one side exposes a material avrement, wh y other omitts, it enus y omifion. If y Plt omits a necessary avrement, and des she alleges enuch avrement in defense, he omus y Plt omifion. The Plt avers y P lt took a certainStream of wotk, which avening he took it from his shop, now if P lt instead of denuning, pleads y'yt he did take it, it omus y omifion.

Post 24. 132, 3. / Sid 184. L. 1 and 88. Com. 1 P. 1 C. 80. 1 T. 37. 5 B. 1 197.

XVII. New matter alleged in any stage of y proceeding after y declaratin, must conclude with a venfication. New matter of fact is whatever is pleaded in avoidance on one side, and in subsort of the allegation contained in y declar. in y other. in short every thing except a complete denial. He cannot but himself upon his county. The venfication is y established mode of keeping the Pleading's shin. This Rule is unfruitful at Law except by Eng. 80 and 86. It is in case of a Plea of Bankruptcy - Post 77. 80.
Laws 115: 45° 32°. Doug 58. Corp 87° 52°. 2 Burr 772.

Why is it necessary yet go new matter shall be left open? In every successive stage of y Pleaing y adversary must have room to reply in either of these three modes: 1. To y Counter. 2. By answering them. 3. By Demurrer. Now if y Def makes a Special Plea vi bar, y Pltf may be deprive of either of these 3 modes. witho a verification.

The answer to a Plea vi Bar is called y Rebld, y answer to a reply is y rejoinder, y answer to the rejoinder is y third Joiander, y answer to y Rebld is y Rebutler. y answer to y Rebutler is y Thirdbutter. The Thirdbutter is y utmost limit, to ask Pleadings have been named: 1. Saund 303. n 3 Bl 307. Corp 87° 52°. 2 Burr 772. Doug 58. Laws 15. 14. 148. Ch. 243. 4.

The object of y Plea vi Bar, is to defeat y plea. y Plea to fortify y plea. That of the rejoinder, to fortify y Plea in Bar. by defeating y Plea in Bar. The object of each, is to fortify what he last said. by defeating what is advanced by his adversary. 3 Bl 310. Pleadings not answering these purposes are bad, for each Party must abide by his original grounds of action or defence.

The Pleadings being closed, an they terminate in a Demurrer or an Issue in fact. Judgment must always be given on the whole Plead. and not upon any single, or detached part of it. Thus. If y plea and Plea vi Bar are both bad, and the Plea be demurred to, Judgment must be given for the Def. for the Plea
Of the Declaration or Count.

The declaration and count are generally created in the books, as Synopsis. Yet when the Pith only, or only one cause of action, and make but one statement, they are.

But when there are different causes of action declared upon, or when different statements are made, of the same cause of action, then each separate statement is called a count, and all the counts taken together, form but one declaration, and are 3. Bl. 280.

When there is no fact, but one cause of action, we often find several counts, to reserve for any possible contingency in case the Pith or reason where one of the parties is unable to prove any one of the others, and if he can prove any one of the counts, he will be entitled to judgment and will recover " segundo alleagato et probato."

The declaration being the foundation of the claim, 3. Bl. 283.

must show every fact, both, as material to, or. if not, causes of action, and these facts are called the 4 Bac. 6. 13. "Pith." For nothing can be proved, nor are alleged, and are everything material or alleged, indeed, he can't have judgment, 3. Bl. 283.
If a deed contains any thing that shows, or to the commencement of the suit, has no cause to come to action, he can never have judgment on that action. 3 Sum. 257. 7. 1614. 3 Plow. 4. 6 Ed. 33. 8. 8 Ed. 23.

Thus, if no debt is debent, or let date of the bond, the day of payment to be after the date of the debt, it will appear on the face of the declaration, or to the suit, it is commenced after the debt. 3 Sum. 257. 8 Ed. 23.

A judgment for the debt, even if it does not show by the contents, is a defect and receivable. 3 Sum. 257. 8 Ed. 23. 7. 1614. 4. 1620. 4. 1620.

From what times a suit is said to be commenced.
3 Sum. 257. 8 Ed. 23.

But if a party bound by contract, disabled himself to perform, he may be sued before the time fixed.
3 c. d. covenant to convey certain lands to the
6 months, and before the time, he conveys to C. 1612. 5 Co. 21. 92. (see covenant broken)

The omission of any party who is essential to a suit of action is an unanswerable defect. 3 Sum. 257. 8 Ed. 23.

The suit of an action is a suit without which there can be no suit of action. In a suit, the consideration of a suit of "execution" is a suit. Bae. bd.

Decd. 2. mo. 1608. 8. 1607.

In such cases, if he has good cause of demurrer and if he will stand, and verdict go to him, he may avoid the judgment, or after judgment he may bring a suit of broo. and reverse it.

14 Ed. 57. 6. 1535. 14 Ed. 56. 7. 1612. 15 Ed. 640.
2 Ed. 37. 211. 3 Ed. 350. 4. 15 Ed. 8.
It follows then, yt when a Pltf's right of action, must arise on a performance of a condition precedent, yt Pltf must aver a performance of yt condition, or yt y Def prevented him.

Thus if a promise to BB $100 on condition yt BB shall build him a house, BB in owing for yt must aver yt he has build y house, or that a prevented him from so doing. 9 Eliz. 240.

Doug. 655. 7. & 15. 11 Eliz. 130.

An averment go as has not paid y money, might more may be insufficient. The omission was be inumerable. 1 Saund. 300. 1. 1 Hill. 307. 1 East 308. 1 Ch. 579. 7. I. 120. 1 Bac. Pl. 33. 1. 3 Pl. 38. 26. 9. 310. Co. I. 645. Mod. 529. n. 1 East 303. 8. 619. Com. Dig. b. n h. 5. 57.

But when yt Pltf's right of action, is qualified by a condition subsequent, he can't bound to take notice of yt. A condition subsequent is not matter for the Pltf, but for the Def to aver. Upon, thus in an action on Penal Bond, containing for spayment of 500 hundred loles. y Pltf can't bound to take any notice whatsoever of yt condition, but may declare upon the Penal part of the Bond. Com. 3. 2. 854. 1 & 2. 17. 304. L. 3. 74. 2. 380. 1 Pow. 339. 5. Co. 10. Hob. 88. 2. 11. 80. a. 240. a. 1 Kent 177. 3 Mod. 303.

Again where one sue on a contract containing Reproposcal. 1c independent contract, or promise. y Pltf need not aver performance of his covenant, but when dependent, he must aver performance.

Thus if a promise to pay money to BB. in
Consideration of P's promise to deliver good. 
B in suing need not aver delivery, y action is for the breach of P's promise. But if A's promise was in consist of B's delivering, y count is dependent, and A in suing must aver delivery, y delivery being the precedent condition. 

Bent 177. 2 Mod. 319 5 Co. 10. 1 Cow C. 359. 
4 Bac 10. - vs. 114. Comb 555. s Bae 184. 
1 Lea 293. Hol 88. 2 N R 340. n.

Whenever previous notice to y def is of fact, on what y right of action depends or is founded, y plea must aver it, being admitted excepting in y case riding clause of 2 3. it must always be negatived in suing on the 2. But excepting in a separate substantive clause, need not be. 

On y former case, The exception forms part of y description of the rights mot to be of y latter. 

See Municipal Law. 43.

So excepting in the body of a covenant, must be negatived in y action of covenant. But exceptings in a distinct substantive provision need not be.

Certainty ante 6°

It is requisite, yt any declaration shouT contain certainty. This Rules applies to all pleading. It is necessary. First, for y def to know whoso is answer. Second, for a general issue to be formed. 3d for y Le to know what to decide upon.

It shouT "indefinite" yt the def may be able to plead the judgment in bar to any subsequent action for y same offense. thing. 

Co 38 4 Burr 2486. 2 Bae 132 81. 
Co. Lit 305 a.
The certainty required extends to Partie, time, place, and subject matter. 

In describing the subject matter, however, y Law requireth no great certainty, in y nature will reasonably amount, as a Bros' an action of Trosse 170 27. for a certain ship and Tally, y was all y description given, but the Ct adjudged it sufficient.

So in Trosse for books, y description stated only a "Library of Books," yet that was held sufficient.

On the other hand, an action was tret for some fish and in the deell they were termed a "lot of fish," y was held sufficient.

So again, an action was tret for 3 sheave of Corn, y was held to be insufficient.

Again, "7. pieces of Linen," was held not to be a sufficient description, 1) Rwm. 272. 5 Co 34.
2) Taww. 243. 2) Tawm. 74. 5 Co 34. Cro 887.

In ablying y Rule of certainty, y subject must in general be referred to a good sense of y Ct. The Ct in modern time, were more liberall, ym they formerly were in exacting certainty, 2) Tawm. 74. n. 5) 2d Bac. 188. 170.
Doug 310. 5 Co 34. Taw 67. Cro 887. 5 Bac 272.
Taw 826. Cro 883. 2) Taww. 243 "Distem," to be joint, if the party can know from y description what is meant. Cro 887. 1 Bent 33. 5 Bac 880. 5.
In alleging matter of Indecency or aggravation, the rule is less strict, matter of these is y' distinguished from action, and is never traversable. Laws 119. 14. Matter of Indecency, is y' subject to y' Principal or material subject. Laws. 667.

Post 22. Matter of aggravation in y' wh. shews a circumstance of enormity, not attended y' action.

The last and finding in "Jarre" is but a matter of Indecency. In assault and Battery, threatening words and Gestures are matter of aggravation. The one is explanatory, y' other additional tending to enhance y' damage. Laws. 72. 118. 656.

An case of y' "Jarre" there may be circumstances of aggravation, yet not increase the damage. In contrast, strictly speaking, there is no matter of aggravation.

But to return to a subject of "Certainty." There are in y' front of说着, certain words, continually recurring, such as "said," "aforesaid," "before mentioned," y' don't impart a single degree of certainty. If there is more y' one is indetermined to y' what they refer, and in such cases, y' word "first" shall be introduced.

* P. 178. C. 66. 2. La Rayne. 888. To suppose there were 3 counted, mentioned, and y' expression was the "aforesaid county." y' may not be y' fact certain. To render it certain, y' expression "the is by first aforesaid" or y' that aforesaid as may be case might be. Con. 3. 18. C. 6. 5. 267.

A declaration may be ill in part, for want of certainty, and good for y' balance, even tho' there be but one count. To suppose in y' action of Covenant Break,
This Rule is "a fictitious" one, where there is more
on one count - advantage cannot be regularly
taken of mistake, in the declaration by Plea in
Abatement, but by the case demurr. 200 005.
T. 212. 20. 1. Bae 15. 1 Show 1.

If one declares on a contract, to a validity of
which a deed is necessary, by the C Law. a deed must
be alleged, and he must describe it. So if one
pleads a Release, he must plead, granting not
a necessity to the validity of the Release.
That is necessary to the Rules not require, each party,
to plead what is essential to his cause of action
in defence.

Now By the C Law a deed is necessary to the
transfer of any incorporeal right, 1. 33. 83, 43. 16.
Couns. 289. 4. Bae. 636.

The Rule is y name, where a contract or conveyance
is pleaded, which is unknown to the C Law, and
what is required by it, to be written.
And must then plead the Instrument, which
is the foundation of the Claim, and must also
his pleading in hand, as the writing is the essential
part of his case, 221 and Couns. 289.

But in declaring upon a contract, which is good
at C Law, without writing, which is required by it,
to be in writing, he is not obliged to plead the
The declaration may be either General or Special, and the difference consists in a generality or particularity of the Statement. It is general, for Example, when A Platt in debt on Bond, sells out only the Principal part, but when it states, in Particularity, of A Bond, as y condition, he makes a Special declaration. 

A Platt in declaring upon a deed, need not bind to state any more of it, than is necessary for him to recover. A Contract may contain various stipulations, it may covenant to pay B a sum of money to one, and to another, to convey certain land.

These the Platt is bound to state, only those on which he recovers. Doug 542. * Def by stranger may take advantages of it.

In the action of Assumpsit it has been questioned, an y particular word "Promised" is not necessary. But it has been very properly determined, yo y words "agreed" is sufficient. It is extremely difficult to hold to any distinction between y wordy "agreed" and "Promised". 3 T. R. 62. 3 M: & B. 160. 4 T. & R. 653. 1 Loc 164. Lw Ray 1877. Co 8. 913. see page 85 12 Rule.

Of the Founder of Parties in one declaration.

When 2 or more persons are jointly interested in a right to be asserted by action, May may and regularly ought to join as Plfts. If a promise is made to A and B, and broken, they must join as Plfts to enforce it, or a action will not lie on y promise. 1 T. & R. 153. 281. 5 Co 15. 6. 19. a. Co Lcte 154. 5 T. R. 657.

This is the Rule, an y action is founded on.
Formerly it Tenants, Cooperators, and Tenants in 13, common were required in all actions, relating to their 13 Estate, to join. This rule has been acknowledged by all hands, till lately, for an injury being done, remedy shall be too.
But it has been decreed now in Eng. and now in the state of N. York, yt such a joining is optional with them, either all may sue or one.
This Rule has been adopted, in account of its being more convenient. And all allow, yt y Rule
was formerly otherwise. 12 Part 61, 37, 2 Jac. 166.
This modern Rule of Eng. ana N. York has always been the Rule in Conn.

When y right is violated, to be asserted by Suit, it is vested in one individual only, another is not allowed to join. No one but y injured Party has a right to bring y action, and if then dies, y def is not be liable to ym. If y Rule were otherwise, any man might be joined by all for his neighbour.

It is impossible for one person, who has y sole right of action, to join another with him, and enable him to recover, who has suffered no injury. Thus y action might go in favour of both y
Demanders or nother. Co C 143, 1 Leon 316.
The misjoinder in such a case may be taken advantage of under the General Issue. or it is Pleadable in an abatement. Post / Lev. 316 / 1 Con. 13.
In an action by Executors as such, all who are named in the will must join at射处 even tho' one is under age, or that refuses to 
ofice. 1Saun. 331. 9. 1Thal. 337. 960. Toll. 446. 
Yel. 130. Bent 90.

This is in accordance with y 1st general Rule. 
Their interest is joint. 9 Co 37.

If one Co. is omitted, his omission is pleaded in 
abatement only, and if one Co. refuses to join 
and dont appear. he must be summoned 

As a converse of a General Rule, if 2 or more 
persons several rights are violated, even by 
same act. they cannot join. As if A, by one 
discharge of a gun that kills y horse of B & 
also y horse of C. B & C cannot join in an 
action pros A. They can bring separate actions.

Again, if B I says A and B are both liable. 
They cant one in a joint action, for their 
involvements are several and different. Co Ch. 572. 
Yel. 3. 374. Bae El. Pl. a 1. 2 Bae & 2. 2. 485. 
2 Saun. 211. Owen 106. 1 Com. 193. Yel. 121.
4 Bae. 571.

If there are 2 or more joint Covenantees, Slaves, 
or Promissees, and one dies, their entire right 
& issue at law, unravel'd, with y other. if, remain 
yther as Survivour. The estate of y deceased 
Slaves or Promissees cannt be joined with him, for death 
has severed the estate right at law. Tho' before 
death of either, they that have joined in an action 
upon this Bond, &c. The survivor, however, is obliged 
to account with the Co's, for y debt due to his
If a contract is made with 2 persons, severally, and their interests are severally, each on his death, his interest to his representative, some rule holds, where 2 persons are interested, jointly and severally. Ibid.

Where a cause of action arise, out of joint acts or default of 3 or more parties, they may be joined as Defs. Where a cause of action arise to continue they must be joined, but when ex delicti, they may be either joined or severed as Defs. at a election of 2 parties injured or 2 parties injured. So "Sol. may be at a Severable, but y violation of contract in Sol. only. 11b 6b. Black 262.

As to what is a "Sol." see "Conspiracy." B. N. P. 3 36117.

If 2 persons join in publishing a libel, they may as Def be joined, or severally. 2 Il. 190. 2 Bmr. 389.

But where there are distinct "Sols." committed by different persons in several acts, they cannot be joined, nor can 2 persons be joined in one action for "Sols." committed by them severally. As if A and B trespass at y same time on y land of C, they cannot be joined in an action for the trespass.

Or if A and B shou at y same time and place say that C was a thief, they cannot be joined in an action, because speaking is an act, and it cannot join in. This 2 may be joined in a libel or a scurril. If one is injured by the
by the several acts of 2. or more persons at different
times. They cannot be joined. Bae 6. 2.
Palm 86. 3. and 6. 7. 4. and 6. 15. 7. 8. 3. 24. 2 16. 9.
2. Calk 8. 3. And 2. 8. 3. 10. 4
Bae 10

13. When 2 or more Persons are interested in a contract
jointly and severally, they may be as def. joined.
or severed, at the Election of y Pky.

But if there were 4. for instance, I can’t be
once united y next, for y 3. will be treating y
contract: as partly it and partly sever.
and there is no such contract known to y
Law. Yel 26. 1 Sam 22. 3.) 782.
5 Bae 57. Tyls unamignt. 4. Prot 46. 1 16 282.

If 3 or more bind Themselves by one contract. it
is Joint. Of course. on be y terms of y contract.
it is sever. Thus, if 3 or more make a
promiss. note. Tho. promiss de minor. more.
it is Joint only and not sever. 3 Bae 677.
2 16. 31. Ch. 8. 15. Bnr 2611. 1 16 18.

If 2 persons enter into a Joint Bond, and
one dies: his Cx2. is not liable at Law. to be
joined with y other obligor in an action on the
Bond. He can neither be sued alone, nor-
jointly with the Survivor. As it respects y
creditor. his legal remedy is confined to y
surviving debtor, but y Cx2. is obliged to pay to
y surviving debtor, what he has paid for y
Isolation. 1 Est 40.
Now when of 2 or more Persons bind themselves jointly and severally, the effect of the several obligations is the same as if they bound themselves severally. Here y'ed may be once severally, but not jointly. 1 Samuel 25. 31. 1 Lev 18. 3 1 Th 5:17. Com 3. 16. 10. When an action is brought to execution, only More can be sued, who have accepted the Suit. But y'ed Eiff is bound to join all those who are engaged in administering. 4 estates, 2 Cor. 1. 22. 23.

If several causes of action are of the same nature, and between the same Parties, they may be joined in one declaration. Each distinct cause of action must be alleged; however, in a distinct count. 1 Cor. 3. 24. 1 Cor. 3. act. g. 1 Bae. ab. a. b. 6. 3. 4 Bae. 11.

What is meant by actions of the same nature? Different actions are of the same nature when they require at C'law, the same sort of judgment. By C'law in civil actions, there are 2 judgments. The one is called a "capita," the other a "Miniscandia."

Whenever def is convicted at C'law, of a "fact" committed for et army. y Indemnity is a "capita." 1. let him be seized, and imprisoned, until he has paid his fine, for a breach of y king's Peace. On the other hand, when y Party is suspected for a crime, or a wrong not committed by force, y Indemnity is a "Miniscandia" 16. that he be amerced. Doug. 623. 632.
Capitulor Between y same Partes, They may be joined, in y same declaration, But when different causes of action require different Indagmt's at O Law. May not be joined in one declaration.


Thus debt in Bond and debt in Simple contract may be joined in one declaration, in different counts however. 1 SR 276, 1 Mil, 252. 318. 1 Bent 336. A Finite debt in Bond may be joined with a Promisory note. Tho I've never met with an instance.

Do i an elementary principle, & tho there can be but one finite Indagmt rendered; and there is no Indagmt known to the Law. 1st amends these 2 species, hence y necessity of y last mentioned Rule.

The 1st. or affirmative Branch of y General Rule, Tho generally true, is by no means universally true. Tho is true, however. Yt when several causes of action require the same Indagmt, and y same general Issue, and wh are between y same Partes, may always be joined.

When a suit in 2 or more bonds vs B, they are not only of y same nature, but require y same plea. "Non est factum" and they may be joined in one declaration, in 2 or many Counts. 1 Mil, 252. 2 Ibid, 272. Calw. 16. 1 SR 274.

Wheneuer Bonds are admitted, it is presumed, yo y Prev suit. and def i sued in one and y same rights of action, character, and capacity. Post 18. But where he sue, in a different capacity, yo above Rule don't hold. 3 SR 347. 8.
For there must be a Mistaken of Count, and it
ought rather think, a Mistaken of Partie. Post 7, 18.
As if y Pltf sue, or y def is sued in one court
in his own name, and capacity, and in another
count, as Est. More is a Mistaken 1. Myl. 171 a.
10 M. A. 316. Parte 10. 1 S. A. 489. 3 H. 687
in action

Our Books leave it as a doubtful point, an in
Gestment, and aft and Battery may be joined
in one declaration. I conclude, they cannot from
Rules peculiar to Gestment, and the fact, yt y
nominal Pltf is not y real one, and the Real
Pltf in Gestment rule not, and cannot appear
upon the Record, to be y same person as the Pltf
in y other Count.

If this case is not an Exception to y last general Rule
ne perhaps strictly speaking, is not, then y Rule is
universal. 1 Rob. 240. Bae ab. Pl. 3. 8 Co. 7. 3 B. R.
849. 1 Myl. 232. 2 B. R. 319. 3 East 70. 1 Kent. 223.
3 S. A. 347. 8. 4 Bae 12.

With regard to Issue. Issue and Plance may
be joined in one declaration, and to these may be
added an action for malwers, prosecution, in diffe-
8 Co. 7. 8.

When different causes of action require y same Judgmt.
but different Pleadings, they may generally, but
not universally, be joined. Thus debt and detinue
may be joined in one declaration. To debt on
Bonda, and debt on Trifle Contract, may be joined.
The Reason is, yt by the Cate, y Judgmt are y
same. And y Pleadings are different.

So this Rule there are various Exceptions.
An action of detinue has generally been considered as sounding in "Fort" 3 G. Monk. 60. 5 Th. 20. 315. 1 Op. 147. 1 ment. 306. 4 B. a 11. Different causes of action, and of ye same nature, assing to ye same person, but in different capacities, cannot be joined. Hot. 5: 14. N. 315. 50: 6: 125.

As one cannot sue in aid of money had and received in his own account, so in account of another as Est. Here ye Pless claims in 2 different capacities. The person is ye same, but capacities are different. The case is analogous to "right of action, existing in favour of 2 distinct persons." In one, he sues as an executor, in the other as Est. of a deceased person. ye legal capacity is in 2 different persons. 1 P. 248. 2 Q. 10. 3 H. 659. 4 20. 280. 133. 26. 217. 1 Min. 17. 2 Cert. 235. 1271.

Money had and received to ye use of ye Pless, as Est. may be joined with one count for money had and received to ye use of ye Testator. The money belongs to ye same fund, nominally 2 different capacities, but actually ye same. 3 Cert. 104. 3 H. 659.

On ye other hand, ye rule, ye "causes of action different in their natures, cannot be joined, is universal. 2 Cert. 652. 2 65. 316.

Contracts and trespasses cannot be joined, here. ye Indents and the General Line, are both different. 1 B. a 36. 1 talk. 10. 4 11 347 8.

18. For even trespasses vi et ammij be joined with an action of trespass "ex delicto" much less in contracts; here ye Indents at B Law are different vi trespass "vi et ammij" vi ex delicto" the Indents ye different, but ye Tress vs ye same.
There is an Exception to y affirmative branch of y General Rule. 1 Chit. 196. 5. Mod. 90. Bae. Ab. Plead & b. 3. Raw. 233. 2 Phil. 3. 1. Kent. 386.

Contracts and Torts of any kind can never be joined in y same declaration, and yet in Tort not committed with forso, y Indagnt is y same, but y General Issue is different. 1 Chit. 10. 1 Bae. 30.

Debt and account cannot be joined, the requiring y same Indagnt. The Plead and y General Issue are different, and further y proceeding is entirely different. 4 Bae. 11. 12. 21. 1 Mod. 42. An action of account can never be joined with any other action whatever. There are 2 Indagnts to be given in an action of account. The Proceeding is "Prin genus" An issue in debt is to be tried by a Jury whereas an action of account is to be tried before an Auditor. It is absolutely impossible to join ym. y principal Issue is to be tried before 2 different juries. 1 Mod. 42. Bae. Ab. Pe. 2. 3. 1 Bae. 21. (1st quote omitted)

These General Rules of Bower may be comprised under 3 following:

I. When y different causes of action require y same Indagnt. and y same General Issue, they may be joined with y exception, provided y parties are y same in both, and one. and are sued in y same capacity.

II. In general 3 different causes of action, even
if y general issues are different, may be joined, provided they require y same Indagmt. at C Law and y Parties are y same be.

This Rule however a'to universal. The Exceptions are nearly as numerous as its application.

III. Where y Indagmt. required by the C Law, are different, they can never be joined. A Tortion when the Indagmt. and General Issues are both different, they cannot be.

Where y causes of action are such, as ni their natures may be joined, there may still be a mijonander of coung. As Count "a" an adm. for money, "b" by him as such. Parties with a Count on a promise by Instatue. Here is a mijonander, for they require different Indagmt. The "de bini bonori" y other de libation, "corni" 4 T.R. 347. 4to. 16.

And I'll cant join a cause of action accoring in hii own right, with one accoring as like a name in one declaration. 4 T.R. 350. 1 Salk 489. 6o. 1271. 1 Ed. 5 P. 7.

The improser jonander of soveral causes of action is called a Mijonander of actions.

Post 98. A mijonander is very different from duplecity.

13. And ofter crowned with it. It is worse for duplecity. It consists in improverly joining different causes of action (as the state) in different coungy. to assert distinct euclainice night. to enforce distinct and different night of Recovery.
A duplicity in a declaration, consists in joining different causes of action in one and the same count, to enforce an entire right of recovery. Thus, a Plaintiff suing on a note of hand, shall insert in one count, his claim; and also, in charge of

\textit{Post 33.}

The joining of several causes of action in one declaratory action according to these distinctings, shall not be so joined, in an irreducible fault. The defendant may safely demur or arrest the judgment, or obtain a writ of error. The reason why a misjoinder is fatal is this, in no action can there be but one final judgment. If then the Plaintiff obtain verdicts on both counts; and claims judgment on both, he cannot have them for a judgment adapted to one count; is not he y Mo. and y Co. have no right to select one judgment, rather ym 5

\textit{Attn. 1 Sc 11 108. 1 Salk. 110. Car. 436. 3 Cop 188.}

\textit{1 Sc 11 108. Car. 436. 3 Cop 188.}

\textit{Attn. 1 Sc 11 108. Car. 436. 3 Cop 188.}

\textit{Car. 43. 202. Car. 113. 4 Bae 11. Le Ray 1032. 2 IR

\textit{186.}

It has been a question, an a declaratory declaration for trespass, as in assent, yt y Def entere "be in et armis" y Plaint (A) house, and beat his servant, whereby he lost his service, is it a good declaratory?

It is now well settled, yt it is good, and yt y allegation of beating his servant, is to be regarded as mere matter of aggravation, attended upon your primary cause of action, so yt there is not in reality any founded. 3 Bils 20. 2 Bils 33.

\textit{2 IR. 167. 3 Bils 292. Salk. 642. 14 B. 500.}

\textit{Bue Ab. P. 6. 3. yt it is one continuous act. 4)
If ye "per quod" ye. were omitted, ye declare also will be good. (and ye et rule consider ye whole change, as containing only one entire cause of action,) but in such case any consequent damages arising from ye beating of his servants, 2 Sam. 4:8, might be made a substantive ground of recovery.

When there are several causes of action between ye same parties, ye admit of being joined in one declar. ye finding of ye only is not imperat. but oport., he may join or bring several actions.

In such a case however, ye et may compel a defendant, that ye do a discontinue proceeding. There is no Rule of Law requiring it, but where ye causes are of ye same nature, depending upon ye same evi, they will orderly generally a consolidation. This is to prevent ye def from being unnecessarily burdened with cost, and perhaps with a multiplicity of suits. Comb. 2:24. 2 118. 639. 2. 118. 1198. Comb. 2:244.

Where a consolidation is made, ye Plaintiff must pay all ye cost, arising from ye application. because he is regarded as having waived ye def. with unnecessary suits, in order to make his costs. 1. Ch. Bl. 136. 13 et P. 287. 2 St. 77. 2 118. 038. 1. Ch. P. 196.

According to later decisions, in cases of Missi bond. ye Plaintiff may be permitted to amend, by striking out one. 1 Gauna. 2:38. 2. That noth is pone out of ye declaration is Nob Proem. 4 Bl. 108. Before Demurrer, he may as to one enter a Nob Proem, and it seems now by the latter authority, he may enter a Nob Proem or amend by striking out.
The Rule was formerly, yt after y Myndonser had been demurred to, y Pltf could not enter a NoL
Proy, 1 St BC 188. 4 9th 347 366. 1 Saund. 2807.

The doctrine of Myndonser has been stated to depend
upon the diversitie of Indagments in Compt. However-
there is no such "Causation" nor "Muneneorz" and
yet y Rules of Myndonser obtain here, as elsewhere.
They are necessary in order to preserve a distinction
between y different causes of action.

In Eng. and in other Rule, all Indigments are "y
"Muneneorz" 5 Bae 121. 3. 191.

Miscellaneous Rules.
The declaration must agree with y Pltf. for y
declaration or rather writ is y foundation of all
y subsequent processes. The writ commences y causes
of action in general Terms. The deell must be
ambigous upon it. The deell must therefore agree with
y writ. lest y writ express one cause of action,
and y deell another.

For instance when y writ entitls y action
"trespass" y Pltf cannot declare in "case" for
yt must be a stated variance. Doct. st said ft one
of y oldest books, we have but of very good authority.

The Rule of practice in Eng. will not allow,
y deell to take captius, excepting cause "variance".
When y deell does not agree with y writ, y
diversity is called a Variance.

It has been said, yt those facts, wh constitute
a "Gist" of y action, must be directly and positively
It was not alleged, if it was stated, whereas to, it was be aided the pleading. It does not attain to, to certainty. The language of a good plea can never be mistaken. 1 St. C. 10. 2 B. & C. 18. 2 B. & C. 803. 2 B. & C. 203. 2 B. & C. 636.


To have been decided, by a verdict for y plea in such cases. no aid, this not true, y back deal 2. for what is y objection to it? Or is only in form, y circumstances, may all have been clearly and truly stated, this not in y form required.

A declared stating, by at a certain time and place. Brough to have paid a certain sum of money. to wit, Helice to is good pleading anoe 3. 2 B. & C. 300. 1 St. C. 140. 2 St. C. 291. 1 St. C. 232. 493. Lawer. 148. Co. 5 618. 20. 1 Mile. 99.

The Rule requiring material fact to be distinctly and positively stated, does not hold as to y deals of any fact. (the terms must be stated so, when they are y subject of y Special traverse) whereas material or important, they may be, unless they are distinctly traversable by plea.

Example.

In an action of trespass, y deal need not contain a distinct assertion if y plea, for 2. It is only, if y word "whereas" is ill used, as a fact of y plea, or it not itself distinctly traversable. The general issue of "not Guilty" denies y fact.
Again, no declaring to presumption, by consideration of "Gist" and yet to never distinctly and positively, alleged. Again by the C Law, a man is liable, for mischief done by his animal, provided, he has previous notice of their bad habit. Yet y Science, a notice is never distinctly alleged, for it is not distinctly traversable, but is answered by the General Doctrine. For yd qualification is personally liable, as it and so laid down in y test book. For precedents 2. Ch. Pl. 46b 106. Cor 2241. Com 8, Pl. 11, & 14. Bac Ab. Pl. 1, 4. 4 Cor 18, 6. 4 Bac 13, 14, 22, 3, 10 Cor 77, 165 Cor 1166. 1 Sm 180, 179, For precedents, see Ch. Preface, and Pleadings, App’d 79. 10. 21.

The Rule requiring material facts to be distinctly alleged. Does not hold with regard to Indemnity for there are not traversable. Petb 177, Petb 179. Bac Pl. 3, 4. Indeed, they are not within y letter of y Rule, not being the "Gist" of y action.

But ye Rule don’t hold, when a general issue won’t involve a denial of y material facts, in question. In such cases, y facts must be stated in direct and positive terms. The facts must be distinctly traversable. Law 721, 118. 4 Bac 14, 15.

As in covenant broken, where there is a condition precedent, it must be distinctly avered, for non est factum does deny y fact of performance. The averment of performance may therefore be distinctly traversed, and for ye reason, must be positive and direct.
If the declaration is in part good and for any cause bad in part, and the def demurs to y whole, y Plff may recover in the good part, provided y part contain a complete cause of action. Hot 178. & Pro 134. 10 Co 115. ante 11. boro 134.

Suppose Plff once in 2 bodily, and in 2 counts, and it appears y one was not due, when y suit was commenced, and def demur, Plff may still recover in y other Bond. Low 57. Bae 48. Pl. 36. 1 Summ 283. n. 2 328. 378. 4 Bae 256. Co 5. 104. Hot 177. 1 Role 784. 5. 10. Co 115. Glybe 140. 2 May 280. 2 How 183. 2 Lawes 277.

The last Rule holds in all cases, where there are 2 counts, y one good, y other ill; Con D.C. 2. C 36. § 20. 1 1 Summ 285. 6.

Suppose there are 2 causes for Slander, one for calling the Plff a "Vile" and the other a "Dastard" he might recover upon one, and not upon y other, for they are both of y same nature, and not both true. The badness of one don't vitiate y other. There is no Mijoinder, there is only an insufficient Count, in y same declaration with y sufficient one.

See a distinction in 11 Co 40. 6. and Sumn. to y reason. 1 Summ 285. 6. ante 2 & Glybe 16. 103. 30. For there being one good Count, there is of course one good cause of action stated in y deed.

Therefore in Demourer it must be adjusted good.

Where there are 2. Counts, y one good and one ill, and def instead of demourer, pleads y general Issue, andadds y general Verdict for y whole declar'd, y Plff cannot have Indamgt. for Def may arrest it as y et ask'd i to render Indamgt cannot
and does not know how much of y damages, was affixed, on y good count, and how much on the bad. And y Ct must take a new Jury and award damages on y good count int.
10 10s. 2 Burr 386. 2 H. 8C. 318. Doug 666. a 731.
1 Bir 378. 1 Ant 132. 2 Ch. 4 332. 2 Ch. 171. It.

The Ct of Errors have altered Mr. Buxey (quae minun.) deliberately and knowingly, but for what good and what reason Mr. Buxey, for y reason of y
Buxey see 2 Cor. E. 104. H. 378. The Ct have no way of determining, whether y verdict, when the general
 verdict given on all y counts, is obtained from y good or bad count. To y Ct there shall be a new Jury to award any damage on y good
 count. 2 Bux. 4 De 372. 2 Bux. 10 10s. 378.
2 Bux. 171. 2 Cor. E. 378. 2 Cor. E. 296. 3 327. 6. 3 Bir. 177. 2 Bux. 334. 2 Burr 386. 2 H. 8C. 318. G. 1984.
1 Bir 378. 332. 2 Bir. 1271. 3 Bir. 171.

If y Jury find a verdict on both counts, deliberately,
and affix damages upon each distinct one,
Damages on y good count cannot be amended.
The reason is perfectly clear. The Ct know
how much was affixed on y good count
and how much on the bad one. 2 Cor. E. 785.
1 Bir. 576. 1 Bux. 171. 1 Bir. 576. 32. 2 Burr 386.
2 Bux. 334. 3 Bir. 177. 2 Cor. E. 104.

If the Jury don't find upon each count, but
it appears from the Record, how much is to be
found. Damages cannot be amended. 2 Cor. E. 785.
H. 378. Thus, If Plt owes upon 2 bonds,
and ni 2 counts, and the Jury return a
verdict of 1000 $., and it appears from the Record,
at one of ym wasn't due, y Ct have
y arithmetical means of decreeing how much
was given on y remaining count. 2 Samud. 171.

Again if some of y facts alleged in one
count are estimable, and others are not;
and a general verdict found, y Pltf ci
entitled to Judgment.

Suppose a person for instance, were to sue for
words, "Seduc" "is a felon and a cheat"
y first being estimable, y second not so.
y general verdict will hold. 2 Samud. 171. 1 Rolle
976. On L. 325. 783.
2 Samud. 91. 1 Rolle 876. 1 Crit. 37.

To it damages are separately assessed upon each
claim, one not worse Pltf may have Judgment
for more assessed o y great count only.
see 1st part of Judgment. 2 Burn. Thing and Coak.

When a declaration is good in part, and in part
of y good part does not contain a complete
cause of action, a effect if it must be y same
as if it were "in every part," and this is correct
must always be the case, when there is but one
inconsiderable ground of claim, and yt defective, o
the claim in any part: for in each case, y
decl. 2d don't show any complete right of recover
4 Bac 20. As Decl. 2d in argument, y promise
more laid, but y consideration not so.

Secs. vi Prover for 2 Things, one cert. absolute
and one not for y few and f distinct grounds of
claim, of wh one is sufficient cause of action.

21. Of a Plea to y whole declaration is bad in part
it is in to. Com 3. Pl. E 36. f. 28. 1 Saund. 20.
and 47 337. 2 30. 40. Sel 312.
for an entire plea cannot be devised, as an
answer to y whole, if it is not in y law a defence
to y whole, it is no legal defence at all.

If y Ory adores greater damages yn y Pltf.
demand he may release the Surplus and take
Indictment for y rest. 3 Bae 185. 272. 10 Co. 110.
Cart 19. 21. 2 Bae 223. 4 Abdc 48 n. 20. mod 28.
2 IR. 113. 123. 1 St. BC 243. Est 204. Ir 364.
Stanc. 58. Port 139.

Or the Co to prevent Error, may without a Release
give Indictment for the Reste only. 4 Bae 26.
But if Indictment is given for y whole, it is
Error. see Arrest of Indictment.

So if Pltf demand more, yn by his own showing
is due, and the Ory finds more, he may remit
y Excess and takes Indictment for y Reste
4 Bae 26. 1 Rol. 780r. Ir 130r. 5 Bae 190.
272. Est 304. 2 IR 113.

So after a Demurrer. 1 Saund 282. 5. 657.
For Excepting to ye Rule see 4 Bae Pl. E 36.
7. Mod 87. Talk 258. La Rag. 814. Decl 12 when
made by the Plea it is not bad. Com 3. Pl.
ante 8. Port 32.

Dilatory Pleas

Dilatory Pleas

Dilatory Pleas

Formerly they were made permo any foundation
in truth, and merely for delay. 3 Pl. 302. They
never affect y merits of y case in y least. By Co.
4. and 5. no relativity pleading are accepted, yet are not accompanied with an affidavit, or some circumstances wh. shall render it evidently forser and expedient. 3 B2c 302. 3 N. st. 3 B2c 23. 2. 1. 20.

This it is confined to extrinsic facts for it appears on its face of the instrument, y affidavit was unnecessary.

The first Delating Plead are to y Indictment of a Ct. y ground for wh are various. The Plead may plead, yt he is not liable to be tried in one by Such Ct.

In Eng. they have different gradations of atty. assigned to different Cts. and try a good Plea in Westminster Hall. yt 50 if it is atty ivi another Ct.

If y atty in one joint, with another, he cannot plead his priviledges, he must plead it in his own sole right. 3 B2c 250. 3 B2c 276. 2 N. st. 177. 3 B2c 301. 3 B2c 11. 3 B2c 2. 2. 3 B2c 36.

It is a good Plead to y Indictment, yt where y Ct is limited in its Count., y cause of action arose out of its limits. We have no Co. of this Kind, vii City Cts. By y 12th Charter of y City of St. thean. y Cts have no right to organize Cts within certain limits. If y cause of action arose out of these limits, it was be good Plead to the Indictment of a Ct. 3 B2c 301.
2 B2c 207. 3 B2c 274. 3 B2c 11. 304. 4 B2c 36.

Again, when y Ct. sued vii, has no Indictment. It is a good Plead to y Indictment. When y Ct have no Indictment...
Suppose an Enrollement in a Criminal Case found and proceeded in the Co. of & Co. (this Co having no Enrollement in Criminal Cases) by Judgment wererendered, y & then afterward, now that it is a treason, 1 East 352. 6 Co 65. 1 Kent 338. Bac 26 007. 3 2, 3, 2, 2, 0. In fact it is most necessary to clear y proceeding in this case, y whole proceeding in this case, for y proceeding all of ym are "exam non place" and void. &c.

For an action yt was local, yt lasts ut it was lost &c. in a wrong county, yt be a good Plea to y Enrollement. When yt action, however, is customary, it is no Plea, even if it be arose in a foreign country.

Suppose a. Enrol an action at Newminster, ex B. for a bond to be performed in Philadelphia, now a may allege yt B owes in a Bond to be performed in Philadelphia. Ex C. in a Bond in y parish of Mary to be done. London. Ex 512. Cent. 151. 1550 18. 2 36. 1422. 2 140. 140. 161. 137. 140. La. Ray 1532. 4 12. 375.
Actions are Local in the following cases:
I. Whenever y Judgment of a Ct. must be "in rem" it, where y Ct. abuses equity to y property. All real actions require a Judgment "in rem" as in action of Gistment. Here y action must be b'd in y county where y land lies. Corp. 106. 170. 181. 2 H. (C) 146. 181. 3 Bac. 34. 1 Br. 512. 2 Br. 512. 2 Bac. 1688. 2 Sh. 1612.

II. Criminal Prosecutions are Local. This follows from y fundamental principle of Territorism. An offence on y land of one cannot be continued as an offence on the land of another. Ie. No y crime
offense may be criminal by y laws of yet State. y Ct. cannot take cognizance of it, when committed in another. But Personal civil action in Penal Ct. are not Local. by y laws.

III. Where y subject matter out of which y cause of action arose, is Local, y action itself is Local. As in an action of "Quaere Clausum Fregit" For ye is an action for an injury done to the land. Still is Local.

In action of Debt or Covenant Breach. As an assignment of a Lease, is Local. For y contract as between y assignor and the assignee, is annexed to the realty. The Bond is Local, not the Body, land or move, and y lease is incident. Co. Land 2 Add. 550. 3 Add. 550. 2 St. 140. 612. 4 Y L. 575. 612. 616. The y recovery is in damnum, not
is not Local.
On the other hand, an action of Debt or Count Broke, is not Local. This is a Personal contract. The person agrees to pay the other so much rent. 2 East 57. 2 Stanes 341. 2 Mid. 164 7. Co. 2. a. Little in honor of contract. Moore 116. Cus 5. 358. 2 Sel. 69. All to light on honor of estate.

A plea to the dominion, is made in a regular order of pleading. If an exception to the dominion may be taken, and is not another plea, not to the dominion;万人 the objection. The reason is, to be first by preferring another subject, to the dominion, tacitly avows the objection, he might have taken to the dominion.

Each Co has a right to decide upon its own dominion, otherwise a Co might be ousted of all its dominion.

A plea to the dominion must be signed by the def. himself, and not his atty, for a Co supposes yt the atty acts under the Co, and by its permission. Bac 161. 2 Co. 6. 2. 6. Mid. 145. 1830. 9st. 10. Co. 28. 127. 6. Hov. 164. 4. Bac 128. 39.

In Court however, yt atty may make yt plea and sign it himself.

When yt wants of dominion however, arises from subject matter, yt def by pleading, the dominion does not want of objection, and cannot do it in any way, for the def certainly cannot give yt Co y dominion, wht he knows, and y proceedings are absolutely void.

As if an action of Real Property shd be b'd before the King's Bench, in England. The wanting objection to y dominion of y Co, was not
give ye le any additional profit to buy a suit.
The Peer to the Summation must continue to a
cognizance of ye Co: ye form is "whether ye Co will
have any further cognizance of ye Suit" 1 Bae Pl.
1. 3 pl. 768. 1 Moa 124. 6 Lawer. 119. Calks 768.
Wake 288 m. For the liability of a Pltf who ever
in a Co not having Summation of ye cause. See
"Sale Improvement" 8.
* 9 & 10 & 11 & 12 & 13. ye Co cannot award costs.

II. The second Debating Plea in ye request Courts
or order of Pleading in to ye disability of ye Pltf.
In a good Plea, ye ye Pltf is unde some legal
disability to prosecute. ye Suits 107. Co 3Mit 3.128
Bae ii. ii. sale 3. 2 Bae 161. 2.
These distinction are various.

I outlawry was never known in Conto.
Def cannot plead outlawry as an Excuse, for then
it was be an immunity, and not a Penalty.
In a good plea however, is the disability of ye Pltf.
regl. 1 Hs 66. 3 Bae 161. 5. 1 Ch Pl 478. 1 Conn 5.
4 Bae 38.

By ye disability of ye Pltf extent as ye time of ye cause
of action appearing, it destroys ye Suits Lawes 102.3.
But it is not strictly abate the Suits, but it is a
temporary impediment which continue only, till ye
same Reversal or Pardon. Thus Def must plead
to ye same relief. 4 Bae 38. Lawes 102. 3. 4. 12 Moa
407.

But ye ye disability extends to such only, as are
not in ye Pltf own right, and not to those
he may bring in "alter domo" Co 3 Mit 2.
3 Bae 672. Co 3Mit 128. a. But outlawry of Factor
may be pleaded as an action, not by 3 Mit 3.
In the Factor ye very Poerson, whose right is
to be enforced by y action 1 Co 6. 1524

not saunry is sometimes pleaded in Bar, and sometimes as a dilatory plea. If y cause of action is forfeited by the mistake, it may be pleaded in Bar. If not then y plea is dilatory 10 Co 109 Co Lit 23. 18. a. 153 4. Laver 35. 104. *as it is in felony.

II

Another plea to y disability of y plea is "eccommunation" y only replication to it is absolution.

It doth exist here. 16 Ch. Bae 6. ECCOMNUM. 2 Bae 319 Co Lit 133 4. 5 63 56.

III

A third plea to y disability of y plea is in some cases "alienage". This is a rule of natural law. a act thought to prohibit as the policy of a state a no y subject of the state, to allow alien to hold the land. 

By the law, all persons born in a foreign country, wherever Their Parents may be from, are alien. 1 Bae Ch. Alien 2 3 86 366 72. 4 92 303.

In Eng. modified by it.

By so me country, y children of native citizen, his born abroad, have all y rights of natural born citizen. Alien naturalized at by y he have y privileges of native citizen, with 4 excepting.

again children of naturalized person, if resident in y he, and under age at y time of their father naturalization, have y privileges (in general) of native citizen. 1 Bae 7 6. Litter alien. 2 B. 66 75.

*There are some offence, to wh a foreigner, is never eligible.
An alien, if not naturalized, can't maintain an action of a Real or mixed nature. By a Real action, is meant an action brought for recovery of Real Estate. By a mixed action, is meant an action brought both for Real and Personal Estate.

Alienage, Marriage, &c., is a good Plea to a liability of the Plaintiff in Real or mixed actions, for an alien can't hold Real Estate. The general Rule is, that there is a Rule intitled to all Aliens, an enemy or friends. Co Litt 361; 13 Bl. 487, 1 Chit. 371. 2 J. B. 438. Camp. 171, 2 H. B. C. 162.

To 18. Poth. 30.

But alienage is not pleadedable to an alien friend. If an action is Personal, and in some of our States, where are permitted to hold Real Estate, and of come a right to maintain Real Estate by it.

This is allowed as an encouragement to emigration for y State of a General State, as they are briefly mentioned seeCushing's Encyclopedia, article Alienage.

An alien friend may also hold a lease for mercantile purposes, and for his benefit of trade. Rob. 194. B. 20. Alien. Poth 96. Co Litt. 341. Thus is a C. L. exception. As a General Rule, and he may maintain a Tention.

With Alien Enemy, y law are more strict, for an alien enemy can maintain no action at all. In our Ctry. it is therefore a good plea to a liability of the Plaintiff, that he is an Alien Enemy. Mason 125. 3 R. 142, 1 B. 167, et P. 163. 6 Cat. 49, 1 Chit. 120. Song. 126. n 142. But his person is protected by the Law of Nations, Song, 126. 49. Mason 12527.
But a Suit may be sustained upon a Pansom Rule given to an alien Enemy, but not till y war is closed, and then he must proceed to a Ct of Admiralty. Thi is an Excetion to y general Rule. yt no contract made with an alien Enemy, is good. s T. 23. Mand An. 39. 432. s. 227. Contract.

It is an Excetion precisely as邦内名in the Treaty. Besides, calculations. &c are Excetion. It is a part of y Law of Patent and y Suit can be held only before Tr小孩子 CG. Talk 46. s T. 156.


There is another Excetion to y general Rule, an Alien residing under Government's safe conduct, may bring a Personal action. as a good Place in Pabol. yt he is under safe conduct. La Ray. 282. Talk 46. 1 Bac 454. s T. 156. s 1082.

When an Alien wishes to hold Palse Estates in any country, he can do by Special act of y legislature only. Thi is frequently done. Bac 62. Alien.

On Ch. 142. 083.

It is undecided yet, an an Alien Enemy can maintain action as Ex 39 or adem. Thi subject is discussed. Cro 668 142. 1 Bac 84. but not decided. According to mine Judgement (and y mine too. &c) and y late decisions of national law. And think not for an alien Enemy has no right to appear. in y country. And shall he have a right to appear in Ct of Justice &c and maintain intercourse with Citizens. Cro 8 5 or 8 7. Bac 84. &c no correspondences can be between ym - not even relating.
An alien friend may, however, as late as Lord Town of
York, in my Petition, as if an Englishman having a lease for 100 yrs, appointed it a Rebeck.
American, if American may hold the lease, as late
if leases, it might be very unjust to y. reign.
1 Bac. 34. Co. C. 30. 5.

Deput. If it be placed, so Puf is an alien enemy, y. know.
Reckon, it is displayed in 302. so 32. n. 4. Bac. 32. Co. 13. 30.
By the I. law, Rebeck, Rebeck, etc. are "demanied" altaines, for treason, a felony, and that y. Puf has become
Mark, moreover, absolute, are all abilities and may
be by decree as such. 3 BC 30. 4 to 30.

Attainder: If More last mentioned, disability, Attainder is
only known in this country. Attainder is a disabilty
in Eng. and even destroys y. Inheritance. Bac. 35. Pl.
f. 41. 1 Bac. 30. 15.
Note, danger has the 80 of Treason of y. State,
prevented the forfeiture of the State, even during his life:
The consequences of attainder are greatly justified in y. country by y. course of y. State. The Forfeiture occasioned
only to the life of y. offender. It does not cut off y. widow's
claims to Dower, or y. Children's inheritances. Constitution
1 1st Art. 3. 2. 3.

Inquests may apolgate on Secony committe in the high
Treas.

31. Coven. is also a disability. 3 1st. 31.
If an action is lost by a manid, woman in her own
style name, as a Time Cole, her coven. is a good
idea, but when joined name, y. husband as Co. minimum.
her availability cease. Bac. 20. 4. Co. Tnt. 312.
Cran. 124. 1 30. 24. 3 1st. 64. 3 Prince 63.
Lawes. 100. 3 1st. 63.
Coverture in y Plff. is pleadable only a dilatory Plea, and if advantage is not taken of y disability ni y's way, y objection is waived. It can't be a plea to y action, as it don't deny her right, but only questions y mode of Trial.

Whatever can be taken advantage of, as a dilatory Plea, (and if advantage is not taken of y disability) can never be taken advantage of at any subsequent stage of y suit. It must be unreasonable to allow y def to defeat y suit in any subsequent proceedings. By y objection, wh he might have made at y first "in Limine" * 6 K. 766 sq. For Reasons here, the omniner.

If a Defn.'Sole commences an action, and names b'ning y Plff, her coverture is a disability to it continuance, for she, by her own act, disbarred herself to continue y proceeding. But this Plea is abrogated by d+ th'exact. y't y husband, having y marriage in Record, may appear as Co Plff. with his wife. 1 Co. 31. 1 Tal. 2. 2 14 K. 35; 1 Bae 19, 33. th' co is a co of Court

Infancy. Another Plea to y disability of a Plff is. yt he cannot alone, is in Infants. for an Infant not suing by Guardian, or next friends, cannot sue at all. The reason is, because an infant is incompetent to make a valid power of atty. Every person, who appears by atty, is presumed to have given his atty such valid power. 3 Bc 301. 1 Tal. 297. Co Litt 130. L. Car. 123. 3 Bae 148. 2 Valm. 295.

If an infant sues alone, and an Indictmt is rendered, either for or co he hint, it is Evidence, and may be rescored by writ of error. *Coram Robis, as it is called; and may be litig before a higher Court.
proceeded, let emendation be by an issue in fact of part. It must be laid before y time &c. bringing ym to reverse the or In judgment on y ground of y Infants disability. 2 Lawd 22. 13. n. 31. siz. Corr 2. 24. Cont. Corr 2. 44.

By it 21. Jan. 1. Ch. 13. 2. The rule is made materially. It is enacted by that it, where an Infant suing alone, and recovers a verdict against Def. it is good, and cannot be reversed, as his infancy was pleaded, and overruled, but when it goes so far as bad. Com D. Pl. G. 2. E. 1. 92. Corr 2. 410. 2 Lawd 23. 13.

And by it, Anno. y 2. Rule is extended further, and if Infant recovers by "Judgment" except in "nil dictum", or "non sum informat" y Judgment is not erroneous. Ch. 13.

It is a good Plea to y. disability of y. PIf. y. person named as such, is not in consideration. As by a ska institute an action in y name of a dead person: it must be a good plea to y. disability and of y fact not being known) y Judgment shall be rendered for y PIf. it may be reversed by a Wit of Error. "Venni 105 be" 3 Oct 301. Com D. 1 Order 302. Judges 104. 7. B and E 44. Ch. Pl. 430. 6. Story Pl. 44. Com D. Abr. 2. 16. Bac 26. 1.

It has been a question, an. ye objection is not pleadable, in bar to y action, as well as by way of Dilatory Plea. I think, it may be taken as an exception in Bar. for there can be no real cause of action in favour of a Person not in "Error". I have before said, yt Judgment is given for y PIf. wa be erroneous, and it is a Rule of whatever wa render y Judgment erroneous. May be...
pleased at any stage of y Suit &c.

Pla. to y disability shal always conclude with
a reference to y person of y Pltf, by praying
Me &c to quie &c &c any suit &c &c &c &c &c
be further answered. 3 Blc 303.

Of however y disability is temporary, y conclusion
is, y Pltf may remain without day &c &c &c &c &c
however deo end y action. Lord practice 500.
Laws. 103. 9.

The 3rd and last class of Dilatory Pleas
are called Pleas in Abatement.

All dilatory Pleas are sometime called Pleas
in Abatement, but not properly.
The meaning of abatement in Law is destruction,
demolition, or destruction. Thus to abate a rent,
is to destroy it, to abate a nuisance &c.

There is a minute or material difference between
dilatory Pleas and Pleas in Abatement.
Plea in Abatement extends generally to y unit
only. The defects of y counties are to be reached
by different Pleas, and Pleas to y Induction
of y Pltf, and disability of y Pltf, don't attack
3 Lev. 304. 4. 3 Blc 301. 3. 1 Bac 15.

So it saith yt no advantage whatever, can be
taken of y deed &c by Pleas in abatement. Salk.
212. Miles 478. Lawes 172. 3 Lev. 263.

It is universally true, yt Pleas attacking y unit
are Pleas in Abatement. It unit however
universally true, yt Pleas in abatement extends
only is y part, for then, may sometimes reach a Court in y deed. Story Pl. 88.

If there be a variance in y deed, it is a good cause for a plea in abatement. If there be a variance between y suit and deed, y variance is pleaded in abatement to y deed. 3 Bue 624. 4 Bue 800. 1 Bue P 647. 4 Mod 132. 44. Lawes 108. Con 8.
12 S. 40. Mod 98. Story Pl. 88.

Again if there be a variance in y deed, it is a good cause for a plea in abatement. If there be a variance between y suit and deed, y variance is pleaded in abatement to y deed. 3 Bue 624. 4 Bue 800. 1 Bue P 647. 4 Mod 132. 44. Lawes 108. Con 8. act 12. Mod 98. Story Pl. 88.

Again if there be a variance between y deed and y suit, it may be and must usually be pleaded in abatement. Post 44.

But where there is a variance between y deed and y suit, and y description of it in y deed, y suit and found to plead y variance in abatement, but when presented, he may object to y admission of it, on y ground of it not being y same instrument as set forth in y deed, and this is y way in which y objection is most usually taken in the Eng. Et. It is very clear, then, y plea in abatement may go to y deed. Con 8. 12. Mod 98. 3 Bl 80. 3 Mod 102. Lawes 108. Colk 659. Post 44. Doctrine place 1.
In ye plea of ye description, ye greatest certainty is required. The least mistake is fatal. They must be precise to ye greatest degree for they are not like other Plead, because by the Et, as they dont go to ye merits of ye suit, in question, then object being merely to defeat ye suit by taking advantage of some Trivial mistake in matter of form.

10 Mod. 208. 8 T.R. 167. 3 D&B 167. 5 Edw 4 87. 7 &
Com D. Alb. 1. m. B 12. Lawer. 536. 6 157. 134. G. 8
82. 1. #4 B 380.

It is a general Rule, yt every plea in abatement must give g Why every better suit, if it must be so pleaded as to enable the Why to supply y defects or answer y mistakes in a subsequent suit. Lawer. 39. 102. 4 Id. Ray. 1778. Com D. abut l. 13.
182. see Exception Alb. 112. m. 1.

Hence in taking exceptions to a Mismomer, it
ainst sufficient, yt def aver, yt y name contained
in ry suit, is not his name, but he must aver
also his true name. To en a hole in varance,
y Def must show y varance, and y way in wh
it was produces. In that y lawe and manner
of correcting it, must be stated. Doctrine Plac. 116.

The causes or grounds of Plead in Abatement,
are numerous. They be either Intrinsic or
Extrinsick. Lawer. 102.

I Mismomer.

Mismomer or want of addition in y Def
is a good cause of abatement, an y misonomer
be in y suit or deed. Why Mismomer is here
meant giving the def a wrong name. Hence
is good cause of abatement, yt 82. is read as
II. The omission of "y defo addition" is good ground of abatement. The word addition means his title, estate, degree, trade, place of abode &c. To avoid mistakes, and for purposes of identification, a Person, it is provided by St. 1 Hen. 6 y defo addition be given in every suit. By y term addition, we do not mean y title merely, but includes his title and much more. Vide 362. 1. Hen. 6.

It is not necessary at ye day, to insist all these particulars; proper name, degree or profession and present or late place of abode, will be sufficient. Vide.

A modern Rule of practice has been however in a great measure destructive of y Plea for want of addition — at least so far as relates to y suit for y defo must shew y deficiency. By pressing the suit, and he must get leave of Ct. to take y suit out of y proper officer, y Ct. will not grant for such purpose. He must bring yer and shew a purpose in his Plea, but y Ct. will not give yer to make a defence so obvious to y Law. Laws Ed. 1 Ch. Pl. 440. 1. Stat. 31. 3. 13 et P. 390. 1. Stat. 31. 3. 13 et P. 390. 1. Stat. 31. 3. 13 et P. 390.

This 1st of Hen. 6th requiring addition, extends to Personal action, to Personal action, appeal, enquiring and Indictment.

In Real actions, y Plea is "constat de persona," it is yt yr Real actions, yt is description of y property, who is y subject of dispute, and y defo name is a sufficient Identification. Laws Ed. 1. Ch. Pl. 440. 3. 13. et P. 390.
But at Law, neither want of addition, nor
misnomer, is pleadsable to an Indentur for felony.
For y appearance of y prisoner in it, was sufficient
to identify him sufficiently. But The Et of Hen-
dr. extends to Indenturts for felony 2 How 186.
50 Ch. 14. 4 Bae 4 N. f. 3. or 8. 1 Ibid. 46.

But y plea ca be of no Real advantage in
ordinary cases, to y prisoner, for in making it,
he must give his Real name, and as a matter
of course, y Et will detain him, till another
Indentur is framed, or found as true by his
true name. 1 Now 246. 2 Ibid. 176. 238.

As want of "addition" is pleadsable, so "a portion" +
is a mistake in y addition so pleadsable, y
may be more likely to create a bananice as ym
y former. 3 36. 302. Comb. 65. La Ray. 1814. 1 Com. 28.

But ye Rule. I conclude, is virtually abolished
by y above mentioned Rules of y Et.

In Real Action, no addition is necessary, ni
what is required by the Law, and, required no
addition, on unless y party sued, pranked as
high as King or Knight. 3 36. 67. 2 Role. 402 Com. 182.
Talk 581.

In Count, y only, necessary addition is, y dept place
by abode. When however re is sued in an official
representative capacity, y capacity or character in
wh he is sued, must appear in hi. writ.
For being sued in an official capacity, in many
cases, he is liable only as an official character.
And as much must be said as much, but ye sure or representative capacity of a person, is not his addition, ye is mentioned to identify capacity in such as is usual, and not his person.

But when any additions of this kind are wholly unnecessary, ye intension of it is more this, blage.

It is entirely unessential, when ye capacity is not ye foundation of or to action, the here when such must be specified as such, not by way of addition, but by because such a description is necessary to know any cause of action. Bae Mr. 1766, Esq 3 36/5 3 2 1060.

If 2 or more Defts are sure together, a Misnomer of one is sure, is not because by it other, no can ye other take any advantage of it, otherwise. If however there be a variance, ye other may take advantage of it. B. 1730. 127.

It has been a question, can ye suit abate as to one Def. it abate "in toto" or only quoad ye Def. 8 Co. 67. Caris 66. 3 Bae 72.
The question must depend upon ye manner of bringing ye action. If ye an abatement as to one, ye an abatement as to all, for they are sued jointly as unto the person and the law don't require, ye related. If Coward or Et and several, there is no action as to ye suit; continuing as to ye rest. When ye abate, as to one, for ye whole case ye Def is independent of each other. 3 Bae 177 18. Caris 66. 1076 1. 10m 70 1032 45.

In a plea of Misnomer, ye def must not only say, ye name avered, is not his name, but
he must state yet a certain offer, name was, coming of yr writ, and he must further deny, yet he was called to be known by same answer, or, when yr writ issued. For a object of yr writ, yet yr Pllf may avoid future mistakes, and yet yr judgment may not be delayed by casting. Exception, Salk 67. Lee Ray 118.

2 Math. 66. 4 Moa 542.

* by some authorities, yet he was always known.

But P. M. Mr. şik, yo nuckle.

In pleading Pllfmer. Def must be careful in a beginning of the suit, not to admit he is rightly named. If for instance, he is sued at P. D. comt, and defendants 2 Tunnard 203. c. 1 Lilly & Ed. 2 Bl. Pl. 417, 480. or 418. Salk 1. 7. 4 Secd 39. Corb 124. 12. N. 76. 24. N. 63. 39.

If Pllfmer as such advantage can be taken ni by plea in abatement, and if def dont notice it, as such, he waives his rights; for in a Pllf, he cannot apigne for Error, what he might have pleaded in abatement til yr suit. Corb 124. 1 Salk 2. 3 Corb 185. 6 Tll 760. 2 1st Pl. 267. 33. 1 Rolle 216.

It is said, yet if a person executes a deed by a wrong Sn name, he must be sued in yr name, and yr Pllf must be taken out in it. When yr is y case, yr right name, must come in under an "Union" 2d Pl. 93. 267, 32. 1218. 1213. Co Litt 3. 3 Bae 617. 14. Syer 318. 1 Rolle 216.

This however dont appear to me, to be y case.

ni, he shall be sued by his right name, with an avowment yr to be executed y deed.

by a wrong name, for a person designated by a wrong name, i not in Dec. Bae 615. Pl. 7. 3. 3 Bae 618. 33. 6. 697. Co B. 308. 3 Cant 111.
If a action is upon a Specialty, he may be sued by y wrong name. For y Def can allege, yt y Def is as well known by y wrong name, as Def is described from y demall, by y production of y Instrument, Here there can be no need of an alias or averment, as there can be no variance proven by name, for here 2 names are subjoined. 1 Ch. 440.

Where one executes a deed by a wrong Christian name, and is sued by his rightful name only, y suit is bad. For there is a variance. Pitt, 574. Co. C 697. n. Ch. R. 246. to 1218. 3 (Bac 616. ch. 3. 3rd. Crot. 585). 1st. 111.

When an action is brought for 2 or more Def, y name must be signed by Def by all their proper names. Bach 12. 230.

Of them a suit is sued, they must be sued as it. Co. 2. so Co. but must all be sued by their proper names, and Company to be added, as Merehang trading in Company, for y term Company is altogether too arbitrary. xli. 80. 348

On o other hand. When a Corporation is to be sued, it must be sued by its corporate name only. For no Specialty Corporation not avoid nothing for they are known by y & Law. The Corporation has only an Ideal capacity. Leach 244. 0

1 16th. Eng. 71 1218. 38. 1 Bac. 38.

When a def is sued by a wrong name, it is not necessary that he also take advantage of it for his own benefit. He may waive his right to allege y suit, and proceed Dragmo good of thing. He may plead it in bar to an action, but for y same cause ad him by his true name. Ibid. Bac. 16th. Pl. f. 3. Dey 1215. 57. 1130. 125. 3. to. 26
The practice in Court, when a Local Corporation as a Town, is sued, is to name y Select men, thus A. B. and C. to select, men of y town of. A. and y rest of y inhabitants of said town.

A. must be a person of y Pett, may also be pleaded in Abatement and y Rules of pleading are analogou. to y manner of y def. 11 Geo. 2, 142.

Tha y def misleads y manner of y Pett, as a repulsion. y Pett was known and called by y name in wh. he is sued, is good.

But a wrong addition given to the Pett, is no ground of Abatement, any further yu it was at C. law. The Pett then 3rd. inst. extends to Pett. It is presumed yu y Pett is known by the facts of this being one y Pett. The Rule at C. law was, ye no addition was necessary, under y degree of Knight. 5 Mod. 80. Comb 139. 381.


In yu stule, C. mut a wrong description of Pett, place of a. place of a. is pleading in Abatement, for a. a place of Party, affects y Immaterial of y suit. Etc.

III. Covernur. A third cause of Abatement is y Def. being sued alone. is a forme Courn. Covernur is a Def. as y same Cole is a. good cause of Abatement.

But if a forme Cole sued as def. name, pending y suit, ye supervenience cause or management of how canit defeat y suit rightly commenced. See y, the suit by her own act, defeat a suit, regularly commenced as her. Bae Abr. pl. 4. 38. 328.

Ex Litt. 132. 1 Ch. pl. 4737. 70. Cart. 124. Sir 81. 811. Litt Ray 820. Bae 5. 323. 10th. 140.
Of a Seme Covert not avail herself of her Coverture as a defense, she must plead it in abatement, and not to her action. Or if she avails a General Impinance, she "is not fact" waives all right to abate, ante 37. Post 37. Later 34. 270. 739. 2939. 1.

She must sign her own Plea in abatement for in her case she cannot make or appoint an Atty. Chitty 2437. 72. 55. 72 247. Chitty 8. 12. 32. Post 124.

2 cases 292. 5. 17. Chitty 415. 72. When a female is sued upon a covert entreaty, or by her cunning coverture, she may give her coverture in her name of her General, either for it and to defeat y present Suit, for any name of husband, but to show y contract to be nullity, and "Continuance"

Gag 2. 7 Bac 32. 32.

If y wife shall neglect to plead her coverture, y husband may appear and plead it in her, at any stage of y proceeding. Or if in consequence of her neglect, y Plat or Pla obtain a verdict in Discharge to her, it may be reversed by suit of "Exom roti" in favor of both Husband and wife.

Or if y wife by her neglect, may forfeit her right to plead alone. She cannot thus mislay y mantel right of y husband. In this case y suit must be bost in y name of both Husband and wife, otherwise y suit is erroneous. 8 12 631. 5 261. 72 400. Bac 41. 41. 61. 12. 72. 72. 12. 12. 12. 12. 12.

If a Seme Covert pleads her coverture, she must plead it herself and sign it herself. 2 Corne 3192.

Gag 400. 2 Ch. 11. 420. 3 Ch. 16. 16. 16. 16. 16. Laws 103. 103.
again to a good plea in abatement, yet 2 persons suing together, as husband and wife, are not in fact husband and wife. And e counsel of 2 persons are sued as husband and wife who are not in fact so to it may be pleaded in abatement. This however is not always the case for in many instances, a husband "de facto" can sue, (but on what principle join as Plls?) or be sued with his reputed wife, y same as if married. Seme. Co Rep. 22. 3 Bl. 36. 1 S. 27. 36. ( But Mr. Whitty no concurrence in y Rule on non-joinder)

Infants. But it ant a good plea in abatement. yt Def. is an Infant, sued without a Guardian for an Infant is liable to be sued, without a Guardian, y Ct will allow a reasonable time to appear and defend, if he has one. If not, y Ct will appoint one. "Id id Silem" Co Ltt 89. 133. 5 Bl. 47. 5 Co 33. b. (cases of a lunatic, as yt of an Infant)

Where an Infant is sued without a guardian, it is y Plls concern and not y Infant. It is moe important to him for if Infant gives yo him, (y Infant) he may obtain a part of Cron and reverse it. Co B. 640. Tltt 92. 2 Lees 554, 6 10 Co 134. 2 Bae 218. 3 Bae 140. * Infanency and age. Tltt "Cron."

IV

Another cause of abatement is y death of one of y parties "vendente Ltt" at Law. If a 2 Pll or Def die, y Limit abates of course. 10 Co 134. Co B. 82. 4 Bae 401. 1 Com. 356. 1 Bae 27.
If on ye death of one of ye Parties, "prædente lite," final judgment shall be rendered, this be

suo

The Coror will be estiminavit, for ye Co to have pronounced judgment, must be supposed
to have been ignorant of ye death. And y unit
of Coror ni personal acting, must be left by or
as y Stat I of y deceased party, as y case may be.

+ re Ms. See ni Real) 1060. 104.

If a part of Coror shal be left, avowing ye
to one of ye Parties, was dead. when he was not.
It is ye duty of ye Chief to bring in ye post, now
person of ye Def may appear as Def in ye part of
Coror, as in his own Real. He may plead

nulla est entitut in C law, ye Rule is y same,
as there be one or several Plls, Ear. 339

If one of several Plls does die, y suit will abate:

If there has been a summons and severance,
y reason is, y suit arises a to right, not by y
death of one of yon ye destroyed. The only exception
is ye Rule, nor in case of personal acting, after
a summons and severance. As A and B
have a is right to one, and A may alone
in y name of both, now if B doesnt appear at y
trial, A may have a summons for him, and if
then B doesnt appear in answer to y summons,
y Co-will award a judgment, and severance,
after such judgment, if B die, y suit will
not abate, for B is no longer a Party to
y Suit, 1 Cor. 11. Co. 134. 1 Bac. 78. Deets-Place

wit- - 1062. 104.
But if one of several deft. die, "pendame Lite" y Rulle at f Law is, generally yet y suit shalbe not abate. In such case y Rulle at f Law is, yet y Plff. makes a suggestion on Record, of y death of one def. and proceed as y Other. 1 Bae. & 1 Show 186. 3 Mod. 249

The reason why y suit doth abate it, yet they don't assert it claimes, y fact yet is or more Def. are sued, together, don't imply a Bo claim or concern in it. They need not defend jointly—one may be ultimately liable, and y other not.

The &rnmay may have been aliquote, &cedent.

If however y cause of action yet not survive as y surviving debtor, y action, &c. seve., must abate.

By 2 &c. 2d. (47th) and 8. and 9. Mod. 3d

and similar ones in yo country, &c. inconveniences attending abatement in case of y death of one of of y Partes is greatly remedied. As 1st. where one of y Several Plff. die, "pendante Lite" y suit doth not abate, provided y cause of action survives in yo Person of y Surviving Plff. This will happen very generally, as here y action is rightly commenced. 2 Mod. 110.

4 Bae. 42.

On y other hand, where one of y Several Def. die, "pendante Lite", y action doth not abate, provided it survives as the Survivour. 3 Mod. 48. Bae. 106. 171. 1530 c. 48. 1632

2d If a Solo Plff. die, "pendante Lite" y suit will not abate, provided y cause of action is such as to survive to his Representatives. On y other hand, if a Solo Def. die, "pendante Lite" y action will not abate. 4 Bae. 42.
In England, y death must have happened, after
some Interlocutory Judgment, in order to give effect
to y Rule. By this Interlocutory Judgment, y mean,
y Judgment on y point of Enquiry of damage, to be
awarded, 4 N. 431. The Term May need.
Some Rule holds as to a Tole Def. in Mod. 111. Recess
bl. 5. 6 Mod. 144. Told Exc 442.3. Lilies Entry 647. 11 Mod 124.
Generally any Judgment not final, is interlocutory—
The Go of Court on ye subject, has no reference to
Interlocutory Judgment. To enable y Representative to sue, y action
must survive, in which case death produces no
abatement. But if either of y Parties die aftr y
Verdict, but before Judgment, y action must abide.
Judgment will be rendered. Talk 42. Lilly Entry 647. Mod 122.
6 N. 135.

This is virtually a Judgment "nulla post time."
It is y same as if rendered at y moment of verdict.
Talk 442. 3 Talk 42. 1 Lid 330.

The method of proceeding is this: Where one of
Several Pltys die, his death is barely suggested 42
on y Record, and y Surviving Pltys proceed as
if y right of action was originally vested in ym alone.

So when a Tole Pltys die, if y cause of action survive,
his lost by entering his name as Exe on y Record
and suggesting y death of his Sestator, may continue
y Suit. But when a Tole def die, y Plty must
take out a Sui Saccus, as his Exe and be afser
and show cause, if he has any. Why y Suit
shall not be continued, and Judgment avoided
on him as Exe ye of y deceased.

If there be 3 Pltys, a and B. Now If a die,
"pendentia Lile" y action survives to B. as we have
seen, (ante) but further, if B shall die before y
unit is closed. As (83) suit may enter and prosecute yet suit to Judgment.
The entire right of suing on its death survives to 3d. and he transmits it to his Representative.

So if there be 3 def. A and B and both are before Judgment, yet suit must proceed as the
right of the law surviving suit Def. 1 Bac Ab. 7 Co. E
931. 1 Inst. 732.

Real acting, however, is generally abate
according to y. Rule of y. C.Law, as y. 2d, are
confined to Personal acting. Yet Real acting
are within y. 2d when of y. 2 Plls. or Def. one die
in such case, y. suit shall not abate. But
in case of a sole Pll or Def in Real acting,
y. suit will most generally abate at C. Law.
and the 2d. don't extend to such acting.
Abide 1 Day. 180.

Another good ground of abatement is what is
called a vananee. Where there is a vananee between
a unit and y. def, it may be pleaded in abatement,
for as y. unit is y. foundation, no authorizes all
future proceedings, if they don't agree with it,
they are bad. 270 Boc. 434.

Thus if y. unit sounds in "for" and y. def in
contract or vice versa, De. 1 Lc. 83. 105. Yebs.
3 N. A. 82. 3 T. 70. 722. Lawes 171.

The Ct. will not allow y. def. ther of y. unit
to show y. vananee. As such rule in Count,
y. unit always in Count. 2 Wils. 394. 49.4
49 Boc. 701. 6 Boc. 113.

A modern rule of practice in y. Ct. of Wtmin.
seems to have impaired y. rule, 1 Ch. Pl. 440.
107 Boc. 279. 1 T. auto 318. 2 Bils. 232. 234. 7 Co. 383.

431
There is a mode of setting aside proceedings in any case. By motion for irregularity, as in any case of a writ in bailable process, and decl. to deny one.

The Ct will not grant anof a writ to enable it to plead a variance. If there is a variance between the Inst. and the declaration, it may be pleaded in abatement. Salter 35.


Advantage may be taken of such a variance in several different ways. The most usual mode is Westminster Hall. 1 by objecting to its admissibility in Law, or after its admission, by objecting. 2d by support y declare, and this works a "non vitat." 1 Litt. 31, 2. The 12. 1. 3. 154. Story 308. 640.

13. 17. 4. 11. 62. 687. & Conv. 361. & Conv. 361.

In Eng. it is usually worked a "non vitat." In Amer. advantage is usually taken of it by Decl in Abatement.

There are 4, different modes by which advantage may be taken of a variance. 1 by abatement. 2d By objecting to its admissibility in Law. 3d by support the declare. 4th By objecting it "verbatim" upon the Record, and then demurr. to y declaration 1. Journ 317. Con 2. P. 3. 3. 314.


"ante 33" 467. 10.

There is no objection to y declaration on y face of it. How then, can Def demurr? The Instrument when Decl in y Record, is given made part of y demurr. itself - the y same as if Def himself
recited it. An practical Language. y Pell has asserted, yt a certain Instrument is not, what it really is. She def then says, "you have stated a certain Instrument to be Must, wh y Record contradicts. Thiby 1067. Not Law Abide.

No advantage can be taken of a Mimusoner, as such, mi by plea in abatment, but when it occasions a Variance, advantage may be taken of it, in either of the modes last mentioned. But in so doing, it is to be regarded as a Mimusoner, but as a Variance ante. 36. 4 T R 612.

Thus if B. is owed to A. upon a Bond he may admit his name to be B. and then say yt a bond executed by B. is not y one declared upon.

[Rejoinder Be. to Pell. in Contract & Lot]

VII. Another ground of abatement, is by Non or Non Dvider. "Non Dvider of Parties.

If one person sue alone, when another person ought to have been joined, yos Non Dvider, is always pleadable in Abatement. Co Litt 164. a. 183. a. 195 b. 198. a. Term 4. 7. Term 243. 1 Tann. 304. a.

In y case suppose, y Pell has no right of action as Fole Pell. The right shd b. joint and be exercised jointiy, enforced.

On y other hand, where several Persons bring an action Jointly, when y right of action is vested in one merely, yos Non Dvider is pleadable in Abatement. Co C 143. 1 Term 310. Term 72. 1 Term 13. 1 Rule 239.

This Rule is universal. Such a Non Dvider may in every possible case be pleaded in Abatement. These are also some cases in whi
advantages may be taken of it under a general issue. In others, only in abatement, and in others, only advantage may be taken of it by way of Demurrer.

When a where an objection arises from y Misdemeanor, or Non-Demand, to a Suits, if y objection involves a denial of y declarer, or any material allegation in it, advantage may be taken advantage of it in any of y before mentioned methods: for whatever goes in y denial of y Pltfs allegations, is in support of y General Issue. 2 Ye 820. 131, et Plfs. Pead 268. Bull N.P. 172. 2 Ye 283. 2.

Thus if in an action on contract, one sues alone, when y right of action is in Several, Def may take advantage of y Error under y General Issue, or by Ager and Demurrer, or he may plead it in abatement.

Where y fact of y action being both by one, goes in denial of y declarer. The declarer alleges, yt y Def promised y Pltfs so much. The def may say under y General Issue, yt he did not promise y Pltfs, but y Pltfs and another. Pead. 1 B. et D. 176. 2 Ye 820. Rca Eor 269. 2 Ye 282. Rules 131. 1 Saund. 281. 7 P. 9 / B. et D. 76

In Mere Exemplars, it is supposed, yt y Contract was in writing, for Ager ca not be had of a Carol Agreement.

If in an action on contract, one sues alone, when y right is in 2, or vice versa, and y s appear in y declarer, y mistake is fatal, and will not be aided, even by a Verdict, when y fact appear in y declarer, it never can be aided. 5 Co 85. a. 1. B. et D. 67. 1 Saund. 157. 1. 2d
On the other hand, if one brings an action sounding in "Tort" where your right of action is in 2 or more and it even appears on your face of your debt, it can only be pleaded in abatement. Suppose D has committed a Trespass upon your Joint property of A and B, and A alone sued D for Trespass. Now yo. Anyjoiner can only be pleaded in Abatement.

The deed alleges, yt D trespassed upon your land of A. The fact, yt it was also your land of B, does not deny y. deed, and therefore do not strengthen y. General Issue.


Thus yt A and B being yt Tenants, A alone sued for Trespass. The deed alleges yt B trespassed on y. land of A. Y. fact, yt it was also y. land of B. doth not deny y. deed, and therefore will not strengthen y. General Issue.

Where yr action, arising from your mi. joiner, does not go in deme of y. debt, advantage can be taken of y. mistake in abatement. 6 East 427. 51. 260. In y. case mentioned above, however, B may show under y. general Issue, y. interest of B in order to diminish y. damage.

On the other hand, if 2 persons sue together in an action sounding in "Tort", when your right is in one only, advantage may be taken of it, either under y. General Issue, or in abatement. Here yr action does not arise of y. debt. As By A and B sue B for Trespass. When C trespassed on A only. 595 145. 6 T.R. 260.
If one part owner, sue alone for a "sort" and y def dont plead y nonsonder of y other in abatement, y other part owner may bring an action for his share of y damages. For y def by not pleading y nonsonder, has virtually admitted their rights to sue alone. 4 S.R. 279. 1 Ch. 79:16. 2 H. à 580. 622.

Now, where one partner has withdrawn his name from y firm, receives part of y profits, there is no necessity for bringing him in y action. Nor is he s liable for Company debt. Ch. 82 408. Dec 27.

Nonsonder De of Def in Contract and Lot

If one of 2 partners is sued alone on contract, y nonsonder of y other must be pleaded in abatement, sic it appears in y deed, or other pleading's, yt there is another joined. 2 Al. B. 205, 5 S.R. 257. 1 C. & R. 119. 3 N.R. 308. 1 H. B. 336. Salk 444 not Law. 426 221. 302 129.

Debtors

Suppose A and B are in trespassing, in a contract, and yt A is sued alone. If he write to all him of y Nonsonder, he must plead it in abatement.

The Reason is, yt y fact yt another person was done to with him in contracting, does not prove yt he does not contract. It don't therefore deny y deed, and of course consequently don't strengthen y General Issue.

In actions "ex quasi contracta" y Nonsonder. 43.

If another as Def, if pledable at all, is only pledable in abatement. According to modern formes, it are pledable at all.

Actions "ex quasi contractis" are more compounded of tort and contract. Suppose an action brought on a common carrier, whereby the plaintiff has lost his goods, 3 Camp. 57. 62. 70. 3 Jac. 14. 5 B. & C. 567. 132. Tann. 281. (12. contract y inducement and tort y gift.)

This was once considered as "tort" founded on breach of contract, but is now considered as forming solely in tort, and may not be joined. Tort are several.

It appears, then, if in an action on contract, yet if one of 2 deft is sued alone, the other may plead it in abatement, but not under y general issue. 49.

If in an action on a contract, y suit is abated, and destroyed, and another action is brought by Def. disclosed in y former, he may plead, yet there is null another, and so title y whole, 6 disclosed. 3 Camp. 701. 5 Co 113. 4 B. & P. 92. 24.

As if A. B. and C. are sued alone when jointly interested, A may then plead, yet B is not joined. If then A and B are sued, they may plead, yet C andt joined. If then B. C. 1 Burr 2614.

But he, who has in a suit pleaded, yet another def ought to be joined, and when such def is joined, he who first pleaded, cannot be admitted to plead, in abatement, y second time. 25.

But if it appears by the pleading of y defr, yet another ought to be joined, y def may plead in abatement, or take advantages of it under y general issue. 5 Burr. 2614. 6 N. R. 763. 1 Tann. 291. B. and C.
If my bond appears on your deed, and yet the person who was "in debt" unrepentant is incurable and cannot be aided even by verdict. On the other hand, if one brings an action, saying "in debt," when your right of action is in 2 or more, and it appears in your deed, it can only be pleaded in abatement. In your case, "as for torts" your deed may be demeritable.

If 2 persons are sued on a contract, made by one only, advantage of the may be taken of your answer General Issue. For your objection arising from your bond, denies your deed and of course supports the General Issue. As A and B being sued on a contract, when A alone promised. 1, Ed. 3, N.B. 494, 492, 2, Day 277. Here is a variance.

This fact is in denial of your deed, yet not be no need of pleading in abatement if it were admissible. I doubt however, an it was be admissible. *Phileps & Battles*

If an action is not on contract to 2 persons, where your contract was really made by one only, your Plaintiff claim judgment on either, 3, 3, 4, 5. The verdict of your jury will state your fact, yet one made it, but that both didn't. And in your case, it is impossible for your Plaintiff to avoid your objection by entering a "Not Proo" vs. your then for if he enters a "Not Proo" vs. me, when your action was not vs. 2, he disposes himself. This will change an action vs. 2 into an action vs. me.
On the other hand, if 2 persons are sued for a
Tort, the same committed by one of them only,
y Misdemeanor cannot be pleaded in abatement;
7 Co 569. 8 Co 566. 5 Co 1079. 6 Co 420, for in
an action of "Quaere clerum pugit" lest 2 or 3 and
3, when committed by 2 alone, 2 may
be convicted and 3 acquitted, In Tort, More.
A 10 suppose are no Som or Misdemeanor. Contracts are Joint
only. Com m. 9. 3.

In cases of Tort committed by several, one
may be sued alone, or any or all together.
7 Co 112.

There is however one Exception to ye
General Rule. It is in cases of Tort arising
out of Real Property, and from their Joint
Interest, and ye is y only Exception. 1 Ch. 670.
5 T. 8. 617. 1 Laws on Landsc 27. 61. 2 C. 6 cast 674.
2 Co 182. 2 Ch. 29. 2. Com 2. a. 2. c.

Suppose a and B, 2 Tenants, are bound for
their Tenancy, to keep off a certain water-course,
but by their negligence, it overflows ye land of
another, then, as bringing another of Tort,
must bring it to both. B. G. don't see, why
2 Tenants shall vary the Rule.

When y Man or Misdemeanor goes to y venue of y
deed, it may be pleaded either by abatement
or under y general venue.

A 10 know 17th

Cause of abatement is y Tenancy of a Suit
for y same action or cause of action, and between
y same Parties. 3 N. B. 10. 5 Co 67. a 6. 4 Co 43.
This is to prevent vexatious Suits.
If there is a single cause of action between two parties. The suit is sufficient for either purpose of statute. The law abhors a multiplicity of suits. This Rule does hold however, if both suits are of the same kind, or at least concurrent, and the cause of action is the same. They must both be by the same of law adapted to the cause of action. 5 Co 51. a b. Hob 184.
4 Co 43. a. 1 Com. 142. 50.

In actions for trespass for taking goods, the tendency of one suit in trespass will abate it, for they are concurrent. Hob 184.

But where all the actions originate in one and the same transaction, yet if cause of action is not specifically the same in both suits, the tendency of both suits is not cause of abatement.

The suit is considered as pending from the time of the suit issuing. 1 Bae 41. 2 Haw. 319. Folio. Cre B 677. 2 B. M. 5 Co 48. 3 Barn. 1423. 1 Bost 486. Talk 33. 7 Co 30. a. Com. 402. 2 B. B. 273.

It is not indispensable to a abatement of one suit, by the first suit being pending at the time of the abatement. 1 B. An 10. 4 Bae 48. As A has an action commenced yesterday as B, and today commences another for the same cause, and tomorrow withdraws, the first suit, y second is vexatious or irritius. If however, it appears, at the time of commencing the second suit, the first must be wholly ineffectual, in consequence of any mistake, the second. And suit for the same cause will not abate. 1 Bost 284. 5 62. 4. B. E. 63. Com. 452.

As in an action where Tresper only suits li, he 2 and 30. y Pilt brings an action of trespass. Hence a second action li, pending, y first, and abates, as settle. B. C. 5 of Com. 1 Bost 358. 362.
The first is considered as happening from a time of
& Co 48.

The binding of a long action will never abate
a subsequent one, nor is it abrogated, and it always
is so when what is recoverable by y Second
was also be recoverable by the First.

Again y plea will not avail, even tho there
+ may not be a new def added in the second suit.

The Rule appears to be, yt y second action will
abate for both Defs. & Mndt. however y second
will abate only for y Def common to both. The
weight of authority is, yt it will abate in "Sito"-
(Contrary 42) Contra 1 Root 155.

On y other hand, if one of y des is mentioned
on y 1st is omitted in y 2nd, y is entirely
abolishd, and y second action will also abate
in "Sito." Bexi Carta 967. | Bex 134. 1051.

But it if this appear, yt y first may be defeat
for mere or Mis Bandey & yt y second abate?
Thus is a class of cases, for as neither of them can
be applied. Deline in action on contract,
where there is mere or Mis Bandey in y first
Sche G. 260. 473a ex. 49. 100 17.

If a second suit is commenced on y same day,
y 2nd will be abated, y second will be suspended
to commence after y abatement of y first.
On two there is no fraction of a day
Allen 34. Pilb Ev 260. Bex 163. R. 11. These can
be presumpd to be rebutted?

Or is no cause of abatement, yt another action
is pending for y same cause. in Quirr farrer in
a sliesser 21 420. 1 Comp 87. 86 137 8. The def
If one suit has nothing to do with y other.
There is no relation here - the Rule is y same where
more are go and several debtor - the action may
be brought vs ym all. Bill of Ex. All Parties may
be sued at y same time - Proc. 420. Hob. 1378.

It is no ground to abate an Indictment, yt a
prior Indictment is pending for y same offense
for y et have y power to quash either of them -
and according to discretion, will regularly do it -
Peres of Informations and Appeals. 2 Hare 190
275. 367. 1 Bae 13. 4 Phel 43.

If 2 Informations shall be offered at y same day, 52.
y different persons, each will abate y other -
and no final Indictment can be rendered on
either - I doubt y Principles of y Rule -
1 Cor. 766. Abatement. Hob 128. Moor. 864. 85
3 Burr 1334. Contr.

In my time there is nothing to hinder a collisn.
between an Information and a friend of y Prisoner.
Wh shall destroy y effect of y Information, and
yt may be repeated, and called "an Infinitn -
This i however y Rule lays down - but it seem
'to me (P.G.) very dangerous. It will tend to
defeat public Justice.

8th Cause of Abatements, is yt in writ it was
unlawly issued - So also is any Informality
in y writ - But these are defects in a writ
wh will render it absolutely void - Cons. 2.
Abatement. 116. 106.

If y writ is made returnable to any other Term,
yt y next suceeding Term of y Co. yt writ is
... provided there is sufficient time intervening for Service & legal proceedings. (Roth 310, 16 2 Tuck 16 3 Mil, 341. 4 T and More acting under it. see at Their Petil)

The reason is, ye otherwise y def might Contently be imprisoned, or held to Baile for any indefinite Period. (Roth 310, 16. For he can take no advantage til y Petil. nor rod any one give Baile)

If y pursit is mado by Incompetent authority, it is utterly void, for a pursit mado by any one without proper authority, in Law is nothing more then Blank Paper. (Roth 83. 1 Lev 2. Cor 6 592. 4 Bac 43 8 1 Cor 26. 1 Sisle 304

There are also errors, with which s pursit only defecting but not void. It abatible--

If a pursit has been defectively returned, it may not have been pleaded in abatement--A defect in Petil is no date or want of sufficient time between y date of

in indictment and y Petil day--

date of future date. In Petil allowed in Eng. between y date of

good pursit. and y Petil day, is 10. days. If there y

Pursit has returned it 14 days. after y date,

a pursit is defective--

Such defect may be pleaded in abatement. but if not taken advantage of in abatement--

g Cor 1 480. Cor 4 50. 1 Tuck 62. 2 Rule 71.

53. A defective Service of y pursit, if it appear on y

face of it, is also good ground of abatement,

at Law. But by the Law, if y pursit, is defective in fact, or point of face, appears only on y face of it, it cannot be pleaded in abatement.
y Return is official. And to a homick of ye olde, ye no official act can be falsified, ni by any process instituted for such purpose, and expressly alleging it to be false.

The Shf is no party to y action between A and B, and consequently cant appear to defend himself in y action. The Party however, may maintain an action for a false Return to the Shf. 10B 339.

In Cont. if y Return is defective in point of fact, y Def is allowed to plead it in abatement. See at C Law.

Venue. Want of venue is a good cause of abatement. In y Eng. original Mit. there must be a venue laid. By venue is meant vicinity of ville, ni yth an act is done. 7. F. 243. 5 B. ae 322. 2 Ch. Pl. 329 n. 6. Tor 449. 1 Lamn. 82. n. 3. 2 Id. 3. n. 3. 2 Philb. 136. Port 160. ante 26.

But in transitory action, it unfit necessary. Ye venue be laid if it is incorrectly laid, it is no cause of abatement. In Local I presume, y venue must be laid in y County, as in y action is brought.

By y C Law, he was obliged to lay in venue, truly, but y Law of venue is now essentially altered. Where y action is transitory, y cause of action may arise in one county, and y venue be laid in another, y be may in y discretion change the venue. An Issue in fact cannot be formerly tried, ni by a Jury from y new venue. See 2 Com D. action 10B. 13. Galb. 908. 70. C. 570. 3 Caree 329. 18B 2d P 20. 240. Lawy 74. 173. a 55.
In Local actions, a false venue is good ground of Abatement. Com. D. Ab. 4. 17. 1 Bae. 34. 57. 1 Co. 23.

Thus in Real actions, as "Quaerit Casus prægit" y venue must be laid in y county, where y cause of action arose. Or ed no more be laid out of y county, ym in a foreign country. Before Single magistrate. But, of y Place, dc y venue must be laid in y town. where y cause of action arose. 1 Bae. 340. "or quasi dominum praegit" note as to contrast of Tenor. 23d. 1 Bae. 330. 1 Bae. 370. unto 26. not Local be conclude.

In transitory actions, y Law of Count is different y action must be laid in y town, in 1st y Plea or Des. resides

as cases 14th Cause of Abatement is, yt y cause of action has in him been misused. This may be taken advantage of accounts, not only under the General Rule, Com. D. Ab. 4. a. 11. 3 Bae. 130. 4 Bae. 130. 5 Bae. 130.

C. 5. 5

10th Cause of Abatement is, yt y cause of action was not complete, when y suit commenced, and yt constitute a good defence to y action. As If an action was brt by adm of in her official capacity, before letters were issued, empowering ym to act as Adm, yt cause of action was be incomplete and therefore pleadable in Abatement. Com. D. Ab. C. 6. Co. E. 320. Co. S. 70. 69.

Or to y action, 2 Bae. 137. 14th. 34. 15. 1 Show. 142. 1 Bae. 70. 46 132.

55.

Mode of pleading in Abatement.

Please in abatement regularly begin and conclude to y suit, or as y case may be, to y declaration.
By concluding to y witt, is meant, praying the
Indict of y witt, yt it may be quashed: y same
of y Deed?

There is an Exception, ash is, where y Plea goes
to y person. In y ease of a Plea to y action, it
begins and concludes by praying Indictment; yt y Pith
may be barred of his action.

When y Plea goes to y person of y Pith, it concludes
by praying Indictment, an y def oughto to answer.

It is said, yt yt character of a Plea is decided by yt
conclusion, and yt alone, according to this Rule of
Plea, yt y subject matter concludes to y
witt, it is a Plea to y witt. Thi however ant
a universal Criterion. 11 Mod. 112. 4 Baer. 30.
Ld. Ray 624. Lawes 112. 4 Baer 30. Ct. not y correct
Rule.

The true Rule laid down by Ld. Coke, yt yt character
of a Plea, is to be determined by its beginning
and conclusion, is supported by Moder authority.
Baer Pl. 7 12. 1 Ch. 446. 2 Lawes 208. 2 of. Ld. 584. 109.

The beginning and conclusion ought to be alike,
but by ignorance, and misconduct, they sometimes
vary. Do yt certain. however, yt where they are
alike, they determine yt character, without
reference to the Subject matter. Plac. 2 Mod. 303.
2 Lawes 209. 6.
There is an Exception, where a plea goes to a Person of a Debt, or some Covert, the then prayer Judgment, an Oath ought to be answered.
The definitions are very artificial and unstable.
If y subject matter pleaded is good in Bar only, and if y Plea either begins in Bar or concludes in abatement, or vice versa, it is a Plea in Bar. If both y beginning and conclusion are in Bar, y Plea is in Bar of course, and elsewhere they differ, y subject matter decides y character of y Plea. y beginning and conclusion neutralise each other. There is unusual confusion on y subject. But y last rule seems y most concisely and definitorily method of deciding y question.

Thus according to yd Rule, if y beginning and conclusion differ, if y subject matter is good, in bar only, y Plea is in Bar. If good in abatement only, y Plea is in abatement. Even yd Rule and universal Bar Ab Pl. 8. f. Law Ray 358. 1013. 2 Sanders 203. C. d. 21 Ch. 440. 6.

But it seems to be established, if y subject matter is good in abatement only, and begins in Bar, and concludes in abatement, or "v. e. converse", y Plea is a Plea in Bar. when it determines as the Def. But if it goes in the Pltf, it is a Plea in abatement only.

This distinction is made to discountenance delaying Plea. It does not agree with y general Rule just stated. 1 East 636. 1 Lev 341. 12. Law Ray 1018. 1 Ch Pl. 440.

There is a class of Readings which come within none of these Rule, and distinction.

If y subject matter pleaded is good either in Bar or abatement, then y Pltf y, if y Plea begins in abatement, and ends in Bar, or "vice versa" the Pltf may either answer it
as a Plea in Bar, or as a Plea in Abatement, and as he answers, it will be treated. 1 Nelt 135, 9. 2 Nod 287, 273. a 50.

Why no Rule? Because y beginning and conclusion being different, they neutralize each other, and y subject matter being good, either way - y Pltf has his Election. 2 CCh Pl. 3 2d Chay. 11. 33. 57. 92. 137. Co Litt 133 9. 3 Maw 128. 284.

A Plea in Abatement founded on matter, wh
goes only in Bar, is bad, such matter don't
depare in Abatement. As in an action on trust,
y Def, pleads a Release, y plead is in Abatement, is
bad. 6 Co Litt 134. 12 d. 400. 1 Nelt 136. Co Litt 125. 9. a 6. 113 14. 46.

As to y mode of proceeding, see 3 2d Chay. as
questions above. and 2 CCh Pl. 58. Pleas in
Abatement. Story Pl. 60. Lawes 57.

A def may plead at one time, 2 different
delatory Pleas, or 2 different causes of Abatement.
He cannot plead in y disability of y Pltf, y
outlaw, or attaint. The rule shall stand, as
much as 2. The law don't allow 2 similar
grounds of defense at once. 4 St 257. 80. 1 Nelt 9.
Mr. T. 34. 167 8. 3d Ch Pl. 6.

A def may plead several kinds of delatory Pleas,
consecutively, and in their proper order. He may
plead to y Law's action, and if 90 is overplus,
y y disability of y Pltf.

But 2 similar Pleas can't be pleaded at
once. This is y doctrine of multiplicity. 3d Ch Pla.
111. 6. 1 Curt 9. 9. Co Litt 304. 1 Fids 72. 89.
433. 114. 6 St 251. 2 Nelt 129 8. 16. Co. 35. 3.
14 2. 6.
If def wear to plead at one and the same time, or else of different minds, yet latter not granted or former.

In Court and Wyrd, or practice, has been for to do the assign any number of causes of abatement or y name Plea. This is in adverse opposition to ye Civil Rule. 10 Ev. 12. 20.

and 36. When a cause of abatement is pleaded and Judgment rendered upon it— Error is pleadable of ye Interlocutory Judgment, as well as of the Final Judgment. Suppose a good Plea in abatement is demurred to and overruled, a Writ of Error may be found on ye Interlocutory Judgment, but a writ cannot be obtained, till Final Judgment is rendered. 6 I R. 760. Earl 124.

In 3 357. 1067. Plac. 5.

In matter of abatement no ground of Error.

In Plea in abatement—If not pleaded, it's waived. 1067. Plac. 5. 6 I R. 760. 3 Bae 1071. Ibid.

In a "true fa" in Judgment, y def is not allowed to plead in abatement, any thing he might have pleased to in ye original action. 1 Taunt 210, 2 J. 310. 3 Litt. 393. 1 Mcl. 209. 3 I R. 687. 3 Bae 467. Pl. A 13. 1067. 732.

Again a rent may abate in part, and yet stand good for ye Revalue, and ye Ct may abate as to part of ye rent, when ye Place go to ye whole. Suppose debt to be debt on 2 bonds of A, but one of ymn. is paid by another. Here y plea of non-bond will not abate as to one, and not as to y other. 1067. 3 Bae et D. 120. 420. 420.
Two causes of abatement may be pleaded, to different parts of a suit. As an action is not on its bond, but in one, or day of payment had not arrived, and in y other, another person is joined. 2 13th. 14th.

Sum. 10th. 3.

Again, y Def may in some cases plead in abatement, as in part, and in Bar as to y Barnee. Thi Rule 58 holds however, only where there are 2 or more causes of action. But where there is but one cause of action, I'm not aware, yet There can be 3 different Plead - Bne.

As a Plea in abatement does not go to y merit of y case, it follows, yt Indgmt in fav'r of y Def don't bar a future action. In general, a Indgmt in Abatement, is what is called an Interlocutory Indgmt.

There are some cases, where a final Indgmt may be granted on a Plea in Abatement. In New cases, it is of course, a Bar to any future action. 4 Co. 46. 6 Do. 57. 8 Do. 46. 8 Co. 47. 6. 38. 4 Co. 4. Bae Ab. Pl. C. 170.

Indgmt

The distinctions in these subjects are these.

1st. If Indgmt on a Plea in Abatement, go in favour of y Def, it is yt y suit may be quashed. If y suit be not amendable, yt parts an End to y action. 1 Bent. 22. 2 Shaw. 44. 4 Key 42. 4 Bae. 57.

1st. If Indgmt be rendered, for Def in Demurr, it is an Interlocutory Indgmt, called "Rehearsal Order," 12 yt y Def answer over. 3 Bae 383. 36th. 1 Bent. 372. 4 Key 112. 3 Ed. Ray 534, Ray 110. 2 Bae 367. 5
3d. But when an issue in fact is barred on plea, in abatement, and found to be def. v. Judgment goes in chief, or "quod recuperet" according to the law in Eng. This is a Rule adopted to discourage dilatory pleas, not are false. This Rule does not hold in Indictments for Criminal cases. It is dispensed with in favour of plea of insult 6 Mod 336. 1 Cen. 544. 2 Hark 334. 1 Bae 15 m. Lawer. 78. "In Comt,

The Rule is adopted in civil cases, with y exception of found by the jury, it is final, for these shall be but one trial by jury. 2 Gely 112. 1 Cen 534.

Dott Pl. 17. 2 Mil. 368. "H. F."

But of y. question it to be tried by y. Ct. it has been usual to award a "Responeat Patre,"

It is so decided in 2 Comt A. 377, but not so reported. 2 Traft 304.

45. If def. pleads in Bar, what is more matter of abatement, it is bad, and Judgment will go to him in chief. It is a Rule, yt a def. cannot demurr in abatement. The reason is, it is mere matter of abatement in the cause of demurr.

If then def. demurr in abatement, Judgment will go ve him. 1 Cen. 20. 2 Hark 334. 1 Lilly C. 8. 2 Bay. 1020. 1 Cen. 534. 1 Ch. 440. Mil. 400. 70. 220. 5 Moa 127. 8. 7. 10 77.
If he plead, in ye manner, he preclude himself from pleading again.

After Judgment of "Responeat Patre," he cannot plead again, because he might plead "ad infinitum." This Rule is to be understood of Dilatory pleas of ye same nature. 2 Traft 7. Mod. 37. 3 Traft 17. 1 Ch. 415. Lawer. 172. Hot. 126. Gely 46. This Com

blear. 208. "Contra Plowden" 73. 273 a 151.
After a plea to y Impleasion, he may still plead to y disability: for there are distinct Species of abating Pleas. The last rule mentioned, however, does not obtain, when after Judgment, yt y writ abate, y Pltt has his writ remedy.
Here has been no Judgment of Respondent answerer, He who amend his writ, makes it from yt moment a new one. 2 Tamn 40. 1. Doctr Plae into o.

When after Judgment, yt y writ abate, as to y new amended writ, y def is still at liberty to plead in Abatement.
After a general Immaterial, y def can't plead in Abatement, nor y cause of Abatement anies after Immaterial. Bae Ab. Pl. C. 2. Tit 422. 3.
3 Pl 316. Kirby 586. 4 Bae 29. 143.
But after particular Immaterial, as he may pleading in Abatement. * * Continuance. Bae 9.

Restrain of Pleas in Abatement

There is a standing general Rule, yt there is a certain period, within wh. Def must plead, of he pleas at all. Thi period in Eng. is four days after Return of y writ. 3 Pl 316. Comm 3. Ab. 6. 18.
Bae Ab. C. 2. 1. Judd. 422. 3.

Tha period required in Conno, is y afternoon of y 2 & day. after y opening of y Sipt Co. In y County Co. at r before y simpomellation. Rep Pl 554.

When y period for pleading in Abatement, has expired, and no such plea is made y night is waived. - One Exception in Conno in case of
long attachment: where y Law continues y attachment to y 2nd Term. The def ant precluded from pleading y atatonment at y second Term.

When a new cause of atatement arises after y time, y def is not precluded from pleading in atatement. Suppose a Tenet Pole is named after y time for pleading in atatement has elapsed, y def may plead y manage in atatement for a Tenet Pole has no right to continue an action after the becomer Tenet Covern.

See Pla 287. 2 Tad 7. 77. Cases, 173. 176.

Such Limit however don't operate as to those pleas wh are good. Both as to y action, and in atatement, but he must after expiration of y perio. plead to y action. See Pla. 227.

After y suit is atated, y Plf may under y to of amendment. amend y suit, in paying y cost, if when y suit cannot be amended; as in defept of Tenet De. See Pla Ab. amanont and see practice, 8 Cm 3.

61.

Dilatory Pleas concluded.

Plead to y action.

A plea to y action, may be either a general issue. wh is a general Plea in Bar, or a Special issue alleging new matter, wh is a Specific Plea in Bar.

A general issue is said to be a single certain and maternate point rising out of y allegating of y parties, and consisting regularly of an afirmation on y one side, and a direct negative on y other. Co Litt 216. 21, Cm Pl. R. Bae Ab. Pl 91.
There is a fault in ye definition, ye word “material” ought not to be used, for there may be issues arising from immaterial matter, and to comprehend these, ye word materials shall be omitted. It is however a correct definition of a good plea.

According to ye definition, there must be in every case, ni a unit of night, a direct affirmative on one side, and a direct negative on thither.

Co Litt. 12b. a 13b 813. 2 Ab. 70 62. 2 T.B. 278.
Post. 86. Of men a pleading acknowledges a Co-Defendant. was dead at y times of ye commenent of the Plaintiff. If ye Plaintiff was to plead, he was alive; it not be insufficient. It has been already said, yt inferential or argumentative pleading is bad.

Now the negative yt 23. y e def. was alive; is here an Inference, and not a direct assertion. The Plaintiff shall say that he is not dead, or yt he is alive, and suppose he is dead.

The Rule requiring a direct affirmative and a direct negative, to constitute an Issue, has in modern times been somewhat relaxed. Thus if Def. alleges, yt he was born in France, it is determined sufficient, yt yt Plaintiff replies he was born in England. Mil. 6. 1-1-1777.

The rule is laid down thus:
That if y Second affirmative shall involve y negative in y first, it is sufficient. This is relaxing the Rule too much.

In a unit of night, however, if affirmative were yt always allowed, and it is for yt reason, never cited a called “an Issue” but a “misce.” Ths in Common use, parlance, it is called a general Issue, of as in a Bill of nights. Kit also y’ exception: y General wit.

- 11 4 2 4 1 2 6 1 6 1 6 3 R C 3 0 5
Issues are either General or Special.

Some have made 3 kinds viz General, Special, and Common. The only case, however, in which they say the Issue is Common, is yt of Covenant Broken. According to ym, a Issue 'in factum' denies y deed, but not y breach, what

Now certainly, denies y existence of a or Event, certainly denies y breach of it. The same Thing may be said of Penal Bonds. I cannot see y necessity of yses distinctions. *Bux Ab. P. 31. Lawe 110.18 Ty 573. 5 Th 282 4 Bae 37

A general Issue is to deny all y materiel allegations on y deell & is a denial of all y fact, wh y Plts is obliged to prove. #3731018/081.473.081

A Special Issue is conjoint on some particular part of y deell, wh y materiel instead of denying y whole. Co Litc 186.a. Lawe 112.13.140. # 3 Th 305.

1 Pann'a 14.n. 3. 67. ch. 131.n. 205.n. 2. 219. x 235. t. 381.333. 347.

For when y Plts cause of action depends upon various distinct facts, y Def may often velet any one of those facts. & traverse yt. The Term "Special Issue" is predicate of y deell.
only. When taken on y subsequent proceedings, it is called simply a TRVERSE.

Suppose A sues B on a right of action, wh depends upon some preceding acts being performed. The def may instead of pleading "y General Proue" "non est factum" especially plead y non performance of y condition -

But if both general and Special Proues are to be taken on the deft. what name shall be given to those taken on y subsequent proceedings? They are called simply Proues, neither General or Special.
The following are some of y distinctivs in y Pleas -

So actions founded on any Malfeasance or Tort; y proper general Proue is generally "Not Guilty."

So debt on Simplest Contract, "nil debet."
So debt on Specialty, "non est factum."
"Nil debet" and good on Specialty, for it confesses and dont avoid y deed.
So debt on Judgment Null Tell Record."
So asseverit, "non asseverit."
So Replevin, "Non Expert."
If def is charged as bailiff or Receiver never Bailiff in account, "Never Receiuer." If both never Bailiff or Receiver."
So Warranty sounding wi Tort, "not guilty." 3 East 442.
So debt bitt on Penal St., y general Proue y "nil debet." Wh as y claim is founded on an alleged error, "not guilty." seems also a good Plea. Both are good. 1 Ames. 402. Co 257. 4 Rae 54, 884. 1 Lye 142. Mow. 56. 3 Bledsoe. 300. Co 8 57. 5 Moore 324. Co B 257. 1 P. 462.
To affirm in "not guilty" was done ye Plea, and held to be a good general Issue. It seems, to be established now, yt it is not good, and yt "non affirmat" is a good Plea. So 1022. Ebd. D. 167. Conf. 388.

So def. "no wrong." or "non Defensum." Goodment "not guilty." In debt for Rent, it being a simple contract, "null delict" is a good general Issue. Yet "nothing in Action" is a good Plea. Brown 13.

63. But to an action for Covert Broke, for Rent, yo is not a good Plea, and ye reason is, yt it confers ye Covenant, and ye damages, and alleages nothing in avoidance of either, and of course to a Bad Plea. Conf. 388. Pott 78.

In debt for Rent, ye general Issue is "non est factum." If def plead "null delict," and ye Pltf, instead of demaying, joins ye issue, ye important consequence follows, yt ye def is let into every mode of defense, not in admis. in debt on Simpke Contract. 1 Bent 321. 3 Esp. 38.

She fell by accepting the Issue, places her cause upon ye actual indebtedness. If "non est factum" was pleaded. a simipke question and be, and ye debt was made a not. Com. 2. 2. 42.

But if def is allowed to plead "null delict" ye question is not upon ye solemnity of Instrument, but rests on ye simipke existence of ye debt—1 Bent 321. 3 Esp. 382. 2 John. 183. 6 So 82.

1 Ch. Pl. 478.

She general Issue always refers to ye Count or deed, and never to ye Plea. A plea to
If in an action of account, y defn is charged
in y unit as Receiver generally, and in y self as
a Receiver by y hands of Pl, and he plead
"never do ever" he forlie to y fact of receiving
by the hands of Pl.

General Issue alike all other Issues, in fact,
in general concluds to y country and is
ordinarily triable by Jury only, Vide 3 Bl 313.
15. 4. Coot 219 b.
The proposition is not however universally true,
There is a trial by Record, wh does not conclude
to y country, but to y court.

There is also a trial by Inspection also by
Certificate - Wager of Two and wager of Battle-
3 Bl 330.
The wager of Battle was supposed long since
to have been extinct, but some modern decisions
seem to have revived it. These above mentioned
are not triable by Jury. Co Lit 126 a.
3 Bl 313. 15* 35.

In short generally handling the Issues try also Issue.
They try however this y medium of them.
The Jury answer y purpose of Receiver Certificate to
determine y truth of facts. It is true to substitute a
Jury, for more document, for does not seem very
convenient with our Ideas of its constitutional dignity
such in these cases seems to be its office.

The general Issues of Sub Litl Record conclude
with a verification, and not to y country
for a Jury cannot try a Record. To ye Pla,
y party who affirmi y Record must aver its Existence and bring the Inspection of it by the Ct.
2 T 433, 2 Wils 113, 14, 173, 104 R 411, 2 Ann 14th 1738, 231

Port of y Record of a foreign Municipal Ct
is denied, it must conclude to y country, for y Record of foreign Municipal Ct's are not Records in y country
Janes 14 G 326, 1 B & C 411, 5 East 473, 1
It is a fact to be proved by Ove, like any other fact,
but it does not like a Record prove it itself:
The mode of pleading in y case, if y Record is
denied to be lost, provable by patrimony of
The Plea must conclude, if it remains, to y country.

There is a Ct in yt State of Enms, enabling y Party
to conclude by refusing y Disease to y Ct, by mutual
agreement in civil cases only. It Enns. action, Civ. 64
On same State Disease joined before simple
magistrate, or master of y law, must conclude to y
Court.

The Records of a foreign Ct of admirality
are properly Speaking, the Records of our Ct., for they
are founded not on the particular laws of our nation,
but y Universal Laws of all

Of admirabwe sprays on y part of y Self, he says, This
may be inquired of by the Ct. If however y Disease
complains of, it negatifs, he puts himself in y
country, 10 Mod 152, 116. Co Litt 126 a. 3 B & C 363.

Where one party Mrs, concludes to y country, y Disease
is closed. The form made now of, and y State of
Ct doth the like, y is called a Simplicity
473 454. Co Litt 126, 1 Law 114, 3 B & C 370. 144.
The omission of y Simplicity has been a ground of
answer of Indent. 641, Conf 407, 3 Burr 1793.
21 Ann 310, a n. 6.
It is in Eng. to ye day matter of substance. It is allowed to correct y confusion on very slight ground.

Corb. 45. 2 Day 382. Co Lit. 206. 1 Saund. 338.

In Court a want of similitude is aided by perjury 2 Day 1306 88.

An Issue always eludes the proceedings, and y same denies its signification from yt circumstance.

In conclusion of the Issue are used y words of "in manner and form" &c. &c. in Bla. ent. 13. &c. 388. These formal words go sometimes to y substance of the Issue, and at other. They are mere forms.

Postea in Eng. does not issue, yt y parties joined in Issue, and put themselves upon y counts.

In yse statute, it does. The English resort to every expedient to elude yr Rule.

Where Issue is tendered by one Party, y latter must roni y Issue. If it is badly tendered, y opposite may demur to it. Bosc. Ab. 16. 1.

3 Bodd. 314. Co Lit. 530. 1 Saund. 338. Co Lit. 120. a.

Curt. 86.

With regard to y subject of y words, "in manner and form" y following distinction following distinction obtain.

I. They dont but in Issue y mere circumstances, attending y principal fact in question, ni these circumstances are materials. The circumstances, such as time, place, manner. Ye 388 are not generally materials ni they create a balance.

II 317. 2 Saund. 313. m. 6. Lawes 10. 120.

II On y other hand when these circumstances are materials, y words "in manner and form"
traverses ym ni wone: Mos it nod seem.
From y simpliciy of y Rule, easy to distinguish
what are traversable, and what not. Some
Examples, will nevertheless, be necessary.

Suppose a case of Assault and Battery
where y def is charged with an assault with
a sword. How does y Issue "in manner and form"
traverses y face of an Assault with a sword?
No. it will hold good of a cane, or a club—
because the Instrument used, ant materi—

Now where y words "in manner and form" do not
traverses a material allegation, they are but
form. Where y circumstances, form a part of y
description, it is material, and forms part of y
traversable allegations. If A gives B on a bond
dated 1st of July and deliver on y 1st of July,
y time is material, and forms part of y description
and is traversed by y words "in manner and form."
The Pltf cannot here avail himself of a Bond
dated on y 20 of July.

Suppose again, A charged B with a Battery,
committed in y County and Parish of C. y place
is here mere matter of venue and not of Local
description. The dees may therefore be proved in
another Parish or County.

But when y place is part of y Local description,
it is otherwise. If A alleges, go B committed
a battery on y room of D. it is part of y Local
description, and is traversable by y words "in
manner and form." The form then but in Issues
those facts, wh are material, and dont travers
those wh are not material— Letters 483. Co. Lcto
231. 6. Com. D. 1. 2 Past 487. 11. 30 226. 2 Mc. Kelly,
511. 3. or 521. 7. 14 Dae 53. Mc. Kelly
It has been said, yt evry Issue, to be a good one, must be material. What then is an immaterial Issue? Do it in, not being a material allegation, on y other side, is taken in a common not a immaterial. 2 Sam 379. 1 Cor 371. 1 Lev 32. Co 9. 434. 385. Ro 134. 84. 92. as of def. 379. 385. A traverse matter of mere Inducement, as it is an immaterial Issue, a matter of impossibility, of impossibility.

An immaterial Issue is a Radical fault, and not made by accident. Inducement # as sumiso in Co 9. y def alleging, yt he dint promise, here if issue is taken, it is entirely immaterial. 3 Co 339. 2 Bent 156. 1 Moa 137. 1 Mii 389. Bae Ab. F. C. 1. Com P. 148.

Where an immaterial Issue, is found in favour of him, who tendered it, a Repleader is awarded. If in him, it is final.

Where there is no material allegation on one side, there can be no material Issue, for since y pleading is so defective, there is no possibility of taking a material Issue, and under y circumstance of the case, it is the best not can be sever.

Thus of all y defects of evidence, of def may traverse any part of it. If in such case, Judgment is awarded, is the Ati., no Repleader will be allowed. It is a good General Rule, yt the issue canst not be joined on a Negative or affirmative Pregnant. A negative being pregnant is one, who implies an affirmative and vice versa.

An Issue taken on here, it & Law are taken by parties. Co 126. 302. 3 Co 287. 312. *Levy 14. 2 Comm 319. Gild & C. 147. 588 ac 201. 78 ac. 94. 2 de 28
By 50 it is cured by prayers. Is. 32, Hen. 8
There is a distinction to be observed between Isses
taken on a negative Pregnt, and an immaterial Issue.

But an immaterial issue contains nothing material, but an Issue taken on a Negative
pregnant is taken on both, material, and an immaterial matter. Cant 37. 18 Evi. 83.

So an action on contract, y def sabd howing,
with a reservation of 10. per Co, and Plt
traverses, yt 10. per et was not reserved.
This however implies, yt there might have
been a foreset. The plea however is good.

When an affirmative contains in a negative
pregnant, dont ad what is alleged on y other
side, y plea is good. Laws 114 has exactly reserved
the meaning of this Rule.

As rule 23 on act of Battery, y def sabd,
y has a right to arrest it, and in virtue
of his legal right, he molester (permit nature)
or harm. How yre implies, he might have been
without habe on him so ruled. Co E 227
1 Samud 319. 6. There is a great inconsistency,
contradiction and confusion between a Negative
pregnant on an immaterial Issue. 4 Bae 98
1 So 84. 2 Samud 319. n. 6.

An Infamous Issue is one taken on an immaterial
fact, but surely taken in point of form only.
I clearly aded by Mentres 2 Mod 137 Bv. 19.
Rid 3 166 529. 1 Bae 163. 1 Lev 32. 32.
2 Bae 519. n. 6. Cantle 37. 4 T3 a 51.
Traversing a negative allegation in the Technic form, alaqoe how, is informal.

It is not an issue wrongfully taken in point of form, or an immaterial allegation, informal. No, for y greater fault of its being so an immaterial fact.


The general issue covers the whole declarat., and by ye, it means. Def may traverse any thing contained in y declarat. This plea in its nature, does not involve any other personal matter of fact.

1 Ch. 478. 212. 124.

As a matter of Record, y general issue is considered as denying every material allegation. The very effect in the Record, yet def may not interad or in reality to contest a single point. Suppose an action boot on a Bond, made by a Time. Covert, she may admit the making, sealing, delivering &c., and yet pleading her incapacity to make one. Pow.C.97. Hall.7.27.46.10.12.2.13.14. 1 Chit. P.149. 16. 1 Mod. 411.

In point of law, she is morally incapable of making one. The deed is a carte blanche, 3 Hel. 228. and therefore she may plead "Non est factum."

1 Ch. 7. 2 Be. A. 1082. 1 Ch. 478. 2 D.116. 1404. 1 Ch. 124. 1 Pow. C. 3. 3 Mod 311. 22. Ch. 478.

For y difference of y incapacity of a Time Covert, to make a deed, and yet of a mens; 8 Lucatess. The latter is appareble. The deed of a Time Covert "ipsos factos" void.

On y other hand when y deed is absolutely void, or its nature, and not from y incapacity of y person making, y general issue of "Non est factum"
It is not proper.

If supported in an action both on an express bond and general issues, it is improper, for the obligor being compelled to form a deed in favor of fact, it is considered as a fraud of fact and not obligatory at point of law. E. & B. 223. 1 Hel. 202. 5.

Again, when a incapacity of a party, who has executed a deed, is not absolute, it is not proper to plead a general issue. Thus, in the case of an infant, who is considered as possessing no real competency, but not discretion.

The defense of infancy is therefore inconsistent with a plea for a plea asset, yet he did not make it. 1 Ch. 476. 9.

So is a general rule of all law, yet when a specialty is made void by an act or fact, if it makes it void, must be specially pleaded. La Co assigns for a reason. Thus, high solemnity of the instrument.

The true reason is, yet there facts are utterly repugnant to the general issue. "Non est factum" 5 Co. 119, 1 Ch. 323. 1 De Ch. 313. Cal. 873; 498. 3 Comm. 1805; Rob. 72. 150; Cal. 166. 273. 620.

Coverstone is only case, where a party may believe "Non est factum" and yet make a specialty plea, and give in plea the nullity and illegality of the instrument.

So an illegal instrument is certainly void and cannot impair an obligation on a person, yet when there is no incapacity of a person drawing it, the defense of "Non est factum" and enough. Ibid.
There are several defences, not may be given under the general issue, &c. 115 278 a. Ex. 3. 223. 4.
Thus an erroneous may be given as a defence, for y def may please yt he didt make yan deed as it now is, and consequently yf y tis not legitimately y same.

The loss of the Seal may also be pleaded, under the General issue, for y instrument is not legal without it.

He are not to understand however, yf y Plf not lose his cause in such a case--he will have his remedy in y Ct of Chy.

Now when the Seal of a deed was destroyed by fire, an action of debt will not lie, nor any action at law. The proper course to be pursued, is to bring a Bill in Chy. and a Lease. When changed becomes an Instrument in writing, and is of equal force as any uncertificated Instrument.

The want of delivery may also be a good defence. How advantage may be taken of all these defects under the General issue.

Do not a General Rule also, ye matter of fact only are put in issue, under the General Issue, there is an Exception, however, in the cases of a "time event" before mentioned -- that is "Si quis" 1 Ch. 715. C. 3. 224.

Matter of Law under y tis may be lost unless a General Issue. Thus is not the case in the Chy. 1 Ch. 715.
What defences are admissible under a General issue? If a defence is admissible under a General issue, it must be consistent with it.

As suppose an action lost on a deed, any alteration of that deed may be made under the general issue.

Infancy, lunacy, surplus, &c. must be specially pleaded.

The reason is, yo those defences, are inconsistent with a General issue, and therefore admissible.

In y action of Indeb. &c. There is a very great licence allowed in the defence. For in yo action, Rule 1, yo any thing, &c. The show, yo y Pllf has no rights to recover, at y time of plea pleaded, may be given in Pli under general issue.

In yo action, y promise is always fictitious, a mere legal consequence. The material fact in question is the debt, &c. and whatever disproves y debt or duty, disproves y promise.

On this account, I do not consider yo yo is an exception to the General Rule. for y plea of Non est factum don't mean, yo Def didn't make a promise, but there is no Indebtedness.

Hence under the plea of "Non est factum" y def may give in Pli Henry. infancy, Reprieve, Insanity, Surplus &c. It specially given for some debt. Awaed of and is deemed and satisfied or any illegality in the Instrument. Now no one of these can be given in Pli under the plea of "Non est factum." 1 Bl. 492. 4 Bac 601. 2 Rule 682. 3. 3 Brnn. 553. 2 Co 1018. 787. 2 H. Pll. 143. Doug. 188. 1 Ch. Pll. 170. 2. 2 H. Pll. 698. 142.
to account and satisfaction according to my weight of opinion. Ch. Pl. 472. 2d. Ley. 366. 12 Mod. 376.
12570. Different opinions on no subject.

Does the same rule hold as to Special apt? in principle? 3. 10th. This must be admitted as a rule, for where there is no before promise, there is an inconsistency with this Plan.

Ch. 10. 179. 1. 13 Mod. 210. 3. Reg. 516.
The authority, however, holds. yet y same rule applies to Special as to General apt. It originated in mistake, and has been extended by precedent. Ch. Pl., 187. 2d. 147. 8. 4. Bae 601.
134. 3. Mod. 13. 2d. Ley. 501. Ch. Pl. 272. 3.

True distinction these lands down.

But in practice, y rule applies to both Special and General apt. 3d. Mansfield in one instance seems to lay down the same rule in relation to actions in the case generally. 3. B. R. 1362.
2d. 64. But. No cannot have been his meaning.

I observe here on other hand, yet the Pl. of Lim. 69.

Said. Bank. and Act off must in all cases upon a Law principle, be specially pleaded, and cannot be given in Oli under y close. "Pl. apt. Ch. 5. 198. 1. "B. 283. 2. 2. 2d. 147. 3. Bae. 578. 2d. Ley. 152. 1. Ley 770.

The true reason is. They are defenses, not being matter of law, destroy y action or remedy, but dont destroy y indebtedness. In all these cases, y plea admit y debt but denies y right of Recovery.
The debt is due "in foro conscientiae," but by manner
is taken away by the St. of Limit. The Rule holds
as well of Indebitatus, aequum et specialiter.

In C L 2, p. 2, 503. n. 2.

But y mode of admitting special matter of defence
under the General Issue, s. 68 is not allowed at
C L 2, p. 2, in cases of "ficta" any more ym in action of
speciality, in all those defences are inconsistent
with the General Issue. "Not Guilty."

Thus take a case of Release, The def. pleads a Release,
& a Justification of a fact, not in general Issue.
the issue is of Robots, To of any Justification in
an action sounding in "ficta." Pec. 74. 82.

See 1 Trench, 4th ed. and Bulstrode. 4 Bac. 60. 2 Role 682.
3 M. 43, 292. 8 & 174. 5 B. 478. 1 & 317. 2 & 332.
6, 8 & 2, 425.

In debt on Simple Contract, y St. of Limit may
be given in the under y General Issue.

I Thinks so of all those, no dve mention in
under the Idea of "non asbo." In debt, because
sage in holt, y pleas. "The debt" is ni y present
sense, and as it demis present Indebitement, it is
consistent with the General Issue.

5 M. 43 18. 1 Perns. 283. n. 2. 2 Ley. 319. 2 & 36. 343.
108. 289. 388.

The St. of frauds and beginings may be specially pleaded
under "nil debit" under the General Issue.

The St. of principle is not the St. of Limit under
a General Issue, in "indebitatus, nil debit", non asbo.

Tho St. Language in fact sense, is in Legal operation.
in y present, I refer to v time of pleading. Hence every defence admissible under it is Debts, and seems to be so under "Ion ait," at least in "in indebtedness ait." On a action of ait, y st of Tuns is may be taken advantage of under the General Issue. There is no necessity for it, but it may be done. The def may plead the General Issue, and object to Partial Testimony.

2 Rev 214. 6 Br Ch. 32. 3 Ch. P 271.

So a universal Rule, every defence to y action, when can be specially pleaded, may be given in the under the General Issue. But these Special defences, abovementioned, may not be given under the General Issue, may be pleaded specially.

The only reason why a defence cannot be specially pleaded is, yt it aint to a General Issue. Every defence must be admissible to some plea under y action, and there are but 2 such Pleas. We y General Issue and the Special Plea in Bar. If men y Rule were otherwise, as person might have a good defence, and yet not be able to plead it. Laws 111. These distinction are derived from the C. Law, but don't universally hold in practice. The 3 of other State allow other defences to be given, for y purposes of Liberalizing and giving advantage to those ignorant of y Law. The consequences have been mischievous. The number of ignorant has been truly increased.

In Coart, in a Rule introduced by 3d and applicable to every action, yt def may give in the under the General Issue, any matter of defence or justification, not goes to y action, ni some sets of y Def. by wh def is "saved and acquitted."
The pet of J Pitt here meant is some act, whi

The set of J Pitt here meant, is some act, whi

So I presume of any other act of y Pitt, whi show

In Comt. the Law of Limit may be given in evidence

In Book debt. a Release may in Comt, be

de given in Civ. under the General Issue. The Exception,

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given in Civ. under the General Issue. The Exception,

The Rule of y Co requires, yt def shall give notice of y defence, wh he intends to offer. Vide last page.


Lawer. 112.

The plea then tendered is a Special Issue. see ante 52.

If y plea tendered an Issue in ye manner, ye made as answer to part only of y declaration, ye Petitioner must be answered in some other way. Would it be more proper to plead ye place and its Execution under Special Pleas in Bar?

There are some defences, wh cannot be pleaded specially of Special Pleas, yt are alleging new matter) amounting to y general Issue, cannot be specially pleaded. Every thing is new matter, ye what denies an allegation on y free side. And he, wh pleads specially, what amounts to a General Issue. pleads matter of fact to the Ct. wh belongs only to the Jury, and it longshene; ye Pleas unnecessarily and that to refer questions of fact to y Court. y new matter, wht avail, y de Cll. is admirable.
A Special plea is said to amount to a General Issue when y Special matter alleged in it, goes in denial of y allegation in the deed. The in deed in trespass and pleading property as a stranger or y def himself in trespass, for such plea y may allege substantive facts in y form of new matter are in effect, a mere denial of y plea's allegation whereas nothing ought to be specially pleaded, by the def, ni new matter. the legal sufficiency of ple it may be some necessary for y Ct to determine.

440. 4 Bae 68. 2. 136. 137. 232. 138. 261. 36
413. 1 Bae 234. 136. 360. 137. 41. 52. 210. 3 392. 12. 3 394. 185.

If Def in an action of trespass, it is as above stated, plead yt y property was his, he plead yt y fact, who was y fact, to be tried before a jury.

A Special Plea amounts to a General Issue, where y fact is stated in the Plea, deny y deed, see Infra. Thus in y case stated, to plead trespass on his land, but B pleads yt y land was his. But if on y other hand, y def were to plead Justification, it was not deny y deed.

Title is pleadsable specially ni Cmto ni Cmto, ni trespass on land, by St. 50 at Claw by giving ednor. 3 369.

To the General Rule. Infra, 16. yt a Special plea amounting to a General Issue, is regularly inadmissible. These are Exceptions.

I it Special plea amounting to a General Issue is good, if it contains special matter of Fact, 4 Bae 61. 3 Lev 41. 2 Bae 261. 180. 310. 5 Bae 302.
For where a defence is compounded of a General Issue & Special matter of Justification, it must be pleaded specially. For matter of Law ought to be shown to the Co., and a Justification is matter of Law. 1 Summ. 1. 282. n. 1 Co. Litt. 283. a. 3 Mod 137. b. 9 Talk 107. 8. 4 Mod 379. 2 Bae. 60. 166. 12 B. 127. 239. Co. D. Pl. 17. Post 82.

When the Special matter pleaded involves some legal elements, some real points, y Co. in its discretion may allow such a plea, in some cases. As in the legal language of Rule, y fact pleaded may bear 'tend' to the legal sense. In the Law Gent. 15, The Law Gent. 2 Bae. 60. 3 Co. C. 871. 2 Mod 574. 176. or 166.

III. In treason or assize, a Special Plea of Issue, giving colour, is good—Post 74.

Such Pleaing is according to some authentick, proper cause of demur.
This seems to be y true Rule, So it is deemed expedient, yt y Co shou have y right of excusing a discretion in allowing, or disallowing y Plea. But no discretion can be exercised, if y Pllf shoul claim, as of right, a decisyon upon demum. 5 Bae 291. 1 Ch Pllt 403. 4 Boc 127. Co 6 125. 105.
2 mold 274. 5 mold 18. Co Litt 328.
To accede in Cmt. 2 Day 429. The former practice was to demum.

But if y Co wont allow the plea, and def refuses to plead, y general issue, and Domi ini demumer. Judget will go to him. The Pllf however can nevver be driven to y necessity of demuring. 4 Bae 154. 10 Co 94. Boc 306.
In this ease therefore, it is accurate to say, yt y plea is ill ini demumer. for after y Co has disallowed the plea—if y Def wont allow y General Issue, Pllf may take Judgets, as by "Il Dicet" 3 Bae 202. 4 Boc 101. Co 6 165. 319. Bae 85. 10. n. 5. 4. 3.

But there is a materia difference between a Special Plea amounting to the General Issue, and a Special Plea alleging facts, whi, in Pr may support the General Issue.

For y latter does not necessarily, as a Plea, amount to y General Issue. As Pleas of Release to "appomt" or debt on simple contract.
A Special Plea not allow y debt to be Enversed) to ini mag to y General Issue.

For instance ini y action of "for" a release may be given ini Pr, under y General Issue—Yet it may also be specially pleaded. Do they not amount to a General Issue? (No, for they
all admit y deel. A Release admit, yt a promise was given. To also plea of infancy.
Covenant, Davies, Ch B, 137, 4. Ed Ray 88.
Talk 382, 4. 5 Mod 18, 4 Bac. 62, 134. 5 Com 76.
Cartl 356. These defences do not amount to a general issue. The they might be given in Ori under it. Lawes 12, Lyd 521, 39.
In apt payment may be specially pleaded.

For they do not deny a fact alleged. yt the deel.
As the general issue always does. but go to Ori of ym. By what distinction then shall we distinguish between these 2 Clauses.
No plea of a general issue admit, yt there was once a cause of action. (as Release, Payment, Ed Ray 27), or yt y allegations in the deel are
As to it deme, yt there ever was, so cause of action.
As (money. Davies) amounts to the general
Cause, the y facts pleaded, might have been pleaded under the general issue. and we have supported it. Ed Ray 88, 3. 566 767.
Ch Pl. 491, 2. 496. 1 Bst P 213. 4 Bac 62, 134.
For such pleas dont deny the deel, ut Sup.
As last orner. ante 72, 66. 39. 67, 37.

In such cases. y deel is a "matter of law." A new
matter. Legal sufficiency of the may come in question.
As Times Covenant, may to debt in bond, made during the coverture, plea her Coverture.
101. 8 Tit 348. to the action.

Advantage is taken of her coverture in yt case,
not by way of privilege, as being sued alone
when she is liable to a Suit with her husband.
(as is done in Writments) but as rendering your
extract more (as before form of a plea in Bar see
Ch. 420, 418.) The Bar admits your facts, but
avoids your order, by matter of Law. So Release, &c
in debts on Simple contract

and in Court, it customery, to plead specially
your defence ym acts of y Plff. specially, in action,
in contract - This in cases of "&c" y General Issue
is almost always pleaded. ante 70.

Reading specially (as in form of Special Plea)
what amounts to y General Issue, is warranted
"in apes" & Treason, by giving colour to the Plff.
10. by alleging some seised matter in Plff's
favour, in order to justify in answer to it.
- a Special Statement of Def't Title - 4 Bae 102.
5. Bae 208. in

By giving colour to y Plff, is meant, by y choosing
or Plff's or Title defective in Law, in order yt
Def may allege another Title in himself.
- Def must take care to make the Title defective-
If def alleges a title solely in himself, the pleas, a mere matter of fact to the Ct., by giving title
to the Plff, a question of incapacity arises, not in
one of Law, and not of Facts. the Plff cannot
deny the title given him, but he may deny the
Title of y def.
Thus Title in def is a good defence under the
General Issue. see Laws 126. 7, Pl. 384. 3 80, 403.
1 Ch. Pl. 381. in

But a def in Trespaire may plead libenum
Tenementum 1 Saund 284. n. 6. without giving colour. 
Laww 128. To Pl. 591. 10. 128. 2 Ch. Pl. 502. Con. B. Pl. 
3. m. 33. 40. Miller 215. note. it does not deny 
y defect, as the plea may still have some right. 
as. A iosoer or title. 
The Rule depends upon a doctrine of 'Com Bar.' 
explained in Miller 215. 1 Saund 283. b. m. 6. 
2 Plc 1089. T. T. 397. 5. Salt 453. 6 Mod 117. Law 
May. 333.

Common Bar was in one case, held not traversable. 
1 Saund 26. Tales when the pleasure title goes to 
party. Laww 128.

On replyng matter of title to a plea of title, 
plea need not raise colour. 1 Cast 212. But he may 
do it. Laww 1078. 1 Cast 213.15. there was to 
not be ill on special Remuner. 5 Laww 38.

A plea stating specie fact, wh go to prove y 
General Issue, and concluding wht a Gen Issue 
is not a specie Plea. for it conclude with 
y general Issue. It containg however. specie matter 
lke a specie plea. These facts, wh state, y grounds 
on wh deff relies on pleading the General Issue. 
At to an action on Bond, yt writing was delivered 
to def as an Bond, and so not his act. 
So also, yt the Bond has been altered by the def. 
So not his act.

So in action on Deed, y def may plead, yt at 
y time of making the deed, she was a minor Covert. 
and so not ner act. This is called a General Issue 
with an exception. Will 1. Cat 164. b. 4 Bovs 62. 83. 
5 Com. 387. Salt 274. Emb 222. 1 Bent 18. 5. 215. 
3 Plw 66. is a special "non est factum"
The plea, according to some, must conclude to y country. 3 Feb 26. Plow 60. 1 Bent 5. 210. 4 Bae 62. 39. 5 Com. 80.7. Talk 274. Ch 222. According to them, it may conclude with a rinificatin. Gibb Civ 164. May 112. Moore 30. (The former, y better opinion, says &c.)

It seems extraordinary, yet any diversity of opinion on ye subject she ever exist. But if it does, so conclude it with a rinificatin, it now seem not to be a plea of Thos Plind. not y general peace, with an "intent" but a Special Peace, amounting to a General Peace.

It is usefull in dawning notice to y Def. of y true defense, and confirming y attention of y Pling to y particular facts stated 'n it. Gibb Civ. 163-4. If it is said, may plac 'n over, and take issue in the Speciale matter.

Talk 274.5: What possible ruse can 't be in thus doing? For the Speciale matter is an issue of course, if not demanded to, and y Def is bound to prove it. Indeed it's y only matter in issue under y plea.

It may be demanded to, it seem, even tho' it conclude to y country. Gibb Law. 164-5.

For y Speciale matter may not in law support y general Peace.

Generally if a plea (executed in point of law) was originally made in consequence of some thing done, as Comtinue, or being to by something in part facts as cause or interruption De & Def can not plead y general Peace, ni with an "intent" 6 May 818. De ant 20 now Gibb Civ. 163-4. for y old Rule see 5. Co 113.

Ed Tutt says. a Speciale for this factual is always impertinent, as its subject y def to y "own bordane" 4 Bae 62. 6 May 218 &ere how Impertinent? At subject y def to the "own bordane" it is true, but it may be very convenient in narowing the
II. Special Pleas in Bar.

A Special plea in bar is usually defined to be one, who admits, or states as his, the fact, and avows it, e.g. 4 Bae 66:1, 66; Lawes 10:129.

This, tho' generally true, is as a definition defective, for a Special plea in Bar, sometimes, traverses parts of the fact, e.g. 72, Bocx 31, 4 Bae 70, 80, Hol 104, 106, 107, 109, Cro. 30, 418, Litt. 38, Lawes 116, 211, 148. As held in Crespin, plea, licensed on such a day, must be traversed as to other times.

A Special Plea in Bar, I shall define to be one, who alleges Special matter in Bar of the action, and concludes, makes an averment, it regularly admits all traversable allegations, who it does not traverse, and it goes in accordance of what it admits.

4 Bae. 173. Talk. 21, 1 Mil. 338.

Note. There is one kind of Special Pleas, not so good, tho' it neither admits, avoids or denies, y'halt, allegation; strictly speaking, but shows, y'Pll be precluded from avowing y'facts, y'are not in y'fact, alleged by him, and of course be not y'admits, not denies, y'kind of Pleas are called Pleas of Estoppel. This is an Exception to y'General Rule, advanced above. Lawes 38, 130, 40, 65, 156, 151, 170, 3 Bl 303, Millet 13. 3 Cas. 346, 65.
In actions sounding in "Fod" y more words pleased in Bar, is a plea of Justification.

It is a plea in pleading, yet every plea in Justification must confesse y facts intended to be justified. 1 Summa 28.m.1 & 71b.318. & 71.10 398. 1 Summa 14.m.3. & 71b.394. & 71.10 389. 71b.389. It must be prepossum, to say justify, what is not admitted to exist. This however may mistake, for by saying, yet it must admit what it justifies, is meant, y s it must be so pleaded, as not to deny it - it must tacitly admit it.

So of matter pleaded in Excuse. Temple 71b.389.m.3. This is of in Special pleading for Battery, y defenster of denying, y confesing and avowing it justify, an act, wh does not constitute Battery, y plea is ill in Special pleading. 71b.389.m.3. The fault is only formal. 71b.394. & 71b.389. A Party may expressly admit an allegation on y other side, as not operate in his favour an d may make it a part of his case. 71b.484.

Any fact not in bis deicide of the allegations on s opposite side, is new matter.

In Special pleading in Bar in every instance necessarily alleged, new (or Special), matter, and it is usually in y affirmative. And not always - sometime, it is in y Negative. Of an action is birt on a negative cognizance (see Comt Brotken 5 71b.399). y Special matter must be in the Negative. Hence it must regularly conclude with a denifcation, and "ye he is ready to verify."

The form of denifcation is artificial, yet form is only mode. However, of keeping the pleadings open, s when new matter is alleged, by the def. y sill must evidently have an opportunity of pleading.
is your in either of these ways—by denying him, by demur—by this, by confessing and avowing him, by new matter of his own.

Hence tile a proper issue is tendered, your pleading must be kept open; at each party may have an opportunity of answering the allegations by others. Lawer. 148. 1 Sma. 133. m. 2. Lawer. 149. 3 Bler. 309. 10 Dorn. 38. Camp. 375. 2 Brum. 172. 238. 2. N.R. 353. m.

Exemption in your case of a General Plea of Bankruptcy. under 3. Geo. 2d. Lawer 140. 110. 224. 227, m. 80. 81. in this case he concludes to y COUNTRY.

Plea merely negative need not be so confined. For a pleading negatively cannot reasonably be required to verify it. For may pray Injunction without verification. A Negative Special Plea in Bar, however, may be concluded with a verification. And ye ant y custom. Lawer 140. Sill. 3.

As a plea cannot in general be required to speculate to prove a negative.

But plea, wh form (or rather tender) a complete and proper issue. Trouble by Bury. must conclude to y COUNTRY. 3. Camp. 86. Raym. 38. Blunt. 58. Lawer 148. 3 Bler. 309. Similarly y pleading might never be both to a close. The plea in your former case, must leave y pleading open—i.e. y latter must conclude to y COUNTRY.

When y Def alleges distinct matter of defence, to different parts of y declaration, or cause of action, he may conclude each separate matter of defence, with a verification or y whole suit one.

1 Sma. 338. 2d. 339. m. 1. Camp. 312. 208.

Camp. 48.
Requisites (ante 77)

I have observed, it is all ease in general admit of course what they do not deny, ie all material allegation, wh they do not deny, Hence "repel debts" is not a good Plead to debt on Bond. For y case is admitted, and y cause of action not avoide.

y Plead allegs nothing in avoidance of it 4 Bac 83. Car 33, 332. 1 Tormer 69 n 1 Leb. 170. Lt Ray 170. 2 In 755. 50. 5 Brum. 2588. It is ill in General Demurrer. 2 Hil. 10. Ch 224.

Lit. Coger, General Rule is, Every def must plead such as follows as is pertinent and proper according to y quality of y case. Estate or Interest. Co Lite 280. 303. 4 Bac 83. This is saying, every Plead must be a good one.

Every Special Plead must contain irresolvable matter,ame it not triable, as if def an action on Bond. Plead, yt he has always been ready to pay the debt. even so, with more, it is not good, because it is not irresolvable besides y facts is immaterial, it is no performance of y contract, yt he show be ready to pay, but y left her the pay.

Laws 137. 8. 137. 8. 2 Hil. 74.

Every Special Plead, in fact and Law are so bladder, yt they cannot be responct, all, as yt is unlawfully enjoyed y goods of Tllor, in such a place. Laws 138. Every Special must, as far as it is practicable, irresolvable matter of Laws from matter of fact. In a word; when matter of Law and fact arise from y same defence, y matter of fact must be so alleged, as to be distinctly answerable. Thus in y case above.
just stated. A case B for Treason, and B pleads, 
set it is an attainable felon, and y B has a lawful 
night in y goods. of all attainable felon, such a 
plea is bad, for it blends matter of fact and law 
for he ought to show y special matter, on wh y night 
was founded. He shall have pleaded y So wh 
created y night-

A traverse of y allegation in y above form, not 
embraces all matter, both of law and fact, wh 
could go to establish such a right: 1 Bae 68. n. 2 
Mos. 39. 3 Co. 29. a. Bae 66. Pl. 41.

A plea in bar to y whole debt, must answer y 
whole gravamen, or cause of action. As for it is 
ill for y whole. As A says B for assault and 
Battery only, and mayhem. As he pleads to y whole, 
justifying y assault and Battery, y. alleges matter 
with justifying y assault and Battery only, it is ill 
for y whole. And y whole may demur to y. and 
y debt as appeasing damages, must give y. for 
assault and Battery, as well as for Mayhem. 
The same Rule holds as to the subsequent proceedings.

Suppose A brings an action of Contract on B. 
for 1000. B pleads infancy. 4 mo. & rebel, y to y. 
of y venue was for necessary, the infant is must 
for y whole sum. For an entire plea cannot 
be denied in its effects. Bot. 33. 4. Llew. 15. 17. 
4 Bae 85. 3 Co. 268 3. Lea 370. 4 Hsb 320. 8. 1 Lea. 16. 
48. 1 Co. 318. Lea Bay 229. 5 Co. 648. Pl. 51.

So as to Treason, if a Plea a be pleaded, all treason 
afterwards must be traversed. Hsb 104. 1 T. R. 636.
Thus y replication must answer all yt material in y plea.

As to y application of y Rule to subsequent proceedings see 1 Saund. 28. p. 2. 1 T.R 40. 2 Saund. 127. 1 do. 47.

But yt General Rule does not prevent y def from making different pleas to different parts of y deed. (or alleged cause of action) Lawes 1013. Post 37. an y deed must consist of several countys or one only. As suppose in y case of A. and B. and C. and D. and E. yt yt deed is for an official right to arrest, and as to yt Mayhem these selfdefence, y belief & better.

So again if treasurers for 10. horses not guilty as to all or one as to yt in Instiplication (yer good pleading) again afirmatio for 1000.00 as to 500. now after as to yt Residue setoff, payment.

But yt all y pleas taken together must cover y whole ground of action.

If however matter pleaded, as an answer to y whole, deed or grievance, yt in Law a good answer to part only. y plea is bad of course for y whole. (and yt y subject of a consumer)

Thus in an action bout 50 a Bailee, for goods delivered to him to keep and convey, a plea to yt whole. But he was discharged from keeping same, i.e. ill for it doit answer his obligation to convey. 4 B.C.E. 88. H.B 28.

And evry plea to y action is taken as a plea to y whole alleged cause of action, unless expressly limited to a part.
So on y other hand. If matter nght not be a
waist answer to y whole in Law is pleaded to part
only y plea is bad. Lawer 135. & 71. Talk 178 & 672.
1 Randel 28. Cor 2 138. 330. 434. Cor 5 27. As
in troverse he must be at in apurto for 100 doe
and pledge as to 50. More part and parcel of
y whole. a receipt or release, off all demand
with further answer. This plea not have
answer as for y whole but being pleaded for
a part only. is ille-

So an action for words. This is y thief and
other. 30. doe. v plea y she is y thief and dole.
2. henry. 4. Bae. 63. Cor 5 673. 2. Role 414.

As to a mode of taking advantage of such
pleadings-

If y plea begins as, (ie. purpose to be) as an
answer to y whole doe. and is in Law, good as
o part only. Plea may deman. For there is an answer
to y whole. the an inappropiate one. it is a declaration
for Assault and Battery, and mayhem. a justication
pleaded to y whole. stating if not doe. in Law
justify the Assault and Battery only. For instance
if it shd be pleaded, a note to await, and "made
solidy impostant." 1 Randel 2. Ch 3. 43 Talk 178.
In Aug 331. Cor. 383. Lawer 1350.

But when a defense is pleaded as answer to part only.
and in Law y in answer to part only. it is a
discreetance for the Def of his defense.

This is inappropiate. It is so if he pleads nothing,
and Plea is entitled to it. attain a Witt deed.
The Plea not only. need not deman, but must not-


demur. So if he demur, he accepts an answer.
to part for a whole, as deems as above, and some
justification pleaded as to y default and Battery,
only, and no answer to y Mayhem, y will this not
demur, but take Judgment as y 'il Delict'
1 Smund 28 n. 3 Ball. 173. 40. Le Bay 201. 841.
for he is not bound, and ought not to accept
an answer to a part only, and may therefore
not treat it as no answer. If he demur y whole
action is discontinued. 1 Smund 28 n. 3. for
by thus consenting to try y sufficiency of a part
only of his cause of action, he waives it as an
Entire right, and refers to y Ct. y decision of only
part of it, which cannot be done.
For a Ct of Justice will not try an alleged
part of a claim, it cannot give Judgment
on a part only of the alleged Claim or cause of
action, it must in some way, extend to y whole.

Suppose y matter pleaded to a part only would
have been good in Law. for y whole (570), can
y party demur? or must he take Judgment at Esh?
1 Smund 28 n. 3. Lawes 130. 2 Baff. 426.
1 Fel. 4 P. 4 n.

He must take Judgment by 'il Delict'. So
conceiveth, 4 Co 62 1 Smund 303. 1 Smund 28 n. 3. For
if y matter might have constituted a good
answer, to y whole, yet yo is actually no answer
but to a part. As Trover for 10 horses, plea as
to 't not guilty or defence, and no reply as
to y others to. If Judgment shall be given as to
't only, y cause as to y remaining yo was
remain unsettled, and thus the Judgment was
not settle y cause.
To declare for assault and Battery, and Mayhem, and a For assault I Demone, as in Law a Refutation of y whole Pleading, as to the assault and Battery only, and no answer as to Mayhem. 2 B. & C. 427. The Ab held, yt a Plea might demur, as seems to disagree with my Law, That Plea however was incongruous, yt two ends were inconsistent and unlike.

The Law is differently laid down in y Books, but it conceive, it makes no difference, an y defence is in Law, and an answer to y whole or part only, where it is pleaded to Part only. 1. Dein, n. 14.

Tho a Plea began thus (see next to 69) expressly answers the whole, y Plef may demur specially for its incongruity. 2 Boc. 427. Lawes 136.

These Rules do not require yt def expressly to answer such parts of y delect, as are not material, or not of y Gist of y action.

As matter of Inducement and aggravation need not be answered. 1 Camp. 24. n. 3. For a Plea

As in Treason for Breaking and Entering Wth. house, and expelling therefrom and beating him.

A plea, yt justifies y Breaking and Entering, is a sufficient answer to y declaration, 12. it will in demur. defeat y action, yt y pleadinggo no further, and will at all events, defeat it, as y plea so destroyed by公开课clusion. 12. by novel assignment in y replication, stating ye as a Substantive ground of Recovery.

For y Expulsion is, only aggravation—
What will be a condition of a question, if 23 have a right to break and enter? How is a duty to obtain separation for the breaking and entering?

And thus is to answer by "novel assignment" if it "novel in his replication, where a duty is lawful, and declared, the opposing in "totality" as in any case it supposed be, 3 B.R. 242. 1 D. 479. 636. 201 4 Co. 62. Lawe. 36. 1 H. 3 Bl. 355. 2 H. 88. 20.

What is a novel assignment? see 3 B.R. 311. hei definition is suspicious / Sun 209. a.m.
6. 3 B.c. 243. Lawe. 70 163. 140. 102. To convict.
In alleging ripe and necessary circumstances in his replication (in answer even to an Original Plea)
What is alleged in his declarer generally, or in stating as a "Substantive" basis, or ground of claim, what is on its face of its declarer appears to be more matter of aggravation or matter of mere aggravation, as above, or finally in stating as a cause of action, a transference distinct from yet to why plea apply. Either of these 3 different statements in replication may constitute a novel assignment.

As declarer in trespass, pleader, licensee at such a time, pleader stating trespass of the same kind with different time — the again of novel assignment declarer for an escape, plea to be recapitulation on fres.

As Repl. Voluntary Escape, 3 W.R. 125.

When pleader makes a novel assignment, def may plead again in Bar, "Not guilty"— to novel assignment, def may plead as in a declaration — as General Price.

Lawe. 160. 1 Sun 206. 3 East 34.
Novel assignment concludes with an averment, ye & trespasses, or wrongs described in it, are different from those mentioned in the plea. Otherwise a new assignment is unnecessary, for if they are not different from the former, they stand justified by the plea already made. 164. 1. 2d. 1.1. 2d. 2d.

The averment cannot be distinctly traversed. If it be true, def. may plead "Not Guilty" to a new assignment. Laws 201. 1. 2d. 1. 2d. 2d. 2d. 2d. and yet involve a denial of the averment, it being a denial of the def. is guilty of a wrong different from ye admitted and avoided in ye plea in Bar. For the form of a novel assignment, see 2d. 2d. 2d. 2d. 2d. 2d. 2d. 2d.

General Pleading. It was anciently necessary for def. to set forth specially, all particulars however numerous of a defence consisting of special matters of avoidance. Co Litt. 313 & Co 327. 4. 3 Baed. 9. Now however, general pleading is sometimes allowed to avoid multiplicity. As, when particular facts, if specially set forth, would tend to infiniteness. This, however, is only an exception to the general rule. Two examples will illustrate the general rule of the exception.

An ext. covenant to pay all ye legacies, in ye testament made, in pleading performance, he is allowed to plead generally, for it is presumed ye legacies in a will cannot be very numerous. He must state each Legacy specially, and ye he has paid ye, and ye they are all.
In a former part, precede a thief, give a Bond, to discharge all his duties now he need not plead specially, or performance of such official duty yet who be morally impossible, he is allowed to plead. Generally, if he has performed all his duties—see the Case of a Brewer, who agreed to convey to 63. all his grain, for a number of yrs.

Again of one is bound to perform contract, or performance of such must consist of a great variety of facts. He may plead performance generally—see Bae 81. Contr 1 Co 327. 313. 1 Res 210. 231. 219. a 234. Co Litt 318. 2 Bent 235. 206. See Covenant Broken) Contr 375. Law 50. 1 Carn. 117. n. 1. 2 Co 419. n. 4. 1 Ta 333. The Rule, then where well laid down by 5 Bull. 227 Covenant Broken. But this cannot be done, where some of y Covenant are negative, for negative cannot be performed, as to these, he has not done a act, covenant not pos. See Covenant Broken Co Litt 303. Co 217. 4 Bae 51. 5 Com 236. 208

In y case, if def plead performance, advantage can be taken of it only by special Demurrer. Co 8 252. 5 Cor 8 22.

Def need not allege more in his plea, in what amount "prima facie" to a sufficient answer to the debt, and 2 La 159. 2 Mil 150. 1 Carn 238. He need not therefore negative by antedelusion, possible answers to his plea. 2 Mil 150.
All pleadings or either side must be consistent with itself. Hence a repugnancy on a material point, radically vitates every plea. Issue if no point not material. Sir Tho. Brett v. Birkbeck. A formal defect cannot be taken advantage of by a special demurrer.
1 Phil 38.

Repugnancy of date in a Record, is no error after verdict. It is not of the substance of the Record.

When a def. must give under a warrant, or any other authority, he must set it forth specially, alleging, as he acted by a certain warrant, and so forth, unto sufficient. 1 Thame 394.
3 2 80 442. n. Co Litt 383. 3 Mod 697. 8 Cath 175. 4 Mod 573. Com Pl 317.
For or the matter of any Law must be specially shown to the Court. 46 27. 280 4 Bae 60. ante 72. 67.
and see also Covenant Breach.

Form of beginning and concluding Special plea in Bar. 26 162 2 see 133. 14 8. 192. 151.

Decided by Sir Mansfield, yet action men goes in every case to y time of pleading,
not to y commencement of y action.
Doug. 153. 12. 80 3 54 143. But yet it seems
not to time in all cases. 80 3 54 152 150.
As plea of Setoff.- Cony. 596. The presence of Mr. Plea. For y Plea must aver. y y
plea was indicted to y def before, and at y
"Oferavi non Debet" may be pleaded instead of actioenem non" when ye plea shewe, yt there never was a cause of action

Plea when it admits, yt there was once a cause of action. Lawes. 130. Talke. P. 376.
This must be, because y former is construed as denying any original cause of action, or Liability, and y latter as denying an existing cause or Liability in y action, or existing Remedy.
Plea when aided by Pleading, see Com. Pl. 27. or 37

**Traverse**

A Traverse is a language of pleading, of ye denial of some particular, (point) fact or matter alleged in ye pleading of ye other party, and always tended an Issue, may be taken to any part of ye pleading.
4 Bac. 87. Co Litt. 252. Leis. 150.

When a Traverse is proceed by Special matter, by way of Inducement, it is called by Lawes a Special Traverse — (not so see Lawes 110. 8. 21.
49. There dont ye extent of it decide its character?
It does when proceed by an Inducement, it is properly called a "Technical Traverse", but it ant necessarily a Special one. It is somewhat, yet to accurate a writer who have erred, as to a "General and Special Traverse". He has confounded y words. Technical and Special
When a traverse taken on one side, denies y whole alleged on y other, it is called a General Traverse. If taken on part only of what is alleged, it is called a "Special Traverse."

It is sometimes said in y books, yt a Traverse closes the issue 4 Bae 67. But yt is not a general proposition is incorrect - Tho as an exception to y General Rule, it is sometimes true - The issue is closed (when tried) by y party by concluding it y Country - It is joined by y opposite party, adding The Similiter (of not Post.)

A Technical Traverse with y words "Aboge boc" concludes regularly with a verification, and if Special, it always does. 3 Mod. 203. 4 Bae 67. 6 Co. 24. 5 Com. 109. Co 871. 1 Burr 321. Doug 412. Halle 121. 1 Lambd. 103. b. n. 3. In yt case, it does not close y Issue. As it alleges in his boc, yt it is accused twice in fee. De deducing his title from him.

The other party says, he died twice in fee, "Aboge boc." yt he is accused twice in fee, without a verification. When taken in yt form, it only tenders an Issue.

"These are technical Terms, in Pleading, equal to "et non."

The words "Aboge boc" are technical words of demerit, but they are not indispensable "et non" are fact.

Sawyer 118. 1 Lambd. 22.

We are told in y books yt a General Traverse, may conclude in many cases, without a verification or to y Country. I conclude or emerce, it ought to conclude to y Country always, as - "De injuriam sua prorsum aborge tale sauce" and yt concludes to y Country - 4 Bae 67. 6 Co. 24. 1 Lambd 103. b. n. 8.

2 1st R. 364. 1 Burr 317. Doug. 90. 412. Calrke 4. 7 Mod.
Such a Traverse cannot be ill, as being unreasonable, because it denies all, yt is alleged, on ye other side, and cannot be necessary or proper, for ye adverse party to answer with Special matter—

for it tendes an Issue, and 64. wh cannot be refus'd by ye other party, since it extend to all yt he has alleged—

That ubique Salis causa, refers to alle, yt is alleged—by ye other side, see: Lawes. 152. & Co. Co. 67.

Lawes 154.

Under what circumstances, a General Traverse may conclude, without a verification. 2 T.R. 443. 2 Bmr. 10 22. 1 South 133. a b. no Layre has attempted to point out. the B R. 1: T.R. 443. has said. yt under certain circumstances it was allowed—

She concludes without a verification in ye place—

South 133. a b. 1 Lawes 121. is understood, as only by precedent with origination in a mistake, for how can it be proper to conclude without an argument in any case. when all ye allegations on ye other side are deemed and wrong, and were learned upon yr. The opposite party can't possibly make a Special answer. and he ant concluded by a conclusion from demurring. if he choose to do it.
The general replication "de injuria sed" properly abopque
tali causa" is appropriately adapted to answer
matter of Deere. Lawes 154. 6. This it is a good
answer generally at a Justification consisting merely
of fact. Lawes 155. 6. 8 & 9. and not containing
matter of Deere, right Title or Interest, all such
are matter of Law. Lawes 155. 6. 8 & 9. Emb ib i. 20.
1.

For as to Made a General Traverse is altogether
inadmissible, as it does separate mere fact from a
matter of Deere, &c. but denies both, without
distinction—Lawes 154.

But tho' a Replication "de injunia sed" conclude
with a General Traverse, (abopque tali causa) is
not proper when part of y Plea consists of matter
of Deere &c. but even in such a case, the Pltf
may reply, "de injunia sed, and conclude with a
Special Traverse. Of any one material fact—or
bounty in the Plea by itself, as the Deere &c. for
the more avoids y inadmissibility of y General Traverse,
"abopque tali causa" Lawes 154. 8 & 9. by
separating y matter of mere fact from y matter
of Deere &c.

Whereas "abopque tali causa" traverses all yt is
alleged. on ytther side. Lawes 152. Shoo to
Apaupt and Batany and wounding, yt Def justifier
under a Writ or warrant, and alleges Resitation
by Pltf. If Pltf replies, "de injunia sed prorima
abopque tali causa", he traverses both y Resitation
and y Writ, yet is insufficient. A Traverse of
either will be sufficient, but y General Traverse
and butt matter of Deere in issue to y Duty
as well as matter of fact. The Pltf shal therefore
Traverse y one or other by a distinct Special Traverse, not would prefer a matter of Law to y Courts, or y matter of fact to y Jury. Lawes 158. But y General Traverse blends ynm. and 178.3.

And "the injury" may be repetied in its general form. to a sheet, alleging a matter of Fact or Lite, Where such matter is alleged by way of Indicement only. Lawes 158. Com Pr. 1st 20. 1. 1 Burr 320. 8 Co 574. For Men it is not distinctly traversable, nor parcel of the Cause.

A Special Traverse I have alreary, is presented so by matter of Indicement, and differs from a direct and positive denial (ie. aboue hoo) by a common negative, not only in action, but generally in y concluision. The latter is y James proper mode of denial when y party tendering y issues, has no occasion to introduce new matter before it. 2 Tyrwh. 268. 2. Pick 528. 1 Co 203. and b. 2 N R. 269. n. As suppose to an action on contract, is left please hear.-- These are 2 modes of traversing. 1st Refers to "good and lawful consideration" aboue hoo yet it was agree, agree, and conct a reciprocation 4 Bac of 77. 1 Burr 422. Bllay 32. 2 F. 434. 2 Co 574. 1 Bac 820. Lawes 118. 149. 140. 1 N R. 374. n.

It was not complay gread, and concluding to y country. This form a complete issue, and is it itself sometimes called an issue, as distinguished from a traverse technically so called-- Lawes 117.

This latter, mode of traversing, always forms a complete issue, and always conclude to y Country, there an a wrong conclusion is ill in these cases is ill in General Demurrer. It is Note.
17th of 40.

In Raymond to relate on bona, sometimes to buy certain same. Def pleads yt he had paid all. Plrf replies yt he had not paid all with a renunciation. Holden Pl on General demurer.

It seems yt it was ill on General demurer before y Ct. 4. and 5th ann. p. 15. 30th Dec. 303. called y Inconsistente Ct. 3 Mod. 203. 2 Saund. 190. p. 5.

Scene since yt St. St. is ill (under St.) only in form and can be reached only on Special demurer. 1 Saund. 153. b. 235. n. 5.

boot 88. 3 Mod. 203.

When an allegation on one side is expressly denied, on y other, vi com nos. Language, y subse consequen.
tion of a Common Technical Traverse, is unnecessary, needless. ego imposuer 3 demurral.

For there is a complete issue without y2 addition.

Secus y parties might answer "in infinitum.

As Plrf asserts performance of a condition precedent, y def directly denies it, by saying yt y plrf did not do. There is a complete issue. Superadding a Traverse of performance, by an "atque hoc" is imposuer. 3 Bae 67. Lawes 117. 2 For 87.

Cne 79. 1. Bent 101. Day. 238. 2 Saund 188.
As to y conclusion of a Traverse. Averment and Renunciation are synonymous.

Note on the subject of y conclusion of Pleas. yt word "Averment" is used in y same sense with y word "Renunciation." It means yt Averment, "Ami he is ready to renorse" ante 61.

But for most purposes. yt is synonymous with allegation.
When is a Traverse necessary.

General Rule. When one party alleges new matter, which is inconsistent with any of the antecedent traversable allegations. The rule of forma estor rogari upon issues joined, not being aimed on either side, but which does not form an issue, a traverse of these allegations is not only proper, but necessary. Hence a traverse might be laid: in infinitum, without forming an issue. As thus: A def pleads of the Codf, was dead, at ye date of ye writ, but if the Plea be directly repugnant to ye other, yet it does not form an issue. Hence a traverse of his death with an "aboue hoc" is "et non" is necessary. As, traverse yt he was alive "aboue hoc" yt he was dead

So, def allidges, yt I & my noe were in See; Pltf allidges, ho died seised in Salk; Hence he must traverse yt he died seised in See. 4 Bac 67; 8, 70

Laws 47 & 50; 1 Mev. 233. 1 Hob 143. 1failed 22. m. 2.
2 SC 107. C. n. 4. 249. m. 8. Cro C 38. 3 Bol 310. 1 Sad 301
1 Bent 207. 213 2 Mod. 68.

The new matter, wht precedes, is called the Indorsement to it. Laws 47.

To y General Rule. There is one Exception.

Whenever in answer to a negative allegation, it is necessary for y Party, to set forth affirmative matter, especially to make out his case in defence, he cannot conclude with a Traverse of his Negative allegation, Tho' ye new matter is inconsistent with it. See 38 et P. 362.
Thus it is left in arbitram Bonit, if def pleads "no award" Plts may reply "in award" setting it forth and assigning a breach, but he does not traverse y plea. Nor his allegation are inconsistent with it. Ch. Pl 187. Lawe 100. & Case 366. 114e 238

for he must plead y new matter specially, to make out his own cause of action, and concludes with a verification and of course, have it open to be answered by the def. ante 8. 77.

This exception is "This General." Why we may ask, does not y Rule hold in ys case? Answer, there is no cause of action, ni y award is alleged, it is new matter, and consequently y pleading must be left open.

Mr Lawes, has repeated a proposition of Sir Hobart, yet a Special traverse without proper Inducement, would include a Negative Pregnent. Lawe 118. sec 120. top of y page. But ys Rule is by no means universal. It holds in general only. Where y traverse, taken by itself, includes circumstances, or particular, yet are not material.

2 Taunt 158. 6 1 30. 103. 3d. 314. Lyer 280. 15. 312.

in such an inducement it necessary to limit its extent, and application. Lawes 121.

The Rule is really univest. It would lead y party traversing to employ an Inducement of course, in necessary or not. The Trust is, there is no such General Rule. As ye stated by Mr Lawes. As in an action of Battery, plea. "moltier manly impostor." Replication. Def. ywa as such an Inducement it necessary.

"E converter" Plea. PI i dead, Repl. "not dead."
But all ye is necessary for ye PLAIDER to do, is, first, to assert, and ye traverse must an Inducement, not be a "negative Regiment", if it would be, necessary, to proceed to write an Inducement.

After an Inducement is Insuflawage, as plea. Non. Boniter of PC, as def. who is while alive— and Pltf may reply, "He is not alive" with- Inducement.

So plea of title by device from PC alleging ye is dieu sasque in his— Replication, ye he did not die sasque in his— is good—

When a Party confesses, and avoids by new matter, ye adverse allegations, a Traverse is improper. For what he alleges is not inconsistent with ye adverse allegations. Indeed a Traverse, would be inconsistent with his own Pleadings—

For he surely cannot traverse a new witness, he has already confessed. As in action or entitae, ye def, please e.a. Wea. The Pltf replies, he made a promise to fulfill, after such age— hence he cannot traverse, having made a virtual confession.

So plea of "Plaque" de Replication, "by Dur" or "by fraudem" traverse will be impfen. 2 Blae. 84. C. 38. 202. 28. 168. 9 Blae. 108. 132. 202. 4

The replication in these cases, as it contains new matter, must conclude with a "surmise", without a Traverse. 3 Blae. 108. Lawes 15. 288. 18. Laws 22. n. 2. War 5. n. 3. 28. 18. n. 5. 288.
Traverse or y last case. As, on Special demurrer only.

Traverse preceded by Indemnity, is but a conclusion of fact, from y Indemnity, (Post 36) 16. when both go to y same point, as If. Pll. axis seized in
title "abobe hoc" y t he is not sued in fee.

88.

When a Traverse with a verification is intended, y issue is formed by y opposite Party, affirming over, what is traversed and concluding to y contrary -
This affirming over, is a repetition of former alleg-

An issue formed on an "abobe hoc" ought to have
an affirmative after it. Contra y words after it
mean after y "abode hoc" Co Litt. 126 a. 4 Bae 68 a.
1 Cast. 587. 1 Co. 587. It must be traversed with a
direct affirmative - Sawyer 121. As otherwise y Traverse
would consist of a double negative.

As suppose Def. pleads, yt Co Def was not living
at y place of y suit; now Def can't plead he
was living, "abode hoc" yt he was not living.
He must conclude with a direct affirmative,
for y "abode hoc" is precisely equivalent to saying,
yt he was not living, and the Rules of Pleading
won't allow such complicated Pleading; a language-
2 Chit 16. 2 Banc. 70. 4 Harr 103 b.

but by assumps. Respond with an "abode hoc"
yt it was not voluntary. Gravelled or form
because it contains 2 negatives, instead of one
affirmative.
To blest ye pities did not give def notice, and

"Replication abate how"

Note an instance of a "negative Pregnant" is here
given, wh was omitted in you former place.
See b 31.

The def ini an action on contract, pleads "fusing"
and says, yt it was corruply agree to pay 1 to her 6
"This implies a negative Pregnant, yt it was
comply agree to take 1 1 5 1 her 6.
To Return. The omission of a Traverse, when necessary
is said to be matter of substance 4 Bae 70.
2 Mod 37. 1 Sco 83. 4. At C Law it was so.
Bto by Mc Il 4 and 2nd Amne 1t is matter
of form only 1 1 Coram 163. 6

If def ini traversing w Pitts Litte, shows ini Inducment
a defective one ini himself 1t a defective defence. Ini

General Rule. There cannot be a Traverse upon
Traverse, when y first io material A Traverse
upon a Traverse is a subsequent Traverse, going to
y same point as is embraced ini a preceding
Traverse ini y other side.

By y 2 Rule is meant, then, yt when one of
y Parties has tendered a material Traverse, y oth-
ery must join ini it, and cannot leave it, and

And another y 5 Ini the Inducment to y same
point 1t, y same ground of defence or claim.
See particularly for a full illustration 5 Con 110.
Con II b 3. 17. 2 Mod 185. 1 1 Con 403. Cold 222.
2 May 121.
If it were otherwise they might go on indefinitely as Polf claiming from Pl. pleads, yet Pl. was seized in fee. Def replies, yet he was seized in said abode, how yet he was seized in fee. Now Polf must join in his case, and cannot traverse y Seiui in said estate. Also they might answer "in infinitum" without meeting.

Here both traverses go to y same point. Pl. title both embrace y same question, an he died seized in fee or not.

But a traverse after a traverse is good, even tho' y first is material. 4 Bae 28. H6b 104. Co. Lit. 282 b. 5 Co. 120. Popham. 101. Co. 2 scr. 9. 18.

What is y difference between a traverse upon a traverse and a traverse after a traverse? A traverse after a traverse is one which unite go to y same point, 10 y same fact or ground of claim or defense, as is embraced by the prior traverse, or y separate sides, but tended an issue on a different point. H6b 104. 1 Co. 12 scr. 2 do 26 scr. Con. 2. 9. 9. 14.

Suppose a brings an action vs B. for entering upon his land. B pleads, yet he entered on his land, y first of July, having a license from a, and concludes with "an abode here" yet he didn't commit trespass on any day after or before ye day.

Now Polf may do one of 2 things, either traverse y Licençed, or join in y first traverse, not alleging, yet y trespass justified, and yet complaint of are y same, i.e. only 12 Land 298. m. 2 Co. C 228. And on a different day. (1505 94) see.
Now a traverse upon your licence, is not a traverse upon a Traverse, but a Traverse after a Traverse, for it goes to a different point.

Again in an action of Trespass, the Def. (Collin.) pleads a Release on the 15th of June; ye is not enough, he must supersede an "abique boc," or he commits y Trespass on a subsequent day. Now ye Def is at liberty to either join in y release tendered, and to traverse y Release. If he could not traverse y Release, he might lose his case of False Endorsement.

So an action of Trespass, if he pleads Tresment, is by himself on the 1st of August, and traverse a Trespass on any previous day, here y Def may traverse y Tresment.

This is not however y best mode of pleading, the more sensible and better way, is to plead in such cases specially only as to y past justified or considered, and y general issue to the release, and put himself upon y county, instead of commending his General matter with a Traverse as Trespass done Clemence forget, Plead, as to any trespass once such a day, "not Guity" as to any before Release. If however y day laid in y Justification, is a same as ye in y declaration, no traverse is necessary or proper: y Trespass alleged and ye Justified being "primâ facie" 1 Jam. 1 Ch. 35.

There cannot, as has been observed be a "Traverse upon a Traverse, when y former is material, but there may be a Traverse upon a Traverse, when y former is immaterial."
This is not strictly an exception to a general Rule, as the general Rule runs, a traverse upon a mere material traverse - the traverse upon an immaterial, may be treated as a mere nullity. A traverse tendered on the Inducement. 4 Bac. 73. 6 Co. 104. 5 Esc. 120. 4 1st Bl. 376. 406.


As trespass for cutting and selling trees, Def. pleads special matter, as yet he cut for 5 Pthf. note, and by his license. And traverse y seling, 6 Co. 104. Here y Def. traverses y fact of selling ym. but it is an immaterial traverse. By Pthf may object it over, and traverse y Inducement or y license.

In ye case as def does not justify for any particular day, he does not traverse as to any other time, and ergo y trespass justifies, is taken to be y same as yt complained of.

Sence y second traverse, is a traverse upon a traverse, post 102. post 134. and 8% on Pthf may demur specially for y Immateriality of y 1St traverse - 1 6 Scand. 21. 4 6 Co. B. 221. 2 6 Co. 109. 151.

But there is one flat exception to a general Rule, viz in y case of Foreign pleas. As when trespass for Battery, laid in y county of B. Def. pleads a Local Indicitation in y county of B. (as the authority of a Pthf in yt county & a right to arrest) with an "abate hose" yt he committed it in A.

Here (y Indication being Local) y Pthf may leave y Trespass. (1st it includes what is material, viz y Trespass alleged) & traverse y Indication.
For supposing such Justification to be false, and yt Pltf ca not leave, y first Traverse, and take issue upon the Justification, it must follow he must be 
defeated of y right of choving his venue in transitory action, or he defeates by the False pleadings of y def-

This supposse in y casee stated, yt The Trespass was 
committed in B. and not in a. state Pltf has no 
right to sue and recover in B. But thi, he ca not do, if he were obliged to join in def. traverse 
by affirming over, yt y Def was guilty in y county 
of a.

This exception to y General Rule is necessary to 
defeat foreign Plea, when false. 1 Ch. Pl. 397. 
Com. D. Pl. 2 18. 4 Th. 4 39. 5 Bo. 367. 1 H. BC 403.
1 Parn. 22 m. 2 # BC 102.

The Pltf in y above case may join in y Traverse, 
and affirm, yt he was arrest in y county of a. 
and conclude to y County. Or he may leave y first 
Traverse, and traverse y Justification in y county of B. 
affirming, yt the Pltf was a Pltf. Poham in y 
former case. (Subra)

The better and more sensible way for y def. to 
form his Plea. and be thus, "as to any trespass 
in y county of A. Not guilty." And to any trespass 
in y county of B. he may plead his Justification.

When y matter alleged in y deed, as y cause 
of action is, in it is nature divisible, so yt Pltf 
is entitled to recover for as much as he can 
prove Title to. (tho less ym y demand) 
Def cannot make yt, part of his Plea, 
wh is no answer to a part of a cause of action.
in inducement to a Traverse of a Plaintiff.

As debt for 100 £. Plea. payment of 67 £, which now /whole debt "obliged he" yet he owns any more.

He said as to 90. blank payment by itself. Specifically

£ as to y Residue. v. General roofs. 1. June 26. v


sor supposing the traverser to be true, y belff may
still have a right to recover for y part not traversed
... yet if be were obliged to join in the Traverse, he
would be precluded from denying the Payment,
and thus ior claiming for yt part.

If def would take advantage of y payment of 60
he must plead payment of yd sum
and for y Residue full debt.

In these cases, you see where, y pleadings go to one
point.

On y other hand, when the Traverse and its
Inducements go to different points, joining in the
Traverse, admits y Inducements, when they go to
me, and y same point, and are properly adapted
to each other, joining in the Traverse doesnot
admit the Inducements, because in such case, y
Traverse is but a consequence, in point of fact,
from the Inducement.

Thus if y whole debt was but 50. Dole. y allegition
of payment may be false. Suppose it false, yet
if the Traverse was good, y belff must join in.
0 the defection by a False Plea., as he could
not contest y alleged payment in Eri.

Or Suppose y allegition of Paymt. and Traverse,
both false. (ie. suppose no payment, and y whole
debt above 50. Dole.) in y case, if y belff join
in the Traverse. (as he must, if it is good),
he cannot in Eri contest y false allegition of paymt.
The case before, and of the parties and traverse. As alleged payment, he said not under it. Traverse, go into your proof, yet y debt was more.

If ye plea were good, he said in no possible way, answer it right prejudice, tho' it were entirely false. The plea must therefore he ill.

So in a case for obstructing Light, Def justice, as to 2. "above how" yet he obstructed. 3. y plea is bad.

He said, plead ye general Issue as to me, not Justification. In these cases, if ye traverse were good, ye plet would be obliged to join it.

And not thus be precluded from answering as to y part covered by the Inducement.

In order to be clearly understood, and ye it may be clearly remembered, I repeat:

When a traverse and its Inducement go to different points, joining in, y traverse, admit y Inducement.

(As ante, a traverse after a traverse.)

Alter of they go to y same points and are adapted to each other--ante 64. 88. 91.

Indeed when y Inducement and Traverse are properly adapted to each other, and go to y same point. Showing that y latter, implies, a negative of y former. For y Traverse is, into a conclusion from y Inducement. ante 78.

For y purpose of avoiding y facts alleged in y Inducement; a protestation is sometime, used. 4 Bac 63. n. But it can answer no purpose in y cause, in such it is good. (infra) for y subject of y Protestation, "y Ngọc. Indeed y
protestation itself is no part of y' Pleaungs.

...Law 141. and in this case principally I suppose.

a protestation is wholly unnecessary, since by y
supposition, y' allegation doth as it is taken, ca not
be denied by pleading, and therefore no answer

to y' protestation is necessary. Law 143. Com. D. pl.

Bac. 73. 4. and indeed admits of no answer.

A protestation what?

as defined by Le Cate, it is 'an excusion of a

controvercy' i.e. Bac. 126. 3. Bac. 311.

But a party, adverting to traverse, admits of course

certain allegations, with he doth not

traverse. So he is at liberty to deny what he

pleases (1. Bac. 4. Bac. 2. 126. 4. Halk. 31. 1. Mill. 381.

note 9. 177)

For him. Therefore, a protestation may answer

a very valuable purpose, for he may avoid

a exclude any such such admission (as far

as respects any claim in a future suit)

by protestation, and in go cases a protestation

may be useful and important, for y' purposes

of avoiding an obloquy, with y' alleging not

traverse, might 0' otherwise constitute

But ye protestation doth not oblige y' other

party, to prove y' allegation protestated 00.

but as to y' principal cases admits y' com-

Law 141. 3. Il3 2. 144. 4.

It merely prevents those allegations in y' Pleaung.

from being lit in any other case. (as y' party

protesting) of y' first to ask y' protestation away.

4 Bac. 43. 3. Lit. 126. 2. Brrn 1023. 5 Com. 126.

6 Mil. 136. Lit. 192. 3. Bac 311. Lawer 141.
The def, when he objects the y allegation, does in common language, "Now there are 2 or 3 of these allegation, why I have no objection to answer in order to decide y present cause; but I dont choose to have ye admission he a/bear on the Record, so as to injure one in any future case.

A protestation may be of two, either to a party traversing, or to ye other Party coming in y traverse. This is y only method of denying y allegation, not part in Issue. Lawes 14, Plow 267: B. r 276

A Repugnant protestation does not vitiate y plea, for in strictness, it is not a part of y Plea. Lawes 14. Com. 2 m. 2. Readings. And in general a protestation does not avail y Party protesting in any way if y issue is found fo him. Lawes 14. Litt 192.

But matter, wh might be excluded by protestation may if not so excluded, conclude y traversing party in future controversy. And y issue is found for him. 4 Bae 73. m. Lawes 141. Litt 192.

for it appears, by a Record to which he is a party.

It is a Rule, ye a traverse can only be properly taken on a material point. 1 Ch. one device of a cause. Lawes 113: 1 Rule 335: 6 Co 24. n. Bath 277 n 377. If however a adverse party will demur to it as being immaterial, he Demurer must by St 27, Eby and 2 and 3 Ann. Ch 16. be Special. 1 Sauna 14 m. 21 n. 2 Do 207: 1 2 St. 624. 2 Sauna 310. n. 1. C for St 27, Eby sec 4 Bae 133. for St 4, ame, sec 1 Bae 14. a. Contra 217. 8. at C Law on immaterial traverse was ills in General demurer. Rule 135. 2 Sauna 207. b. part 113 14.
And yet if y party be, to whom y traverse is tendered, / some in an immaterial traverse, and a / verdict be found by him, payment will be regularly / received, and a c/estant awarded. 2 S. 310. / s.n. o. 3 Page 228 n. 1. 1 Selv 37. s. 8. 484. 585. / Scalk 370. post 134.

This is a case might be, a person upon such an / issue would be good. For in some cases, a verdict / found one way, will be decreed of another, when / of found of other way, it would not. Post 137. / But there are cases of mere "Negative Prejudice" / (Post 137, ante 48 o). Can y verdict, if for y party / traversing, ever be good, except when y issue is / question an, only as being a "Negative Prejudice." / I think not: and not always then. As case / of contract payable on a before 3c. see post 36. 134. / 48.

A traverse can be taken only on an usuable point, / for what is material, is not necessarily usuable. / The very object of a traverse is to tender an issue, / unless matter of law, however material, cannot / be traversed. 1 Sauria, 2d. n. 6. Plant 331 a. / 1 1 1. Bk 182. As in an action of false imprisonment / self pleaded, yet he was a Thff., and had a / lawful right, as such to arrest & Prisoners, / Here a Thff. may traverse y fact of his being / a Thff., but cannot traverse y legality of y arrest, / by a Thff., nor generally matter of Indemnity. / 1 Bae 68. 81. Laws 16. 118. s. 2. 201. 183. 3. 3 Com. bl. / g. 14. Harra 29. s. 9. 6. 3 1 Sauria 23. s.m. 3 Mod 320. / s. 2. Hark 14. Selv 658. Com. 9. 442. 4. 13. / 1 1 1. Bk 176. 442. 3. 221. 1 Sauria 22. n. 23. Pls. 283. / 22. 4 1 1. Bk 182. 2 Sauria 183. 189. / Excution, Com Pls. 14. Com. 8. 201. Bae. bl. 2. / 5.
A traverse may be taken on a single point only. If a single ground of claim or defence, otherwise it would be bad for duplicity. This single point need not of course consist of a single fact, but as your case may be, if any number. But if there are 2 distinct traversable facts or points, either of which may be selected, the both cannot be traversed. Com. D. 10 C. 16. 1 Bae 85. 3 Lev 40. 1 B. 20. 1 33 3 P. 50. 8 C. 56. B. 58. post duplicita. Law. 41. 3 100. 2 10. 18 1. The language in which the Mansfield is made to apply a Rule in Burrough, is incorrect. The question was not, any beauty were comminable. If of a comminable species, but an any fact, they were entitled as to each case to Common.
But if two distinct points are material, either of them may be traversed. Laws 45. 6 Co 24. 6. Bile. 338.
Lyer 365. a. Com D. 136. G. 10. As please the award
of Arbemnawt - The self may traverse y submission or y award.

Nothing but what is alleged, or necessarily implied, can be alleged traversed. 1 Suma 382. m
4. 286. 2 Do. 10. m. 14. Talk 129. Com D. 1 b 9. 8
Bae 81. This is apparent from y definition
of a Traverse. - For a Traverse is a denial on
one side of what is alleged on y other.

There can be no proper denial, but on some allegation
as an action on a promise to pay money, not averred
to be in writing, as by St. of Travers, it is required to be
in certain cases, y def cannot traverse, yt it promises
to be in writing. 4 Bae 75. 6 b. 81. Castig 39. Lid Ray 64.

But such a Traverse is ill on Speciali demures
only, by St. 2 b. Clerk 6. 35. 4 Bae 70. Later 335. 376.
Lid Ray 239. 1 Suma 312. 1 m. 4. or at least by St. 4
Anne. 6 b. 1 Suma 313. m. 4.

This Rule may seem extraordinary - For if one
party traverse what is not alleged, what has
yet to do with y merits of y Case? I answer, yt y
Traverse must be on an allegation of Special
matter, and not a denial.

Any materials points or fact appearing in the pleading,
may be traversed in General. And it be in form, of an
Indemnity merely, or suggestion. Laws 48. 2 Suma 206.
When a party sues, or in any way composes,  
proceeds to part only of a cause of action, or defence  
alleged to him, his traverse or other answer must  
be complete with y part hot thereby avoided,  
for all y parts are necessaries to constitute a whole.  
And all y parts of a deed must be answered.  
ante 79.

As un these two, if Def pleads a Release, he must  
traverse or otherwise answer as to all y times before  
and subsequent to y date of y write, for yt period is  
not severed by the Release.

If a Testment antecedent. If a Release at a  
particular time, all before and after, (ante 80)  
Merewa part of a cause of action remains  
unanswered, ante 79, or rather part of a benedic  
within wh. y trespass may be brooked  
In ys case, however, if y day laid in y declaration,  
Justification is different from yt in the declaration.  
So is necessary to be so. y Traverse is usually preceded  
by the allegation "qua est cadem"  82.

1 Ch. Pl. 334. 2 Bph 657.

But if y day laid for y. Justification, is y same  
as yt. in y declaration, or different without necessity  
y Traverse, and qua cadem eto or "qua est cadem"  
So are both unnecessary, and y Traverse is  
deniable.  
Ch. Pl. 635. 2 Saun. 9 n. 3. 4 Ed. 114.  
2 Mod 68. 1 Lev 293.4. 4 Eph 415. 1 Talk 222.  
Bro 5 87. 1 Lev 241. 307.

This is only true, when y day is unnecessary different.  
Otherwise y General Bible holds. In such a case.  
as the def cannot pleased a Justification or y same  
day, y law allows him to please a different one,  
if he alleges the trespass to be y same.  
These rules are among the more serious of
pleading - the more simple and proper way is, however, to plead y Generalrosse as to a part not avoided. 1 Ch. Pl. 570. 20 n. 7. andt 68.

Exception to y above 2 last. Examples of y Justification (Fedment. Licence) &c. is laid on y day, m the y
Treasure is alleged to have been done, for y day is agreed on in Tre Pleading. 5 Bae 206. Talk 42.
1 Bn. 59. 1. 138. 2 Samud 3. a. 6. 290. 6, 1 30. 14.

And thus y Treasur says Justified, is on y face of the Pleading. "Sonnet Omnia" identifies with
that complained of, and the qua est eadem
in unnecessary. 1 Ch Pl. 590. Castag 28. Con Pl. 3. 1.

And if y Plt vi y last case, relied upon y Treasure
done on a different day, from yt alleged, yk
he has a right to prove, by making a Proved
Ray. 664. v. 666. 4 Bae 125. 3 Pl 31.

So if y fact shd be, yt a Treasure different
from y one justified, was actually committed in y same
day, yt might be newly asigned. I conclude
there, an a Travers of y Deo est eadem" andt
not answer y purpose. 5, 2.

Suppose the Treasure laid on a day certain, and "never
other days." Temple. a Justification on yt day is
sufficient, and Plt may newly allege. 2 Samud 3.

If y day laid in the Justification, is necessarily different
from yt in y Declaration (as yhere y date in y to
y suit, under wht Def justified) obliges him to vary
from y day in y Declaration" 2 Samud 5. a.
8. andt n. 3. 3 Lev 277. Talk 64. Confo 161. Antioxid
In or in such case. Def may plead, as if y
It appears that the text is a mix of Spanish and English. It seems to be discussing a legal or philosophical concept, possibly related to pleading or pleading as an extension of the argument. The text is quite fragmented, making it difficult to extract coherent thoughts. It appears to be discussing the idea of traversing before and after a day, which suggests a legal context, such as a defense or challenge to a previous statement or pleading. The text also mentions the ideas of necessity and inference, which are common in legal arguments. However, due to the fragmented nature of the text, it is challenging to provide a coherent translation or summary.
Then it is necessary, many times, to prevent a Negative Petitioner, by regulating and limiting y Traverse. Laws 118.

2d. It is necessary often, by way of Protestation ante 20.1. In other cases where y inducement and traverse go to y same point—y former is unnecessary.

3d. Where y Inducement and Traverse go to different points, y inducement is necessary, because y Traverse alone is not an answer to y whole matter pleaded, on y opposite side. As Indictment as its one day. With Traverse to all other days before and after. Hence y Inducement is a necessary part of y defence. The Traverse alone is an answer to only a part of what requires an answer. ante 84.3.

10. It is a General Rule, yt an Inducement to every Traverse must itself consist of issuable matter. 4 Bac 68 & Lem 32. Cor Ch. of C 336.

For if the Inducement and Traverse go to y same point, y latter being only a conclusion from y former, cannot consist of Issuable matter. Now y Inducement does also ante 87. If they go to different points—y inducement itself is traversable. 116 104. and therefore y matter or subject of it must be issuable.

This Rule has been ridiculed. but ridicules was never less deserved. It is said what is y necessity of this Rule. When y Inducement cannot be traversed? It answer. If y Inducement and Traverse go to y same points. y Inducement must certainly consist of issuable matter, because it makes a distinct, substantial, independent part of y defence. It therefore must be materials. When y Inducement and Traverse go to y same
point. It is impossible, yt y Traverse shd be
material; and the Inducement shd not: if Mut
are properly adapted to each other, and if they
are not, yt itself is an Incompleteness, and
therefore dammable

That y Inducement must necessarily be material,
y Traverse is so. where both go to y same point
mile appear from the Traverse being a direct
conclusion from the Inducement, and y Inducement
is just as issuables as the Traverse. So if he
died seized in fee he could not die seized
in Mail, and "& converso"

In General a Traverse because y very Term of y allegation,
traversed. It don't however always do so, for it may
sometimes amount to a "negative pregnant." As if
def. release a Release since y state of y suit-
y Defs. show not traverse "not his act since y
date of y suit" for yt would imply yt might
have been, at some other times. He that pleads
ym he did not give a Release, "in manner
and form so alleged." ante 47

So also, case for obtaining 3 light - Traverse
y obtaining of 3 light - These Traverses are
(negative Pregnant), and it is a Rule, yt
no issue can be joined on a "Negative" or
"affirmative Pregnant." 4 Bae 98. Co Litt 126. a.
303. t. 1 Root 53. 8 Bae 201. 2 Lea 177. 107.38.
1 To 408. 1 Saund 265. 2 To 2037. Comm. Cl Ro.
ant 65. Le Ray. 1077. Case of affirmative
pregnant in traversing "non ali" in pra. sec
anno - ante 66.
To of a Tende, pleadad at such a place, when
no place is fixed by the contract, and traverse
of Tende at yt place. Pltz pltz shd have traverse
that "not his act in manner and form"
"modo et forma" Lawes 116. 2 Saund 318. n. 6.
2 Lev 12. 2 (Mod. 146. Ex.

If to an action for money payable "on or before"
such a day, Def pleads payment before y day.
Pltz shd reply, "not paid at yt particular day
nor after." But shd not deman for by such a
Traverse only can y question of performance be
tried. For y payment before y day, being a perform-
ance is proper, and y time, issue is taken upon it
cannot be treated as inominate, and therefore under
y plea of payment on y day, payment before will
not be Arr. and a Traverse, "modo et forma"
would not y time on issue_ 2 Bae 944.
4 Burr 8 Bae 65. 2 Milr. 573. 2 Burn. 944

Note y difference between an obligation payable on such
a day and one payable on or before such a day. 2 Bae
944. Th 93. In y latter case, payment before y day
is a strict performance. Here y Pltz must in
traverse as to allege an absolute breach.

In y former case, he may traverse y allegation.
I conclude, "modo et forma" ante 60.

To ye Rule, there is nothing analogous it
is "Qui Genero." To state at large.

If an obligation or contract is made for paying on
or before such a day, the Pltz must traverse in
y form. "to Def did not pay on 50 day, nor
before nor after." Y contract is payable on or
before y 25. Dec. Th 1824. Def pleads payment on
y 12th of Nov. Th Pltz shd reply, yt y def
did not pay on ye 1st of Nov. or before. y Traverse would be bad. The Traverse is obliged to be even stricter on this Allegation. What is ye reason of ye Rule? I answer, ye when a Contract is payable on or before such a day, it is good performance to pay on ye or any before. If ye Pltf then pleads, ye he did not pay on or before ye day alleged, wh is ye first of Nov. it is open to ye Replication, ye he did pay on a subsequent day, perhaps before ye 25th of Dec. perhaps on ye 1st or ye day.

In ye case of cases ye Party must traverse what is, as well as what is not alleged.

And if no obligation is payable on a day certain, Def sha not plead payment before ye day (even if ye fact be so) but payment on ye day. 2 Mili. 158. Bunn. 498. 377. 344. Con. Pl. 37. ands proof of payment before wilbe support ye plea. For if he was to before ye day, he was paid in ye day.

But a Negative pregnant is added by verdict by by It 32. 8 Hen. 8th. ch. 30. is ill. it is said only on Thence. Demurrer 4 Bae. 46. Cor. 3. 87. 312. 314. 2 Laude 34. n. 8. Cilb C. b. 153. 1 Root 58. ante 66.

But if payment before ye day, in ye above case is pleaded, and found for Pltf. is not a Repleader allowed? 3 Bl 38. 1 Laude 312. 8. But in particular case depends on particular reasons. Bunn 344. Cor. 3. 434. This verdict would not decide ye question, for 1st. it appears he did not pay before ye day, still he might have paid on ye day. 2 Mili. 158.
Duplicity

This is a fault in pleading. Co. Lit. 304. a 4 B. n. 110. 3 Bl. 31. 5 Co. 36. 33. 4 Hob. 289. 1 Litt. 27. 177. 6. 131. 2. 132. 1 Sum. 337. B. 2 Do. 101. 3.

Because it tends to unnecessary solemnity and confusion. 4 B. n. 17. 9 Pleyd. 194. Chel. 184. 3 Kent. 279.

The object of Pleading, is to bring the controversy, to depend upon a single point of fact or law and where one fact constitutes a complete answer.

A Rule of the C. Law will permit nothing additional.


A double plea is one that consists of several distinct, independent matters alleged, by the same party, (a defendant, a plaintiff, or any other person) and requiring different answers. 5 Co. 60. Co. Lit. 303. b. 304. a. 4 B. n. 183. or rather alleged to y whole, or to one, and y same part of y claim or defence. 1 Sum. 336. 7. 3 Chit. 142. 1 Do. 180. Ad. Injunction and Release both pleaded. to y same prepart. or direct and payment to y same debt or contract, either one or y other, is a complete defence. One complete defence will answer all purposes. Wh any number will and therefore y law won't allow more...
But giving different answers in different parts of your declaration, does not constitute duplicity. As General Issue is one part and Special matter in avoidance is another. Traverse as to part, and Demurrer as to Rescue. Laws 1613. Co. Litt 384. a. 4 Bar. 108. 18. 129. ante 72.

And so even at C Law. If there are several def., each may plead a single matter to y whole or different matter to different parts of y declaration. 

**Civ. 414. 13. 18. 20. 6 Ed. 6. Marsh A. 444. Laws 32. 1 H. 70. 2 Co. 1140. 610. 2 Le Ray 1372.**

For if A and B are joined as Def. it cannot be compelled to join in A's defence, and as each may plead separately so each may plead separate defences to y separate parts. 1 Co. 47. 1 Saund 309. a. 6.

In Mapps, in an action on contract, when 2 or more are sued together, they cannot plead separately. This Rule is unquestionable, cannot be true. Thus if 2 or more choose to plead y same defence, they must join; but if they choose different defences, unquestionably, they must sever. A Prior Indebtedness must be proved to oblige def. to join. For independency of authority, the Rule. That they must plead separately is undoubtedly true. See 6 Mapps 444.

For if it were otherwise, any honest man might be cheated out of his property by a collusion between Pltf and Def. is Def is worth nothing, he may say to Pltf. Join B with me in y suit & he must join with me in y defence, and I will join in no plea, but y of Release. Wh being false, you will recover no no.
It is a Rule, that every plea must be simple, entire, connected and confined to a single point, ante 92 S. B. c 311.

But this point need not consist of a single fact, many connected facts may be necessary to constitute one complete ground of action, or defense. A single point may consist of various facts. Suppose, plaintiff pleads an award of arbitration as a cause of action, he must plead the facts of submission, making and delivering, and all the particular acts.

Again, a tender is no many cases a good defense, to an action on contracts. But a single fact of tender is not sufficient. The def must plead y tender on his side, and y refusal on y other.

There is one peculiar case. In an action for Malicious prosecution, y def must not only state y probable cause, but every fact and every possible, constitute probable cause.
The facts may be indefinitely numerous, and yet y plea not double. 1. B. n. B. 33. 3 B. c 128. 4. B. c 69. 120. 1, ante 87. 3 T. a. 142. authority. As to y award, y tender is a pleading, as to y action of Malicious prosecution. 3 T. c. 134. 871. Iow. c. 63. 33 3a.

The Rule is exactly the same in y analogous case of False Impeachment. There are cases, where good grounds of Impeachment may justify an Impeachment. Def may plead several causes of Impeachment.

When y plea for impeachment 2. Haw. 121. for, they all go to one point, reasonable ground of Impeachment and the Replication "De Joh Fort" answers y whole. Indeed the plea does not admit of a distinct answer. Seven if Def pleads on an
act committed by Pltf. Ch. 331. b. which, itself constitutes a point or ground of defence. As if he justified on one ground of a felony committed by the Pltf. No he may have committed a number. He is justified in pleading but one.

Suppose a man to have committed several felonies. and to have been amnestied. If he brings an action of false imprisonment & y of freeing, y def can plead in defence only one of these felonies. for joining another matter of defence will make y pleading "double" Ch. 335. b.

So when y material fact relied upon, is y mere consequence of another fact. y latter may also be alleged, without rendering the Plea double.

As "adminisnant Plane" and so nothing remains in his hand. For that merely shows how the principal fact took place. Am. pl. E. 2. Plowd 140. 1 Burr 320.

Distinct counts in one declaration, each count being itself single, an being established intended to establish one right of action or several, do not amount to duplicity. For each count always appears on y face of the declaration. to be a distinct cause of action. As when the holder of a Bile of Exchange, sues upon it, and makes different counts of money had and received. &c. They are different modes of stating y same thing. But don't constitute duplicity.

Seems if different parts of the same count, require different answers. as where different causes of action are involved or one count to establish one. and y same right. The reason of insisting several counts in one declaration, where there is but one cause of action, is. ye if pltf fails in y proof
of one, he may succeed in y other, and if he
prove y case laid in any one of his cases,
this he fails in the next: he shole recover
proportionate damages. 3 Bl. 295.

But mere Insuburage never constitutes Duplicity
as where there are distinct defences of sub-
one is frivolous or not igurable 4 Bae. 119. 1 Lid. 78.
1 Robb. 661. Dyer. 226. 2 Hils. 376. As suppose
in an action on contract, y def pleads payment
in a certain day, and addes, that he was always
ready to pay it before yt: the 1st is good,
y latter inigurable: mere Insuburage. ante 73.
1 Robb. 311. 1 Sid. 175.

From what has been said, it appeares, yt
Duplicity ne a declaration, consists in unnecesarry,
joining in one Count, distinct grounds of action
of different, or even similar kind, to establish
one right of recovery. 2d Ray. 404. 2 Bent. 198.
Abatement G. 4. action G.

So in debt on Bond, y assignment of more in
one breach, in substitution is duplicity at C Law: it
is unnecessary. The defl could attain every effect
by assigning one, wh he could by more. for one
works a forfeiture of y whole Penalty. 4 Bae. abatm
A. 4. action G. 34. 2 Bent. 198. 222. Comb. 207.
1 Rob. 112. 31 Bent. 198.

In an action on "Covenant Broken" ye def may
assign as many breaches, as he please at C Law.
Count Broken. For a deed may contain
a great many covenants, and any or all
of them may have been broken. The action
being only to recover the actual damages.
5. Com. 36. 4 Bae. 131. 1 Do 344. Pro Ch. 176.

So 'tis he can recover no more damage on he

can prove under breaches of Covenants, and he
can prove no other breaches ye more alleged,

as in this case, y different Breaches are not
alleged to y same point (as the breaches of

$y$ condition of a Bond, are to $y$ forfeiture

of one and $y$ same Penalty) but to different

points, 16 to several distinct grounds of damage

occasioned by the several Breaches.

But in Count in debt on Bond, y actual
damage being recovered - Et 27 and y 8 of Act,
8th and 9th, Mr. (1) 3d, have introduced a

Similar Rule in England. 8 R. 120. 409.

359. And now in Eng. by Et 4. and 3rd Anne

y Def may, witht leave of Et, plead to one
action, as many distinct defences in different

Pleas (each being single) as he pleases.


et Ray 1090. 3 Binn 308. And we have now

a Similar Et in Count, (1815) Note

as to what General defences may be pleaded
to one Count see af 9—5 89.

The Eng to 4. and 5th time comprehend no other

gent Plea to the Declaration. Hence Def may, plead

2 rejoinders to one Pleader, no 3d two

replications to one Plea in Ban. do Is to a Plea

of Infancy. Replication necessary; responds

after full age. (# 10. to act, not Statutory

Pleas.

Duplicitly was at C. Law. 180 on General Demner.

but by Et 27. 24th Ch. 5, advantage can be

taken by Special Demner only, and the
and y Demanor must point out. Whereas y
Pleading is the Defamag. 4 Bae 113. 2 Sw. 9. 4.
Hamm. 337. Com. 16. 5. 2. 2. Park 219. 678.
2d Rule. says. a party must lay his finger on
y very point. 'Duplex et contra Formam' is
not sufficient. Lev 10. 11. Mod. Ch. 111.
2. 1219. 2d Ray. 332. 3d 738. Cont. 7. Com. 36. 5.
Lawes. 132. 3. Part if 2 distinct and sufficient
answers. (not warranted by it) are given on one
side, to what is alleged on the other. (as replying
by plea in Bar, and y Pleading is not demanded
to for duplicity. y other party must answer both
parts, or otherwise his answer will be defective.
4 Bae 113. 1 Vent 272. Thus he must traverse
both. y Traverse of each must be single. 1C.
confined to one point. As Replication. Necessary.
and promise after full age. ante 92.

The Rule requiring the Demanor for duplicity to
de Pleadate, does not apply to cases, in which y Pelf
joins 2 different cats in one declaration, different
and seemingly causes of action, as distinct and
substantive grounds of Recovery, as also and Prover-
ate 2 counts. This is not duplicity, but nose.
It is a misjoine and inequitable. 1Tal. 10.
Ray 233. 3 Lev 26. 44. 1 Bae 111. 1 Vent 274. 3d. Co. 87.
Comb. 232. 3. As to general pleas in abatement being
pleaded. ante 85. 0.

Protest and Pleas. Lawes 36. Tit. 28.
It is a general Pleas of 3d. 2. 2. yet when 1st party
advertises declare on or otherwise pleads a deed and
makes Pelf must it. (It found his claim or
defence upon it) the must aves his declaration.
Yet he brings it into Cont. 3 Bc. app. 2d.
Comb. 18. 6. 0. Lawes 36. 7. As if def. pleads a Pellan
in Bar he makes litte under it.

Proper is required, if the adverse party may
have sey. and a copy of it, and that y court
inspect it. 4 10 233. 2b 16. Em. 17. 16. P.
4 10 54 113. 6 28. 10 20 93.

The adverse party, when entitled to sey. is always
emploed to be incapable of pleading without it.
But if he does plead without it, he waives
his right to it. 4 10 54 113. 6 28. 10 20 93.

Proper is required of no other instrument, in a
deed. It is never made in Englands of a 8x 8x
or promisory note, for they are not the deed
or instrument on wh. y action is founded;
but only one of y promissi alleged.
And the C Law makes no distinction, between
a verbal contract, and one sealed. So by the
C Law, unsealed writings create no debt, they
are mere Eri of a Party contract. Ch 22. 185.
Brom 243 9.

In practice, however, the C wil order a copy
of y writing to be furnished by the def. before he
is obliged to plead it. He demaunders it. 2 10 32.
1 16 213. On cont. the def. C have disavowd
y Rule requirg proper in hurt as to its concern.

In cont. if it seem. all other unsealed writings,
not negotiable, containing express promise, viewing
as deeds, (notes not negotiable, and other
unsealed instruments come under y Rule.)

Sec. 2. 11.

It's there a written agreement to pay anothr
debt, without express ng a consideration?

If a right accrued by deed might have before without deed, he, who claims y right in pleading is not obliged to plead the deed; and, if he does not plead it, he of course is not obliged to make protest of it. As an assignment of a lease without deed. (at Ch Law) and since in pleading y assignment, y Plff need not show it yt it was by deed. I even Tho y lease was bound, by contract not to assign without deed.

Secs of y right pleaded, rule not pass, but by deed. He must then plead the deed, as he makes y title under it, must make protest. 4 Bae 110. 6 Co 38. a. b. 1 Buls. 118. 9 Co 4 c. 143. 9 Co 109. 1 Saund. 3 a. m. 3 TR 156.

But if y right will pass without deed, yet y party pleads y deed, and makes y title under it, protest must be made. Is assignment of a lease and a deed of assignment pleaded, and title made under it. 4 Bae 110. C. 2 Mol. 64. Law. 07.

Secs of y right pleaded, a deed, without making title under it, as when the deed is only inducement to an action or defence. Here title is not made under it. 10. it is not a ground of action or defence. It does not therefore admit of a distinct answer. Of course yer of it is unnecessary. Hence protest of it, is also unnecessary.

As A sells B an unwound horse, and B sues A. A gives B. a bill of Sale, wh is a deed. B sues A. and brings the Bill of Sale to show how y fraud came. he finds y fraud in the demand and not upon the instrument. The deed is mere matter of inducement, wh cannot be answered, and therefore is unnecessary. 8 TR 373. 10 Co 92. 5B. Co 38. a b.
But a stranger to a deed, may plead it without notice, and he deduces his title from it. The reason is, a deed is not supposed to be made under his control. Ford 145. 1 Saund. 2 A. n.
10 Co 94. 4 Bae 111. 2 Shaw 418. 3 Law 80. Mod 870.
AsDef pleads a deed from B. L. to F. L.
and justifies under J. L. he need not make proof of it. 11 Esq. 924

So generally of any one, who comes in by operation of law, as Tenant in Dover- 4 Bae 110. Co Lit 225.
Dent 305. 5 Co 95. As where the pleas a conveyance by deed to her deceased husband, as y ground of the title.

Exception to the last Rule in y case of Tenant by curtesy, for he is supposed to be in poss. of his wife's deed, and may retain ym during his own life. 4 Bae 110. Co Lit 225. 10. Co 34.

So a Record of the same Court may be pleaded without notice, for a Record is not private property. He may produce a copy, but a copy is not a Record. Bull 202. Co Lit 320. 20 Tont. 562. 1 Med 207. Rulc 202. Pic 28. Co Lit 225. 1 Saund 319. 1 T.R. 126

Prizes to deeds must regularly make proof. Prunier of ym. in all cases, in act y original Part. Themselves must be bound to do it. 4 Bae 111.
Co Lit 235. 137. 10 Co 32. 4, for they are Records. Also in to y different kind of Prunier, see 'Coz'. An heir at law is bound to his ancestor. The must therefore make proof
So of the Remainder man to y Particular Tenant.


If a deed is lost or destroyed by time or accident, it may be pleaded, and Title made under it without Proof. For Proof here is impossible. The fact which existence makes Proof must be specially pleaded. So if it be in y Right of y adverse Party -- The Proof must be however stated. 1 Co 1197. 2 Co 180. 482. 174. 1 Eas. 21 Sc. 7a. n. 3 SB 155. 1 Co 707. n 1 Mill. 10. Bea. 1298. 16 Co 52. 5a.

And if the Special facts are not alleged y pleading will be ill for want of Proof.

Note in such case, Relief would formerly have in Equity, as it may be still in some instances. 3 atk 17. 1 Ser. 382. 2 Ser. 8. 1 Lorp. Ch. 159. 123. 3 Po. Ch. 788. 1 Haver Ch. 24. 6.

If y facts dispense with y necessity of Proof, and y Title is made under it, y adverse party is entitled to yer. But y pleading may be amended by striking out y Proof - 1 Sc. 7a. n. 1 Mill. 10. 3 Co 153. n. 10 Lorp 337.

104. Proof in y practice of Court is unnecessary for yer in demandable here, without it. In all cases in which Proof is necessary, in Eng. 1 Lorp 366. 576.

Formerly in Eng. omission of Proof when necessary was matter of substance - Holt 54. Contr. 
New by 1617, Ch. 24, and 48. ann., it is cause of Suspicious Demurrer, only. 4 Bae 113. Co. 9, 32.

Pro. 301. Co. 2, 27.

The object of making a protest is to enable the party to crave a copy. of the instrument. If one party makes a protest, the other party is entitled to a copy. of the deed. 3 Bl. 269. Lawes 360.

4 Bae 113. He has a right on a protest granted; to a copy of it. 4th 217 4 Bae 118.

There is one exception to the rule. The party craving a copy is not entitled to it, even if a protest is made, provided the party making it, does not make it a ground for the instrument. The protest here is mere Intrusion.

Chall. 401. 4th 329. 2 Bli. 305. Doug. 4767.

In case ante of a Bill of Sale, alleged as an Inducement to an action of fraud, but pleaded with Protest. Lawes 37.

When a deed or Bill is lost (at ante) a copy of the same to, or an extract of it, is admitted to prove its contents. Ch. 30. 21. 6. 10 Co. 92. 13.


1 Wili. 344. 2 Bli. 398. 812. 7. Lavo 60, 8. 80, 178. 340, 347.

But it must be made to appear probable to the Court, yt it was actually lost, or destroyed.

Pea 182. 2 Bli. 398.

Evi is admissible to prove y Law.

Evi of 1816. Coleman 27.

The case in 2 S. 1185, is a matter of practice only.

The same Evi is admitted, when y deed is in y hands of the adverse party. 33nd notice 261 26.

Must first be given to him to produce it. Pea 103.

Seems the secondary Evi ant admissible. Ch. 35.
The perfect is unnecessary, yet if it be necessary, with it and the Three are under it, yet it conclude, as demanded, is due to the husband pleaded with a Petition in a suit of Dower.

Granting, when not demanded, is not error. Agreement to the order evidenced can have no effect. But refusing when it ought to be granted for the Party earnest it may have been presumed by the name of it. So it presumed necessary, to enable him to plead.

But y granting, when unnecessary, cannot prejudice y party from whom it is demanded. Lawes 34. Talk 485. 1 Smane 84.

6 Mod. 28. 2 May 1669

To take advantage of the same, it improperly refused, y party earnest it, must have his damages entered on the Record. (See y error would not be apparent.) 6 Mod. 28. 2 R. in Talk 484. see Bn. Bill of exception. 1 Smane 86. Talk 485. Lawes 34. 1 Mod. 28. 2a Ray 484.

This is in the nature of y Petition and y party may counterplead, or by demurring to it, y it will give judgment upon it. Talk 485. or he may file a Bill of Exception, 1. Bae 325. Ray 485.

Now y Petition granted, y party obtaining it, may enter y deed verbatim, and thus take advantage by pleading of any condition, or other part not stated by the Party pleading it. If of y condition of a Penal Bond, or any defect, illegality or variance 4 Bae 18. 23 Oct. 283.

Lawes 38. 6. 1 Mod. 28.
If y mischance or illegality &c of the Instrument, 166. appears upon y face of it, he may demur.
If not, he may shew it by averment, Laws 10, 88. 1 2 M. 340. as long as a Bond, [sic]
If y deed is falsely recited, by a party Obtaining Aye, y adverse party may give Judgment as for want of Plea, for if Party erasing over,
unjustly undertakes to set it out as it is—
Laws 100. 1 and a false recital being a breach of his undertaking, he may consider it
as not having pleaded, or y party proving who pleaded, y deed, may presume it to be
enrolled in his replication, (by a proper officer of the Court) and having then shown
Falsity of the Recital, may demur to it
1 Gaunt 26. 3 N. s. 9. 1 Se 22, 27 a 227. 4 2 R. 377,

Departure, in pleading, is the
desertion of a former defence or claim, for
another distinct from it and not fortifying it.
This is a fault in Pleading, for the Replication
shat fortify y declaration, y exposition y plea
in Bar. This is a Cardinal fault, for it
has already been done, of every succeeding
plea must fortify and support the former.
4 Bae 122. 3. 3 Bae 310. Plowd 103, Co Litt 333.
S. D. 304. a. 2 & Bol 280. La Ray 1409 1449
55 422. 56 8.

The reason is perfectly obvious, for if when one
party has given good answer to another, he
is allowed to reply with a new cause of claim
or defence. The pleadings would be
endless. As one pleads in Bar a sentence.
in fee. 3. vi. his aye. this his mode of acquiring it, or his title, as by being any a gift
vi. Tull is conveyed by lease. 3 release. the
aye. a departure. 3 C. 310. 516. 517.

So if y matter just offered is pleaded as at
C. Law. a subsequent Plea supporting it, by a
particular custom, is a departure.

As an action on an Indenture of Apprentices-
ship as at C. Law. 1 C. in common form
not reciting any custom. Plea. Replication.
C. Custom of London. This is a
departure. 3 so as the custom is not stated
in the declaration. y action is bldt as at
C. Law. 4 Bae 128. 1 Lev 81. 1 Bal. 376. 468.
572.

So a Plea asserting a right at C. Law.
is not fortified by another showing a St right:
Field 138. 3. Dispar for taking Beasts in
common form. 1 C. not Counting upon St
Plea. autemide, same peasant. Replication, def
firm out of y County. (wh by C. Law i no
wrong). This is a departure, for among Pea
nient actionable at C. Law. 3 is by the Stat.
of Marlbridge. 32. Hen. 3 & 4. 1. et 2. Phill. and
Mary. Action is not bldt on these Statutes:
4 Bae 128. 3 Lev 48.

But if one in his declaration pleads a Stat.
and y other alludes, it has been repealed.
y former may reply. (but it has been received)
for go fortifiin y originel ground. 4 Bae 128.
1 Lev 121. 81. the action being founded on the
remains of the Stat.
In covenant, if def pleads performance, and 
Plt., replies, yet def has not performed such an 
act, a rejoinder, yet he was ready to perform, 
and def refused to accept performance, is 
deviation. 4 Bac 123. 3. Com 93. & Lit 394. a 
2. 1 Ed 10.

To plea. Infancy. Publication receivable. - Rejoinder. 
A plea. To 442. This plea good in Bar. of deviation.

Baring in an immaterial point, from what is before 
alluded, is not a deviation. 1 Lev 148. 10. Mod. 
348. "After it", de 18 since 93 in after declaring 
upon a parole made in 1844 (time is immaterial 
in a bond parole) def pleads the par of Lim-
A may reply that the contract was made 
in 1824. - This variance is immaterial, for 
time is an immaterial circumstance in a parole 
contract. Note the come as Litor. Et of long.

After a agreement to purchase of y Plt. 
stock of the Bank of y fl. The declaration 
over a tend to the stock at et y. Plea. Law 
of fl. requiring all transfers to be made at 
y bank in Philadelphia. Publication. Tender at 
y Bank in Philadelphia. holden. no deviation 
Plea. first alleged. not material.

Table 222.3 (Bac 123. 19) Mod 110. also last 
authority. 1Bac24.1.3

When y gravamen is alleged generally in y deed, 
and y def replies an answer, a more 
perticular statement of y cause of action by way 
of "novel assignment" in the replication, is no 
deviation. Lawer 163. 2 # (30 rev. 3 E3 811. 
Bull 17. Lawer 164.5. 3 Mill 20. (Comment 38. a 2. 20
Where may new actions witti or without take Place.
Ch. 42. 2 Co. 1. 1. 283. 2 Layne 24. a. 2 Mers. 36.
Ch. 4. Pl. 633. Doubtsful, an it should not be.
Special - 1 Ch. Pl. 623. m. 1 Taunt 147. Com. A. 10.
But it is aided by verdict. 1 Page 36. 4 Bae 12.
Ch. Pl 623. m. 1 Bae 17. Sid. 58 2. 2 Layne 84.
This Rule (President) is enough appears on the whole Record. to entitle any Party obtaining
a verdict, to Judgment. (in) it a matter pleaded
by way of departure, is sufficient to decide a case.
But it is not aided in General Demurr
for the Demurrer does not confer y facts.
They being ill pleaded. As Plea. Insanity.

Pleas upon the Rejoinder, and founds for the
Def. Side that have Judgment. Sees on
Demurrer. 1 Lev 112. 16. 56.

**Demurrer** is a denial of y Legal
sufficiency of the allegation, demurred to. It
admits each matter of fact, alleged by y adverse
party, as are well pleaded. 9 Mos. 79. 138.
But denies their sufficiency in Law, and
refers y question of Law among ymen to y
Court. 1 Bae 12. 5 Co. 34. 1 Layne 333. 9 9.

Thus it dont confer matter, wh consitute a Departure. It advances a Legal proposition.
We say y allegations on the other side, are insufficient in law, to maintain y action or defence, as yr case may be.

As a Demurrer denies matter of fact, it is said to be in strictness, not a plea, but an excuse, for not pleading, until 4. 3 Pl. 364. 23. 4. 4 Bae 129. 30. 3 Mils 292.

Since it is said to be an iniquitous and collatera1 part of pleading— Savus 42. 107. But this is not a plea in strictness, a demurrer is a good way of answering a plea.

Demurrer may be taken to any part of yr pleading. 4 Bae. 128. Co Litt. 122. a. 3 mod 132. 2 at all stages.

A Demurrer general or Special admits at law no other fact than such as are well pleaded. 18 Knight, pleaded, both as to matter and in point of facts, etc. 3 Com. PC 82. 7. Savus 107. 1 Hob 233. 5 6 1 Gaunit. 338.

This proposition must be taken with some exception. Note a Demurrer necessarily admits in general facts ill pleaded, for yr purpose of the argument and deciding upon their sufficiency as pleaded. C as a demurrer of facts (well pleaded does as in Chy) the not for yr purpose of concluding yr party demurring, as to facts to be pleaded. But since the 2d of 4. and 5th of 115.

To confess, if General, all such informal allegations, as are alleged under it by More, etc., and they and all more formal defects in general. 1 Bae 34. 5. Savus 63. 3. 1 Hob 232. 53. Com. PC 92. 5. 18 Sau 136. 38. Com. 3. 8. 3. 7.
Scen. If \( q \) facts pleaded as matter of Colchester, or \( q \) as a prior admission upon the Record. This if in Covenant Broken, \( q \) plff assign some breaches, whole and other, ill, and def. damns. (Generally, in Speciall., as any case may require) is y whole, \( q \) plff has Judgment on those only, wh are well assigneed. 1 B. & C. 130. 5 Com 130. 1 Madd. 248. 1 H. 271. 2 C. M. 279. 87. 1 H. 35. 223. 1 Squ. 180. 1 Sid. 10. Cr. 95. 377.

Here y breaches ill assigneed are not confesse.

Hence a demurer also never confesse but which contradicts what before appears certain on the Record, as if one party having confessed all allegation on the other side, afterwards allege what is inconsistent with it; and this y latter allegation is demurred, so he plead a Record, though he was a Party, and thus makes an averment inconsistent with it. 3 Lev. 124. Grot. C. 86. Lawe 108. Here y matter alleged is not pleaded for, an averment is unanswerable in y one case, as being or a prior confession, and in y other, on y ground of Colchester. In both cases, it is opposed to what is before made certain.

So an averment of what is impossible.


It never admits facts averred, ash, it appears on the Record, are incapable of being legally proved. The averment of such facts is itself a good cause of demurer. As Case of Colchester infra. 1 Sid. 10. Lawes 40.

Again, it does not admit allegation, ash are impertinent, or ash are not material or traversable, ante 77, 31.

5 Com. 3. 130. Lawes 108. Calk 30. 4 Bae. 131.
In what he cannot traverse, he does not admit by not traversing. But if a material fact is well pleaded, a demurror will confess it. And it could not have been distinctly traversed as considering in a "defect" as a "lienter" in certain cases ante 21.

So if facts are themselves immaterial but made material and traversed by being forcibly pleaded, ante 7 92.

It never admits y truth of immaterial or impertinent averment. 3 Cor 138. 4 Bae 21. 4 Tart 361.

It never admits conclusions of Law made by y adverse party from facts stated. 46 36. 4 Bae 21.

It admits matter of fact only. Its "pront et bene" in a plea of Part/factum is not confessed by demurrer. So in "indeb. apt" its fact alleged do not raise a promise in Law. Demurrer does not confes y promise. Thus it must conclude what is Law.

After an issue in fact joined, (as is done by adding the demurrer,) there can be no demurrer to an issue joined; else, all y pleaded are all allegations in any form is thus precluded. 1 How 316. Co and Bae call a demurror, an issue in Law. 111. 3 Bae 314. 5 Co Lit 51 2. 21. not strictly correct.

Formerly, adding an issue and concluding to y country, did not preclude a Demurror on y other side-- ante 82. So an Issue in fact for an issue is not closed till Bander. It is substantially a Traverse, y adverse party’s major proposition in the so-called form of pleading.

4 Bae 34. Lawes 48. Co Lit 128.
If there is a Demurrer and an Issue in fact in the same case, (as there may be in different parts of the declaration) Pleas. &c. the demurrer is to be regularly tried to be first tried. For if the Jury, the party may absolve all damages at once, when they could not do, if it were in fact, were first tried. It would only be found for Alt. 3.

Hold it is in the direction of your Court to try either first - 4 Bae. 130. s. 100. Esid 72. a. 120.

5. Pattn. 177.

112. There cannot be a Demurrer to a Demurrer. It works a discontinuance, except (say the Holt) where a demurrer to a Plea in abatement, is not applicable - 4 Bae 126. or 130. Tulk. 219. Com. 326. Sawyer 172.

There y. demurrer itself may be demurred to - Com. 326. This is Hebrew to me. There can an inapposite demurrer mean one praying Judgment in Chief? Vide Sawyer 172. Contra Tulk. 219. 2 N R. 233. For Example - How can it ever be broken? 112.

In all other cases, I trust, at any rate, y. adversary party must join - Com 326. Part 172. For as an Issue in Law reaches back through y. whole Record, it cannot be immaterial. If however, see Holt, Exception is correct.
it is confessed by only one.

If the demurrer to a declaration, and something in abatement, the plaintiff may join in Bar, and have Judgment in chief, if the declaration is good, for the declaration is confessed—Lawes 72 3 & 223.

Demurrers are of 2 kinds. 1st General & Special—4 Bae 32 & Con. 138 Co Lit 72. Lawes 167.

If a demurrer not assigning specially any particular cause, is good general.

The pointing out specially a particular cause or defect, on which it is founded, is Special—4 Bae 32. Co Lit 72.

The latter, Mr Lawes remarks, were introduced by 27 Eliz C5 4 L 3. Lawes 167 8.

They are rather made necessary by that it in certain cases, in which General Demurrers were proper at C Lawes post 114. 1 Summ 377. Hot 232.

1 Bent 340. 4 Bae 182. For Special demurrers were not made before that Ct.

To constitute a Special Demurrer, a cause of demurrer must not only be assigned, but set forth. Special—Assigning cause (if it is assigned generally) does not make a demurrer Special. A cause may be assigned in such General Terms as to make it General.

As that the declaration "is uncertain & wants form" the leaves, a Demurrer General—4 Bae 182.


And 112.

Again, duplicity must be pointed out specially. If a Party demurs to the Plea of a opposite party
as being double or Informal. His demurrer is not Speecial. But if he ponits out Speeciall, in what y substance controvrs, then it is so.

Laming demurrers in Eng were always Speecial. 1. Bae 172. 2. Sent 234. and Co. says, it is a good Rule, to make ym Speecial in all cases.
2. Rule 265.
It is doubts y safer mode, when there can be a doubt, an y pleading demurred to, is faulty or not in substance.
A Speecial demurer reaches all defect, wh a General Demurer does, and as many more, wh a General Demurer does not.

It is a Rule, yt all Substantial defects, 1. c. 4. omision of such things, are materials to ye right of action or defence, are reachew as well by General as by Speecial Demurer. But by It 37. Air and 4. and 5. ane. Formal defects are reached by Speecial Demurer only. (excepte in dilatory Pleas, to Make the It does not descende, for dilatory Pleas are ordina to the law.) Note the It 4. and 5. Air. aire all defect in General Demurer.
If sufficient matter appear in y Pleadings, upon wh the It can give Judgment, see / Bae 32. 5.
1. R. 101. 837. Salk 104. 29 id 885. 3 H. 186.
1 Ch. Pl. 206. 2 Do. 672. 82. 4 Bae. 132. 3
1 2 Co 58. Sack 185. C. Lin. 72. 3 2 Do. 624. H. 127.
1. Com. 186. 5 Mo. 187. Salk. 291. 8 Bae. 310
The Rule does not extend to dilatory Pleas.
A Demurer to a Plea in abatement need not be Speecial. The It of Eliz and Ann. do not require it. The object of the It was to prevent captious Examiners. The It 57. Eliz introduces y
Rule of demurrer. Specifically, for such defects in General. That of 4 and 5th time, after enacting the same General provision, extends & Rule to certain particular defects expressly named in it.

The 5th of Cl 4 extends not to Appeals. Indictments, presentations, or actions in Penal, St. 1 Ch. 642. con.

But the 4th Geo. 2d, Ch. 25, extends 5 Rule to actions in Penal Bonds. St. 1 Ch. P. 642.

It has been observed, 5th in all Pleas, of things necessary. 1st. That a matter pleaded be satisfy.

2nd. That it be alleged accordant to forms of law.

Co Litt. 303. 4. Bae 3, 118. 164.

The want of either these requisite, is good cause of demur. If the pleading is deficient in matter or substance, a General Demurrer is proper.

If in form, a Special Demurrer is necessary. In case of Dilatory Pleas, and 114. 118. 332.

4. Bae. 2 137. 7 Mod. 71. 2 La Bray 78. no 382. 782.

The omission of not without which a very material does not appear, is a defect in form only. Omit,

le of a defect in substance. It if does not in his declaration aver performance of a condition precedent when such averment is necessary, is omits to aver "Science" in def. In cases, in which science be

is of & Grand of 9 action, or Consideration in Act or Conversion in forsover. St. 4. Bae. 2 118. 184.

ante 6. 58. See. of "Science", more be in form.

When there is found a total want of substance (as of one who does another in pleading for calling him a Deceit) or where a material allegation is omitted (as if Pity in Sore, the real State of property, or in Treachery, 

+++ (332.) A General as Special Demurrer would reach y defect. 

1 W. 184. 

1 C. 189. 138.

If ye party pleads any thing, not from a face of the plea, he appears to be stopped from pleading. 

It will on General Demurrer. (18. B. conclude. 

If the allegation demurred to are material, 

for as ye action is not to a form of ye averment, but to the averment to the fact in any form.

Caries. 17. 17. 35. 136. 140. 140. 1. 183. 

Wills 13. 4 y other party may reply to the Special matter of Stressed specially.

196. A Special demurrer reaches no other ground. 

defects, ye such as are specially assigned, for cause of Demurrer. As to all defects not thus assigned it is but General Demurrer. 4 Bae 132. 10 Co. 88.

The General Rule is on Demurrer to declarations. 

A judgment on the special, if it be not similar, or concurrent action can afterwards be sustained for y same cause. a in y same ground.

as were disclosed in y first declaration. 

1 Ch. 130. 1 Mod 39. For a final judgment deciding y right in question, must determine y controversy or litigation would be endless. 
1 Ch. 130. 390. 1 Mod 228. sec. "Evit."

Secun of y first action were miscarried, it is 

private wrong, where there was y proper action for hid
2 actions are not concurrent. The right claimed in y second could not be decided in y first.

Altogether if Plff failed in y first action for want of an esse ential allegation, wh
is resolved in the Seconde. 1 Pca 372 2 Bent 169.
2 Tammis 417 a. 4 Bae 116. 6 Mod 30. 14. 88 610.
1 Ch CP 1806 6 663 7 500 3 500. Hutt 84. 8 16. 240.
304. 9. 265. 16. 2 BC 733.

And the Plff is bound by a former judgment as above. 'Thos he failed in the first action in the General
Pique or a Special Pique at Bar. In it insufficient
at y present no decision has been decided between
y parties, whatever now the form of the Pique.
5 Co 7 a. 6 Co 8 068.

But a judgment in Plff in one Real action
is not a bar to another of a higher nature
to try his higher right to the subject. 4 Bae 118.
6 Co 7 see y Rule explained 3d Cast 508 66.

For y actions are not similar nor Concurrent.
no is y night y same.

This Rule cannot Ation ai Count, for we
have but one Real action ai Differenc-
Indeed ai ai stricture is rather a mixed action.
ai called Real, for damage are recovered
ai Brit for Freehold.

But if in a declaration be insufficient too a
mistake in Pleadingy yet if Def takes no advantage
of it, but pleads a Special Pique, upon which Plff
takes 3dms. and y night is founds for y def.
Plff shall have no other action for y same cause.
y matter having been tried, and y night declared.
4 Bae 116. 89 120 6 Mod 297. As to an
insufficient declaration y Def plead a Release.
and it is found for him.

But recovery on it is procedurally in question.

It is no bar to an action on it or a contract obtained by subscription. For the causes of action are different: 3 B. & C. 238. P. & L. 124. &c. 2 Ser. 67.

Demurrer shall extend to a whole declaration, pleading a part of it is otherwise answered, and shall be coextensive with a part not otherwise answered. If not, this is a discontinuance by answering only a part of what is alleged.

on y. this side—Lawes 1356. 1642. 2. 6. Milly 1681.

A Demurrer reaches back thro' whole Plea, and attaches on the whole substantial defect in y. Pleading's, 4 B. & C. 1323. Con P. 28. &c. 3789

1 Sm. 56. 38. m. Con 2. P. 2.

It says, "Substantial defect" because if a formal defect is waived over, it is a remedy.

But the Ct. must give Judgment upon the whole. Pleader, even tho' a Party, join in Demurrer, upon the whole point, a particular part of which being insufficient, Plea in bar and replication both good—Demurrer to a Replication.

Here is only question in this Demurrer, an y. Replication is good. But this is not y. only question for y. Judges to decide. He must look back to y. declaration, and see if it is good. If he finds a substantial defect there—Judgment must go as Pleff. 1 Ch. 649.

H. & C. 163. 220. & C. 52. & a 320. & C. 110. &


& C. 120. 133. 6. & C. 122. 2. 23. 76.
As to a mode of entering Judgment in such a case.

For a decree of Judgment is, 1 Sar. 24: 6. Em. 24:

25. 3 Will. 153 a. i. 5. But there is an exception to this. Rule in debt, &c. for performance of Covenants on an award.

If def pleads an insufficient Plea, and Pltf in his replication assigns no sufficient Breech, y Def shall be Damner, have Judgment. This declaration is be itself good, and & Plea: for in such case, a true cause of action does not, appear. Still y Replication is given. 3 Co. 31.


& Ray. 1080.

The Replication is in such case, a sort of Supplement to the declaration, discovering particular grounds on which the penalty is claimed. So that y Replication is in y order of Pleadings, antecedent to y Plea. Yet it is effe. it is a part of the declaration, hence "y defect in y Replication is in y order of Titte."

So if one Plea in Bar Bar, is good to y whole declaration, is demurred to, and adjudged sufficient. (The Def pleads several Pleas in Bar.) Judgment will be for Def. even tho' & Pltf is upon another Plea, be found, for the Pltf. 1 Sarand e. 2 Bar. 760. 74.

For there is one sufficient defence, and it appears from the Record, yt the Pltf might be barred.

Form of Damner in Court, "yt y declaration and matter therein contained, are insufficient in law, and thereof, he shows Indgment."
In civil cases, Judgment upon Demurrer, follows, 
y nature of the Pleading demanded to,—
 summoned upon Demurrer. (except upon Deliberation Plea) 
 of peremptory. 1. C. 169. 4 Bae 132. Rindler 306.
 Dyer 69. 341. 110. 170. 119. 329.

If therefore, demurrer is to any Plea in Chief,
 Judgment is in Chief, either it to be recovered, or to
 Def go "and die". It is a final Judgment—

To an exemplary case, short of Irish, 1 Bae 132.
 Cro C 166. 3 Hawk. 334. 1 Co 60. 4 Rold C 80.

To that def is not allowed to plead over, when
 his demurrer is overruled, except where a officer
 charge amount to Irish. The law allows an
 exception in favour of def-

On prosecuting for Irish, or any capital offence.
 a better opinion is, yet the prisoner may plead over,
after his demurrer is overruled— Contr. 2 Hale.
Hall a b Holl 3 Hawk. 269. 243. 4 Bae 3348.
2 Hawk. 234. Cro C 106. He may still plead
 to y action.

If a demurrer to a Plea in abatement is
 overruled, the judgment is not in Chief, of
 course, but y aware of the Ct is a "Respondent"
Of Demurrer to Evidence.

In some cases, where the pleading terminates in an issue as to facts, one party may take y examination of y cause from the Jury to the C. by demurrer to, or y evidence, by y adverse party exhibits, no support of the Evidence 4 884, Co Litt 72. Allen 15. Ll Eng. 891. Bullo 353.

Thi, thi calleth a demurrer to Cevi, is essentially a demurrer to y facts shown in the Cevi, and in y respect is distinguished from a common Demurrer, not in regularly taken to the Pleading.

Demurrer to Cevi is taken before y party demurring, exhibits any Cevi in his order, Tembley 1 Part 27o. For if y testimony in both sides were taken,

a demurrer would necessarily refer y comparative weight of Cevi to the Court, a question, not belongs to the Jury, and not to y Cc.

A Demurrer to Cevi must be taken by y whole Cevi, exhibited in support of the Issue, and can be taken to the Cevi of y part party only, who takes y

thus under y General Issue, y defn Cevi cannot be demurred to. If a part of the Cevi ed be demurred to, a part only would be presented to the Court, and the Court therefore ed not decide upon the validity of y Whole

It is to be observed, yre relevance of Cevi is matter of Law, to be decided by the Court. Yr relevance being established, y question how far it continues to prove y Issue or facts to be established, y matter of fact to be determined by the Jury.
As the Co. can never prove Mr. Co. Theman, Language, or "improper officer." it can never be proper to demurrer to Co. v. Co. , which is clearly relevant to the whole Issue. It can never be proper to demurrer to Co. v. Co. , which is clearly relevant to the whole Issue however weak it may be, and Co. v. Co. is always relevant to an Issue when it contains in any way to prove it. 2 Bl. 205.

It is not material, on the Jury, believe me, one word of it is not. The demurrer puts an end to the question of facts, and refers to the Co. v. application of the law to the facts shown in Co. v. Co. , the adverse party. 2 Bl. 180. It therefore admits of facts shown in Co. v. Co. by the adverse party, and where the demurrer denies their legal operation in his favor. 12. Man sufficiency in Law to support a verdict. 4 Bae 186. Co. Lite 72. 2 Bl. 205.

In y nature of y thing, therefore, a fact must be first ascertained, till y u done. Y question of law cannot arise on the Demurrer. 2 Bl. 205.

Hence y necessity of the admission herefore mentioned wth y party demurring to Co. v. Co. , is bound to make u some eases, upon the Record, for a legal proposition cannot be precarious without some fact.

There has been much controversy with regard to y circumstances, under wth a party is bound to join in Demurrer.

When a whole Co. executed or support of the Issue, no written. There was never any doubt, so it might
be demanded to. and y Party exhibiting it. must join in the demnner. or waive the liti, for by the writing, the liti is made certain. so there cannot be a barance. If he withdraws his liti, he withdraws y whole of it. as when a debt is exhibited as liti of a Litle, or Covenant, or as liti of a debt. 4 Bae 186. 5 Co 10. 370. 514. a. Co 2 757. 2. (4 not Law) Co Lito 72. a. 3 Ot 372. 1 Root 370. Rule 3.8. Act 180.

There are other mode of taking advantage of &c. &c. &c. The partys to whom y liti is kno. may file a Bill of Cesequation liti. The Demnner however is y true way. It brings the matter to y "Actumum liti" As it brings a debt on Bond to B. but brings it also on it before the debt becomes due, now the Def may file a bill of Cesequation. and takes other mode. but y most unacceleratable mode, is to demnner.

It absents. on the face of y debt, y debt is not due. How far a Party is bound to Join in a Demnner. to Parte liti. is a questian very recently settled. There is a confusion on this point in the older authorities. 4 Bae 186. 1 Lev 187. Co Lito 72. a. 5 Co 104. according to Co E 397. 2. he is not bound to join at all. because the liti is uncertain. But y Rule in yo extent is not Law. and is clearly settled as well in the old as y new authorty. a case.

It is that tho all y liti rests in Parte. both parties, may agree to join in a Demnner to it. Co 752. for he who joins of course waives any Inacuracy in the Demnner.
II. It is now settled, ye if one of the parties produce witnesses to prove any definitive fact, ye adverse party may by admitting a fact, itself in the Record, discharge the duty to join (in the demurer) to
prove or to waive the Plea, to suppose or an action of Proven, by Bailer vs Bailer, &c. Def may admit the very fact of negligence and that
def may admit the very fact of negligence and that

demurr, for neglect does not amount to conversion.

Allen 18. 211 Bk 216.

III. And it seems now, to be also settled, ye if
Pard. Plea exhibited in support of this, Pard.
be certain, &c. ad sed est eis, no contradicting
in determinate, and circumstantial.

The adverse party, by conferring it in the Record
to be true, may compel a party producing it, to
join a demurr. to it, or to waive it.

211 Bk 216. Suppose the question be this, an a certain
fact did or did not take place. By witness declare. I saw such an act done. "I know y
fact to be true," his Plea is certain.

But if he testify to a collateral fact which renders the other inadmissible; his Plea is circumstantial.

By conferring indeterminate Plea, he does not
confess the fact, for the Plea is not direct and

therefore.

IV. If the Plea introduced, is loose and indeterminate,
y adverse party cannot demurr to it, without
admitting it to be certain and determinate as well
as true. But by making such an admission
upon the Record, he may demurr to it, and it
is written in Pard. and then ye party producing
it, must join or waive ye Plea & Co. 104. 214 (30. 205).
But he is not bound without such admission, Bull 312. To wit, without it, a fact is false, and not ascertained; even admitting the Orr to be true, but the question of fact was to be referred to the Court. Or, formerly admitting y Orr to be true, is admitting only what a witness believed y fact to be true and that the Orr, with y fact conclude, to prove it left unascertained.

The witness says, I believe y fact to be so, or according to my best recollection it is so.

In my case, the Party demandin, the Party y Orr as being certain and determinate, is as if it were positive and unqualified, as well as these otherwise the weight of Orr not be referred to y Court. (7)

If the Orr produced, is circumstantial, y Party demandin to it, must distinctly admit upon the Record, every fact, and every conclusion in favor of the opposite party, ask it conduces to prove. If every thing claimed from it ask the Party might infer from it, he may, then, demur to it, no it is Parr.

Reyes it is not competent for him to demur, and of course the adverse Party is not obliged to join the demurer. Doug. 104, 107. 9.

For by circumstantial Orr, is meant Orr of some distinct collateral fact from which, a principal fact may be inferred.

But the truth of such Orr may always exist, and in the possible non-existence of the principal fact.
and the parties to prove everything, to which it is relevant. As if sometimes we are asked in our
as the acceptor of a Bill of Exchange, to prove,
by presumption, yet he knows the Parties to be
specifically he must admit in his demurrer to
the answer, and not merely that the
Bill is true, otherwise the weight of its words,
be referred to the Court, for every matter of fact
not be ascertained, since the truth might also
be true, consistently with his ignorance of
its fact.

In such cases, the 'presumere de modo' must therefore
be awarded. 2Bom. 3B. 3Bae 167, 2 # 3 Bl. 249.

123. Our Lord, in 1787, decided, 6th in a Deman-
er and Parle, in a single instance, y bome
knowing it, was not charged to join, because
a Demurrer in such case would tend to
entangle y proceedings. Party 132 above how
can such a reason be allowed to control or affect
a Question of Law?

The same Ct decided in 1790, 7th in a Party offering
the Act, was not charged to join on Deman-
er in it, and it was chiefly written, and all agreed
to. 2 Swift 289, not Law

The point in Parle on a Demurrer to evidence
is, an the Act demurred to, is sufficient in law
to maintain an issue in fact. Hence in such Demurrer, no advantage can be taken of such defect in the pleading, post 128. But advantage may be afterwards taken of such defects by motion in arrest of judgment, as after verdict, and so on. After General verdict, I conclude y issue being considered as proved, and if facts demurred to as evidence, not being proved to, under y motion in arrest of judgment, ant 88.

The Party, whose Evi is demurred to, may always demand the Indictment of y Ct, an he ought to have. For if there is no probable cause of action Demurrer. y Ct rules not allow it, for justice that must not be delayed in frivolous point any. 1 Bac 136, Bull 314, Allen 18, 2 Bull 117, 2 H 36. 205.

In Demurrer to Evi, and Demurrer, y usual course is, to discharge the party immediately, and y part of inquiry is arrested afterwards. This sometime, y party after y damage proportionally, before y Demurrer is determined. Bull 314, 2 Bull 148, 2 Ed Ray 30, Plead 410, Talk 287. Long 212, 2 H 36 205.

In Court there is no limit of inquiry, damage are assessed on Demurrer to Evi by the Ct. of declared for Pifi. If any particular part of y Evi is supported of the issue, being objected to, is admitted by the Judges, y party objecting cannot demur for yt cause, and the whole part of y Evi must be alone. For the demurrer must go to y whole evidence, given in support of the issue. The proper remedy is a Bill of Exception, or motion for a new Trial, Bull 314, Talk 284. See "Unity of Evi," 1 Root 230, 2 Swift 208.
If a Party offering to demur to Orr, it is revealed by the Court, his Remedy is by Bill of Exceptions—Bac. 18. 1 So. 205. 3. Co. 18. b. 1. 30. 10. 24. 34. 24. E. 34. 6. 6. The whole proceeding on & Demur to Orr (as by entering it on Record, admitting it to be true &c.) is under the direction of 3. Orr. 2 24. 232. 8. And the Orr may prevent it, of y matter appears in law. Clear. ante 12. or 123. 19. Ibid.


The party demurring, states it on the Record, makes the necessary admissions, alludes to it as not sufficient in law to maintain the Issue, and concludes by arresting Judgment, so for want of sufficient matter in that behalf, the Orr may be discharged from paying Moneys &c. and also if taken by Def. that the Plff may be barred. Be Rule 314. 2 Lev. 188.

Note. This proceeding of Demur to Evidence, was not very common among Lawyers, formerly from a danger of Committing Themselves to admitting, necessary to support a Demur. But since y great important cases, it 2 24. 232. 8. is difficult, and in a great measure remote, and it is quite frequently used.

315. Arrest of Judgment and Repleader.

To arrest Judgment, is to stop or stay it. This is done on motion reduced to writing and entered on Record.

This proceeding is usually had, only after an Issue is first tried and verdict found. 3 280. 180.
But this is not universally the case, for it may be after a default & Prs may be true and yet not sufficient in Law, & Prs etc. or after a demurrer to Prs determined. Doug. 388. 13. 2 To 1271 ante 23. The principle in such Judgment is anestal, i. e. no as the Judgment of a Law Court is a conclusion of Law and as it must be given in the whole Record, he, who does not upon the whole Record, appear entitled to it, cannot have it, even tho' the verdict has been found, or default suffered, or a demurrer determined in his favour.

The Prence raised by motion, is an Issue in Law. Banose Post 103.

Judgment is anestal for intendent cause, only, if such as appear in y face of the Record, as when the declaration namea totally from y mit- one being in Debt, y other in Case. 3 Bl 393.

So when y verdict varies materially from y Issue. For in such cases, the verdict not being found either way, it is improper to render Judgment upon it. Tho' facts in question are not ascertained, Ex: Blunder for y words. "he is a Bankrupt," verdict finding the word, "he will be Bankrupt" 3 Bl 393.

So if y declaration is wholly insufficient, or if it declare no cause of action, Plts cannot have Judgment, tho' he may have obtained a verdict- 8 Bl 127. 393.4. Tho' the verdict cannot contain no declare facts not alleged. If therefore y declaration contain no cause of action, the verdict cannot make one.

And on the other hand, if y Def is plea. on wil be
had obtained verdict, disclose no legal defense to the action (by deed being good); Judgment may
be annulled by Pllf. s. Bk. 390, Co. 2 125. For n
verdict only signifies facts alleged, in the Plea
in Bar, but these facts do not constitute a good
defense, for the Plea and verdict deny nothing
asserted in the declaration.

To ascertain what defects in the Pleading will
support a motion in arrest of Judgment after
verdict, the General Rule is this: After Genera-
\l verdict, the Judgment may be annulled for any
cause, nighth might be assigned, after verdict and
Judgment for error.

In other words, if Judgment in formance
of the verdict not be erroneous, it may be annulled.
5 Crm. 194. 2 Bk. 276. 32. 240. Talk 47.

To determine what defects will, and what
will not make a Judgment erroneous, the Gen-
eral Rule is the following: If the statement
only of the Pllf., or deft. title, a cause of action,
is defective, it is aided by a General verdict.
\nAnd a Judgment given in formance of the verdict
not be erroneous, it is aided in its defect,
not by a day certain. Thi, this is at Cl. law
in General Demurrer, is aided by verdict.

So it not now aided on General Demurrer:
1 Esr 124. 1 Thma. 118, 286. Bk. 4. 15. 147. Port. 138.

But, no title or cause of action, or a defective
one is stated, it is not aided by verdict, for
here a Judgment in a promissory Decree, would be erroneous - as a grant of an Inchoate right by Parol alleged. Case for Calling it a Decree. 3 Bl 324. Doug. 509. Not alleging Debit in Treason. 1 Bl 184. or notice in an action for an Endorse, or Conversion in Treason, or non performance of a condition precedent.

The case in Doug. Barlow in 3 Blinnale. contain a best exposition of the doctrine. 122. 123. of iff in an action of Treason, mistakes 2 days in the Statutory of y cause of action, & venire, miles will not y defect. But if y cause of action is defective, nothing will cure it.

The same distinction applies. Mutandis, Mutandum to y defence pleaded by the def. As to y case of not guilty plead as to debt or after be an Ex on a promise by Statute. Def. pleads, yt he did not promise. Salk. 360. Rule 520. 3 Barn. 1726. 7 T R 377. Cark. 369. 3 Bl. 330. Co L 178. 1 T R 148. Co B 124. 439. 4 T R 743. Salk. 180. (here iff may arrest the Judgment.

Again it is an unanswerable Rule, yt any defect in the pleading, not miles support a motion in arrest of Judgment, must be such as now have been stated on General Demur. 3 Bl 323. 4. Cot 121. 48

Thus it in an action for Handen, iff alleged, yt Def called him a "Dem." and def denied it. Now if the Jury establish the fact by verdict, iff def may move in arrest of Judgment, yt y words are not actionable - But this Rule dont hold e "Convente"

That whatever we support a General demur,
...not support a motion in arrest of judgment, for if you declaration be omitted some particular facts or circumstances, without proving oath, y party stating y verdict, right not to recover, but y oath is implied from those facts, or rather from the finding of those facts, which are alleged and found. The omission is aided by verdict for it will have been fatal in General Demurrer. As y omission is aided by verdict it will not support a motion for arrest of judgment as omitting to state (value (money) in Special.) To summons to lay a day, 1st at Law, 2d in General Demurrer, 3rd 447. 5 & 3 El. 185, 58. 9. 3 Bl. 364. Cart. 139. Cro. 2 & 44.

For y party in accostaining y damages (w. y. 1st & 2d) are supposed to have found the value. If of a grant of an Indenture or release, pleaded, without alleging it by deed, 3rd 5, 5 & 3 El. 137. 5 & 6 10. 3d 3 El. 320. The verdict thus omitted is fact omitted in the pleadings, a correct y mistake. 3 El. 324. For the Co presume the verdict to be founded upon a deed, since they could have no other legal Edw.

A def pleads in his Rejoinder, what will be a a departure, now if Pltf demurr, he will have Judgment, for a departure is bad pleading. But if the Pltf takes issue, and a verdict is found for the def. y Judgment can be amended.

It becomes necessary now to determine what defect the verdict does thus supply. Rule is that after a General verdict, y Co must presume of all facts not alleged, not are necessarily implied from those or rather (from a finding of those) not are.
pledged 8 pounds, were proved to a jury on the 8th of Febru-
ary 28. 828 n. 4

In this case, the court must presume, in support of
the verdict, every thing not in point of fact or
necessary to warrant the finding—Doug. 638. 1 P.C. 140;
Cart. 380. Bull. 323. 1. 1 Sand. 238. 1 n. 1. 2 do 174. 1
924. 1. 1 Mill. 174. 2 Sand. 828. n. 287.

In other words, every thing, as it was necessary
to prove in proving the cause—Bull. 4 P. 331.
Doug. 638. 1 P.C. 373. 4. 200 66. m. 20y. 487
and then the verdict by necessary inferences—
would be in effect to impeach
that it was necessary to prove in proving the cause—Bull. 4 P. 331.
Doug. 638. 1. 200 66. m. 20y. 487.
and then the verdict by necessary inferences—
would be in effect to impeach
that it was necessary to prove in proving the cause—Bull. 4 P. 331.
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and then the verdict by necessary inferences—
would be in effect to impeach
that it was necessary to prove in proving the cause—Bull. 4 P. 331.
Doug. 638. 1. 200 66. m. 20y. 487.
and then the verdict by necessary inferences—
would be in effect to impeach
that it was necessary to prove in proving the cause—Bull. 4 P. 331.
It would seem, yet y doctrine of curing & defect
in y pleading is not arbitrary.

But if o party allegs a testament
wit allegations Lucy of Venice, y verdict ensues
decis. Th, can’t be correct; for there is no
fault. She remark was probably made, Tho
misadventure. For it is a necessary part of
every testament, and, Thys it is said, a deo
is aided by verdict. (s. R. 143. 5 Bae 347 10 Mod.
301. Hutt 34.

But quere, an it was in y first instance
necessary, to allege Lucy. Co Litt 338. 6.
For the pleading, it may seem, md be good without
it. (ante 6") even on Special Demurrer, in a
testament. (Ex vi termini) unless, a Lucy of Venice-
b. Cro 3. 411. 4 Bae 103. So of a grant of fee
without alleging assurance. Laver 48. 8 Coke 82. 6

So of a Grant of advenion in pleaded niet
avement, yet it was by deed, and found by
verdict. Tho Th may presume, yet a Grant by deed
was proved, as thers can be no grant of y kind
without one. 5 Bae 517. Hutt 34. 3 b. 376 10 Mod.
301. ante 12. 128.

Thus y verdict is said to ascertain those facts
wh. from y inaccuracy of other y pleadings,
did not appear before. 3 Bae 304. 1 Mod 263.
On y other hand, nothing can be presumed
from y verdict (ie. presumed to have been proved)
except those facts, wh. are made found, and
such as are necessarily implied from y finding
of yr. 15 R. 145.
Hence it is clear or cause of action itself also be defective (Art. 1120) as where there is a total
want of substance, y defect cannot be aided.
Doug. 522. 3 Burr 1728. 3 Bl. 344. An action for
calling a Bill a Deed - Here there is no fact
to be presumed. wh od makes y word "actionable"

So if any fact is omitted, wh is essential to y cause
of action & wh is not inferable from the finding of
These facts, wh are stated and found y fault is
not cured. for y fact omitted cannot be presumed
to have been presumed proved to the Jury
3 Bl. 330. 1 Co 125. Salt. 330. If course, y verdict
cannot by any Intendment supply it as If in
Ulp or Covenant Broken. performance of condition
precedent is not avered. y debit is not aided

So if in Aet or an Innuers, notice of y dishon-
of the Bill is not alleged. Doug. 657.
For the facts don't follow from those alleged.
not necessary to be proved to the Jury, to warrant
yem in finding those wh are alleged. 1 Buc. 16.
7 Co 162. 3 Com. 25. 1 P.C. 640. 8 So. 128. 8 So. 128-

132.

But the Co cannot presume (18 on principle can't
wh is omitted, because in point of Law merely
it is necessary to warrant a Recovery, for such
presumption can't be raised), but in the supposition
at the Jury are competent Judges of the Law.
But upon this supposition, every defect not be
cured by verdict, and indeed it will be preposterous
even to make a question after verdict, as to
y sufficiency of y Pleading's
Thus it is a mistake of no consideration is alleged, and void; obtaining, a verdict, y opinion is not cared for. 351 357. 7 12 381. ( 1 St. 62. 1 Cob. against, strange decision, and (bequeath to all authority.) So y fact of a promise was made, does not imply a consideration, and y consideration is evidence in Law. to y validity of a Promise, it is still not implicit in y fact. Yet a promise was made. not necessary to warrant the finding.

Motion in arrest of Judgment after a default, operates exactly like a General Demur.

Nothing is cured (by a default) except what would have been on General Demurrer; for nothing can be presumed to have been proved, there being no finding at all. 2 Baccart 350. 12 7. 1 Mil. 171. 273 700. 900

So after Special verdict, nothing presumed, for all y facts found are specially found, and appear on the Record.

On some cases, however, Judgment will not be arrested for y greatest default, and even the nothing is cured by the verdict ante 8. 24. 118. 2 Hor. 56 119. 4 Baccart 131. 2 La Ray. 1080. 1. 3 Co. 120. 133

This happens, where the first Radical fault is y Pleading, is on the side of the Party, who move an arrest.

So there being a Radical fault, he is not be entitled to Judgment at any rate, and the Judgment must be given on y whole Record.

Thus if y verdict is in favour of a Party, who upon the whole Record, ante 100. appears entitled to Judgment, he shall have Judgment, however faulty on his part, may be y practice.
particular Pleading, on which the Issue is taken.
As declaration wholly insufficient — Plea in Bar
settles, and Issue in the Plea found for y def.
PltF cannot arrest the Judgment, for a first
radical defect is on his side; and a Trinol, Plea
is sufficient answer to such a declaration.

So if y declaration is good, Plea in Bar and:
Replication, both Trinol, Issue taken on the Replt
and found for PltF, he shall have Judgment.
The Replication is sufficient for the Plea in Bar
11.35. 36. 3. 491. 53. 484. 469. 199. 473 4 103.

And on y other hand, when Judgment in presence
of a verdict, is arrested, Judgment on Chief as y party
for whom the verdict is found, may sometimes be
rendered.
This is more y an arrest of Judgment. The Rule is,
yt if y party (as whom the Issue is found, abhors
upon y whole Record, entitled to Judgment, it must
be rendered in his favour; y verdict to y contrary
notwithstanding — Odw. 75. 5. 6. Brs. Pl
51. 542. 56. 1 Ch. Pl 634. This is called a "verdicto non
obstante."

As declaration wholly insufficient — Plea in Bar,
sufficient or In sufficient. Issue in the Plea found
for PltF. Judgment in presence of the verdict, will
be arrested, and Judgment entered for Def.

It will be to no purpose, to award a Replication.
Repleader, yt ce not help the declarer, in any
Issue, yt ce be taken on a Plea in Bar.

But Judgment is never thus rendered, ni
in very clear cases. If the case is not such.
Suppose y declaration good, and y Plea in Bar
proving, and y issue taken on the Plea in Bar,
and found for the def. Then y def may arrest
y Indict. and claim me in his favour.

Defect in the Issue

But if Issue is taken on an immaterial point,
when material facts might have been traversed
as ye y finding does not in Law. decide y right
Indict. must be arrested, and a Repleader
awarded. 2 Sumn. 314, a.m. 6. Cavt 571, Cr. 6. 484.
3 S. 1 Sum. 328, m. 1. Salii. 369. Lea. Pl. 322.
Bae Pl. 33, s Mod. 1, ante 63, 32. 1 Ch Pl. 332. 4
4. Com Pl. 51. 18. 2 Sumn. 318, a.m. 6.

As where y traverse leaving what is material,
puts in Issue a point. ye is not so. As y fire
right vs ed. he pleas. That he made no such
promise 2 Vent. 196. 3 Bl. 336, ante 9. 2. 6.

Action for husband and wife for a wrong done
by her. while she Plea. That they are "not guilty",
and verdict for the same def. Repleader
awarded. Lawes 176. 4 Bae 127, Cr. 6. 1.

Or a point not traversable, as matter of Law.
For in such case, the Issue, on wh y verdict
is found, being immaterial, y ed. can't regular
answer from the Record, for whom Indict
ought to be rendered.

Nor can the ed. ever answer ye from an
immaterial Issue, or (as y case may be)
when it is immaterial only from being a Negligent
Pregnant"? ante 66. 92. F.C. Muntz not.

Hence the Judgment being unceded, a Repleader must be assented to on a contract to pay or before. Payment before 21 day is pleaded. partially traversed and found for the Plaint is Bar a 12d. B. 34.


135. Declaration good. Plea in Bar good. Plaintiff traverses an immaterial before part and obtain verdict. Judgment must be answered, and a Repleader answered, yet Plaintiff may take issue in a material part of the Plea for the verdict decide nothing.

Note. Does not the Plaintiff admit what he does not traverse? If he does, is it not clear when the whole Record in the last issue, yet theDef is entitled to Judgment? See Const 332. 4. I conclude, no issue in such ease is supposed to be taken by more mistakes, nor the Rule of practice allows to be notified by a Repleader. see 137.) Com B 243.

Law. 170. 8. 4 B. & 128. B. Y. 488. & 204. 7 87. 1 Burr 307. 5. 3 P. & 300. 1 Rent 136. St. 394.

Com B. 5. 2 Law. 310.

See if y Plea in bar had been wholly insufficient and Plaintiff had traversed a part of it, or y whole and had obtained a verdict. Plaintiff has Judgment for it appears from the Whole Record, yet no manner of joining issue not have availed y Plaintiff Def. or have formed a better Issue. And a Repleader is never awarded for any defect which cannot be cured by any manner of joining Issue. 1 Burr 307. 5. Com B. 6. 8. Co 128. 4.

4 B. 801. 138. 207. 2 Law 304. St. 304. 4 Bae 318. a-
Some Rule holds, and for some reason, for any other pleading, which is radically ill, and upon whose notice is taken, and a verdict found for a party traversing, unless there is a plain substantive defect in any other side, and the Result will have been y true. If y verdict was for y def.

Thus suppose as before, a Plea in Bar insufficient and Pltf takes, write upon it, and Des has a verdict upon it. Implet [sic] his reasons, if y verdict is amended, and Pltf has Judgment, for he appears upon the Whole Record, intitled to it. 4 Bae 136. 316. 9 122, 11 to 10, 5 Bae 286. Dye 362.
Galk 173. 3 & Ray 234.


On a Repleader awarded, y Plaings began anew, and (regularly) at yt stage, in yt first deviation from the Rule of Pleading occurred, (or rather at yt first fault, with occasion to iminatality.)

As Plea in Bar insufficient, Pltf traverses an iminatal point, and has a verdict. On a Repleader awarded, Pltf is to take a new Traverse, or make some other answer to the Plea in Bar. Culp 172. 3 Bae 126. Galk 373. vi 2 East 1. 101, 2. 3 Bc 300. Galk. 173, 173. 216. 1 Bae 304. 6. 2 Summ. 318. Ray. 405. 2d Ray. 103. 3 Bae. 604. authoty, yo. If y Declar & Plea are both ill, y parties may begin the matter.

La Plc says yo. If an Issue is taken on an animatinal point, and there is a prior fault, y repleading is to commence with y
with y first fault - & I could never understand

"There can be no, except by a new suit, or an amendment allowed in motion the
or Can be properly called a Repleader,
Do not y meaning, yt the Judgment of a Repleader,
being General. " That y Party, replies, "you
Parties, explainct. "?

If a Repleader is awarded for a fault in y Issue,
each Party may avail himself of y Generality of y
Issue. Judgment, to correct his own Pleading,
even back to the declaration (so semble)
But if the declaration is not materially ill there,
She be no Repleader - Def ought to have Judgment
into 133.4. The Rule now regards defects in
stating y Def Title or defence, not such as shown
to the Ct, yt no mode of Stating it. And prevails

Repleader for y immateriality of y issue is never
awarded in favour of y Party, wh tendered y Issue.
(Cemble) It is his fault. Judgment goes as his.
If the Issue is no hime. When the verdict is no
hime (y Pleading of y other Party being good) does
it not always appear from the whole Record,
y course, yt y latter is justly entitled to y Judgment?
I think it does. His material allegation being
confessed, Pape 140. 69. 62. 134. Doug. 380. 1 Landa 308.

The same thing, it appears, is true, when y verdict
is for the adverse Party. But as he has joined
issue in the Issue, in the Issue adverse, he can't
have Judgment rendered to y verdict only a Repleader, see 150.
If y person rendering y Immateriale Issue.
is so fortunate as to obtain a verdict, he may replead on an arrest of judgment by an opposite party.

An issue may be immaterial, if found on one way, and if found another. As debt on bond payable on or before such a day, payment before y day is pleaded, precisely traversed, and found for def. Repleader must be awarded. Secus, if found for y def, for y finding not show that he was entitled to judgment.

The reason why the issue for the ptff is not aided as a "Neg. Rog." by verdict, seems to be, as ptff traversing (as above) does not show an absolute breach. ante 16. 66. 3 Br. & W. 114. 4 Eas. 68
2 Mtr. 443. Com B. B. 148.

So of "Modus manus amovit." If found for def, it may be decrnn. Secus iff for ptff.

But "Neg. Rog." is only a "Neg. Rog." aided by verdict ante 16. 92. 96.

Generally a Repleader is never awarded after Demurrer, only after an Issue in fact, form y.

Former cases, y partie, have already put themselves upon the judgment of y ptff. Suppose, def demurrer to y decl. and y demurrer is supported, y ptff can in ye case give judgment in chief. 6 Mod. 102.
3 Lev. 440. 20. &r. 4 Ex. 128. 3 Co. 32. 4 Ex. 42. 4. Ch. Pl. 634. 2 Burn. 810.

The better reason is, ye y question of Law arising by Demurrer cannot be immaterial or indecisive; ante 114.

When a ptff has a demurrer adjudged, a plea
to be insufficient. y Party may amend by the
permission of the Ct. in the payment of costs.
If a Repleader is awarded, where it ought to be
denied, or vice versa, it is subject to a suit
of Error. 1 Ch Pl. 633. 4 Bae 126. Talk 579. 6 More 2.
1 Dig. 182. Glam and Colby v. the Ct. of Corr. 1803.

There can be no Repleader after a default in a discontinuance
1 Ch. Pl. 633. 4 Bae 126. Talk 579. 6 More 2. 3 Com. 323.
On y first place. If the party does not wish to replead
and the def has not pleaded, or he has abandoned
his Plea. On y second. y Party discontinuing, is
out of the Ct. In neither case is there any issue
on which the judgment of y Ct is required.

At C. Law. Repleaders were sometimes awarded before
Trial. In most in General. Since y Ct of Peaif. if
y issue may be cured by verdict or by it
of Peaif. But if y def est is already incurable,
it may be done before Trial. 2nd Com. 391.
4 Lev 12. 1 Kiri 579. Talk 579. 1 Ch Pl. 133. 4 Bae.
35. 126. 3. 1 Bae 60. 103. 3 Rell. 664. 6 More 2.
1 Lec. 32.

Repleader is never awarded when a Writ of
Error. 4 Bae. 129. 127. 2 more 313. 2 Lev. 12.
6 More 102. Thy it was done in the ancient
practice. Note yt it has been allowed in Comt.
Bae. no Curti. 1st Ct. The Home of Repleader.
Ludw. 622.

Defects in the Verdict.

Motion in arrest of judgment might be sustained
either for defect in allegations or in y decree or
in ye verdict, ye subpose ye Jury find only part of ye Issue; omitting something material. 5 Bac 286.
Co 3 503. 3 Lea 62. Hard 60. Lid 79. 53 113. 53 114.
1283. Co Litt 227. Lib 421. In such cases ye Ct will award a "remise de novo" but not a Rehearing.
the fault not being in ye Issue, or Pleadings.
but in the verdict.

Lo if in a Special verdict, ye Jury find only part of a material fact, and not ye fact itself, either way. There must be a "remise de novo" 1 Tant 11.
Burr 1243. Lib 390. As demand and Setwal
found in Proven. 10 Co 85, 7. without any fact amounting to a Conversion or disavowing of it.

But if ye substance of the Issue is found, it is sufficient. Co Litt 227. 1 Bent 57. 12 Mods. 69. 167.
If ye verdict name, from the substance of ye issue it is ill and Judgment is regularly amended.
As Jury find something foreign to ye Issue, instead of the Issue. 5 Bac 286. 2 Rule 717.
49. 711. 18. 2 Bent 57. a "remise de novo" i awarded.

But a verdict, not finding the Issue, is not annulled by finding more. It is Surplusage.
"little per insulam" as Issue, an Def has assay
verdict finds that he has assign it, beyond Law.
5 Bac 297. 9. 2 Rule 714. 5 Co 467 6 Co 307 Co 347.

If the Jury after greater damages, ye the Def
demand, he may release ye Surplus, and take
Judgment for ye Residue. 10 Co 113. 5 Bac 195.
272. 2 Co 223. 4 Bac 20. 2 Rule 280 2 Rule 113.
123. 1 Le 363. Lib 304. 58 367.

or y Ct to prevent Error may render Release.
give Judgment for ye Residue only. 4 Bac 235. 2 Litties 305.
To ye Parti demandes more by his owne showing is due and ye Jury finde more he may remit ye excess and take Judgment for y rest. 4 Bac 20. Boll 780. Co 150. Alle 122. 5 Bac 180. 272. Esq 304. 2 Co 113.

If the Jury after finding a fact specially, make a conclusion of their own, ye Ct is not bound by such conclusion but will give Judgment on ye facts found, without regarding the conclusion. 5 Bac 225. 11 Co 10. Dyber 252. Hot 53. 6. or 536.

As in question of Severit, ye Jury finde some particular fact and conclude and say "OF was ceased".

If in a Civil case, there are 2 counte one good and ye other ill, and the Jury finde a General verdict and entire damages. Judgment is divided and a Writ of mores awarded. 2 H 230. 318. 2 Bae 7. 1 Hot 870. 433. Co 180. Co 815. 788. 2 Wic 377.

For ye is not known to the Ct, upon what counte ye damages were awarded, or how much in each. 10 Co 180. Boll 8. Ch 825. 362. 123. 399 329. 331.

Yet in this case ye declaration will be good on Destination (ante 22) for that is sufficient, there being one sufficient one. Count. It is y absences of entire damages not present, ye Parti from having Judgment. 3 Bac 558. 1 Hot 271. Not any fault in ye pleading (ante 122) Count it has lately decided contra duas obiter.

140. Seve of several damages are adjured on the several counte. Parti may then release those adjured on the bad counte and take Judgment for ye other. 1 Co 150.
Note. When several damages in several defas
are ground for arresting damages, see 2 Bae. 8:
Were or a Release is necessary? Where the Judgment
is had, a "remise de novo" is awarded. 2 T. 206. 24vay. 989.

But as this entire damages are affered, yet if no
Evi was given on the bad count, y verdict
may be arrested by the Op above, from the
Judge: note, so as to apply y'good count only:
Doug. 362. 573. 57. and then an amend of
Judgment may be prevented. 1 L. 134.

In criminal prosecution, if one count is good,
and y other bad, and a general verdict for
Def. Judgment is not arrested. So y Co decide,
y punishment and will give Judgment to Def.
on the good count only: 2 Barr. 288. 2 Hard. 625

In Count, Judgment is arrested for many extrinsic
causes: i.e. no appearance in the pleadings or verdict,
and not appearing as originally in the Record.
but but upon the Record, under y motion in
dress of Judgment itself, ie corumplation in the
Barr. 18. 1: 3: 133. 141. 166 to asking y opinion of y3 persons.
finding when the case of a die - see
"Neu Smal,"

So of misbehaviour of Party to y Jury as liasoning
see 3 Bae. 201. 66 622. Co 160. L. 13 160.
So of one of ye Thurs. was interest in the
Suited, or so relate to y prevailing Party or
this Bail: as to loose a special challenge.
3 Lark 184. 270. 61. 1: 75. 279. 279.
That a Suror has before been an arbitrator in a cause, or party, or has given opinion in it, is a valid ground for arresting Judgment.

General Rule. Incompetency of a Suror, if it goes to his impartiality, will be a good cause for a precedent challenge, i.e., in Court, a ground for arresting Judgment.

But any incompetence on which raises no ground or presumption of Partiality, is not sufficient cause of arresting Judgment, Lord 184, 200. As want of freehold in a Suror, note ruled contrary in capital or misdemeanor. The same rule holds as in civil cases. (Semble)

And even this incompetence does go to his impartial of the Suror. Still, if a party, or whom it verdict is, knew by fact or reason, for making challenge, and omitted to do it, he is considered as having waived the objection. Exception, and cannot take advantage of it, by a motion in arrest of Judgment, 2 Lev 252. Kirby 166. Ruled contrary in a capital case in Court.肤司′′, 1810.

Hence, if one of a Surors has been a trial of a cause in a Ct. Below, a party or whom it verdict is, cannot arrest the Judgment, for he is presumed to have known the facts, since it appear in his Record. 2 Lev 232. Kirby 160.

When a previous opinion declared by a Suror upon a general or principle of Law involved in the cause, is no cause of arresting Judgment, or even of challenge. Kirby 435.

So if a previous opinion in the merits of a case, appears clearly, not to have influenced a verdict.
As a rumor having expressed an opinion several years before, but declining on an answer, yet he had forgotten it.

The Ct in motion ni arrest of Judgment, can never go into y Court on wh y verdict was found. Kirby 61. 162. 273. 2 Lev 264.

Said by Swift on an arrest of Judgment for misbehaviour of y Jury or Parties, a Repleader is awarded. 2 Swift 264. 1 Not Law. 1 Root 173.

There is only a "venire de novo."

In Eng, as in Cont, verdicts are set aside, and Judgment arrested, for certain causes: not appearing in the Pleadings, or verdict or not appearing originally on the Record. 3 Bae 288. 312. 2 Lev 280. Ct 642. Bn 31. As misbehaviour of the Jury, Jury, or parties.

But in Eng, y fact is entered on the "Pleadings" by a Judge, who takes y verdict at 1 Th- so as to become part of y Record, and the Judgment is arrested in Bank.

Difference between ye mode of proceeding and ours.

In the latter, ye Ct, init arrest, inquire into y facts, for our Ct alse set in Bank. To use Pleadings.

The same thing has been done in Eng. in two cases, upon Affidavit. 3 Bae 201. 1 Freeman 74. John 60.

But a new form is y usual remedy in such cases. 3 Bae 201. John 60.

In Cont, such extraneous facts are alleged in y motion and found by the Ct. in wh y motion is made. and the same Ct decides both upon y truth and sufficiency of y motion, and y case exhibits. So ye only difference in this proceeding,
between y Ing and Comt. practices, i. e. in Eng. 
yt y Judge at et P. finds y facts and parts yun on 
Record, as the foundation of y subsequent motion 
in Bankt. and that here, y motion is made before 
y Ct. in pch. the Issue was tried. and y facts 
are sworn to, on a subsequent hearing of y motion 
y same Ct. and being found. y Judgment is 
then arrested.

An arrest of Judgment for defects in y Pleadings 
are no costs were regularly allowed on either side. 
for the Party arresting Judgment might have 
assumed and prevented the absence of a trial. 
Sir 67. 1 Ch. Pl. 633. ; 2d. 52. 70. 37. Ebor. 82. 

So if y motion in arrest of Judgment is overruled, 
yarty moving, brings cost and prevails, 
y does not reserve y cost, below 1 Ch. Pl. 638. 3. 
y for y same reason.

This Rule does not apply to arrest of Judgment in 
Counts for extraneous causes. there is a second trial. 
or "a venire de novo" and regularly y whole 
cost will follow the final event of the Suit. 
2d. 52. 70. 37. 417.

In Counts, where an Issue in fact. is closed. 
y Ct. there can be according to forms foreseen. 
y motion in arrest of Judgment. For y Ct. judged 
of y Pleadings under the Issue, and on finding 
y Issue, immediately gave Judgment. 2d. 264. 
Now decided by the Ct. of Errors. yt exceptin 
y Pleadings cannot be taken under an 
Issue in fact. This closed to the Ct. That y 
Issue must first be found by itself, and 
afterwards there may be a motion in arrest
of Judgment, ante 24. leaving the issue and
deciding in my first instance on the Pleading's

In England, motion in arrest of Judgment are
made within 4, days. of a real Term—after

In Court, my motion is made on the verdict, being
accepted and must be reduced to writing, and
delivered to the adverse party, or lodged with y Clark
within 48. hours. exclusive. of Sundays.

Note Do it not 48. hours now. see 3 Day 28.
afterwards exclusive of the Sabbath, and always
before & end of the Term. Kirby 238. 1 Rost 372.
Form of motion in arrest. see. see 3 Bl. 240. 11
Reference to page. 55. 52. 96. 134. 187.

Finis

Bills Of Exceptions—

A Bill of Exceptions is a statement of facts (of and
some interlocutory Judgment. decision or direction
in point of Law. founded upon ym) annexed
to the Record. for y purpose of showing (laying)
a foundation for a Mit of Error. 3 Bl. 372. 1 Bac.
320. 4 Bull 135. 9 Co 131. 18

This statement consists of fact, not originally
appearing on the Record: but. wh are y
foundation of some Interlocutory Judgment, and
wh. y party vs whom it operates, suppose to be
erroneous. and is called a Bill of Exceptions
because it contains Exceptions to the Interlocutory
Judgment—
This mode of pleading, or a plea, was unknown at law. It was introduced into Eng. by C of Exon. 2 & 3. 16. 1. C. 31. 1 of which it is of a creature. 2 Inst. 420. 3 Co. 13. 1. 32. 324. Bull. 310. 1 Bae. 320. 3 Boll. 372. 40 W. 372.

In Count no pleading, but the et have adopted the Eng. It is one of those old usages common as forming a part of the Chancery law.

This it is also probably adopted either by the C of Exon. or by some legislative act in most of the States in the U.

The object of a Bill of exceptions being to found a want of error, it follows not it cannot be filed or taken, or the C of Exon. from 16 a want of error being not in the C of Exon. matter of pleading in Eng. or C. of Exon. Probate. or C. of common pleas in Court. Bull. 310. 1 Bae. 320. Post. 16.

This Bill may be taken in all C of Exon. where judgments are liable to be reviwsed by want of error as in Eng. in Common Pleas, Kings Bench, Exchequer, sc. but not in C of Exon. it being a C after Exon.

And it has been doubted by some, in it might be filed in the Kings Bench in Exon. Eng. The proceedings being "come to issue." But I conceive according to bonâ fide, it may be filed as well as in the C of Exon. as in any Court. Bull. 320. 3 Bae. 147. 287. 2 Boll. 310. 316.

In the latter, it may be taken from all those C of Exon. from now Brm. Kirby. 288. 2 John. 16.

In Count. They may be taken in Suffolk County. or Dorset C of Exon. Question as to the Dorset C of Exon. Why? Kirby 288. no reason for it. it is a C of Exon.
Record. Perusing an offer to demur to an Answer made, it is an Error. for such a Bill of Exception may be filed. 1 Bae 326. No. 136. 3 B. 13. 6.

A Bill of Exception to the Purg by the Judge in point of Law. viz. Eng is a good foundation for the Bills. The much more commonly remedied by a motion for a "new Trial" both here and in Eng in modern practice. 1 B. et P. 354. 2 H. Bl. 383. 2 3-12. 1.

So if the objection to the Purg be the Judge in point of Law, it is also a ground for a new Trial, and as the admission or rejection is a point of Law, it may be by order of a Bill of Exceptions or of a new Trial. But y more convenient and more usual mode now is. to move for a "new Trial." 1 Bae 326. 2 B. et P. 383. 2 H. Bl. 354. 2 3-12. 1. Kirby 188. Bull. 316.

Point of y Judge admit y party be, Bill is not allowed. because he did not direct y Jury. 7. How to find upon it, 7. even if y Bill of it were a Record, and it always concludes and he did not tell y Jury, yet it was so, or took no notice of it. 1 Bae 326. Bull. 316. Page. 400. if it is mere neglect, and not Error.

So if y Jury be refused, when in y Opinion of y Party, it ought to be ordered. But in this case advantage is usually taken of the Refusal, by entering y Prayer of Jury, in the Record, as a Form of Pleas. "Pleadings is 100" or ordered, when it ought to be amended. A Bill of Exception may be filed. The latter clause of y Rule appears incorrect, as nz Pleas. "Pleadings is 100."
For this also is a point of law, and if correct counsel may be objected to—

But on an interlocutory Judgment, relating to mere practice, ye Bill of Exceptions cannot be taken
in the continuance for a cause, compelling a party to bring
appeal or refusing to enter security for costs. &c.

So when the decision of any kind is discretionary with the Co. as in y case last but, Granting new trials (Plunkett 41. 1837. Rook 260. 1838 Bae 329.
Imposing Terms of granting ym. &e. of there
Error is not predicable, and so a Bill of Exceptions is disposed of

For in these cases, there is no mistake of law, involved, the violation of which is essential to a ground of Error. They are therefore matters altogether
discretionary with the Court.

Suppose a new Trial granted in a case, in such
or by a Co. where it is not by law, grantable.
In any case or under any circumstances, will not
Error lie? As By Justice of the Peace. Post 27. 47.
If Co. thinks it not and therefore a Bill of
Exception, will lie.

And as a General Rule, a Bill of Exceptions cannot
be allowed to any decision of a Co. yet it is entirely
discretionary: for of such Judgment, Error is not
predicable. Hence a Bill does not lie, for not
granting a new Trial, for this is an application
to the discretion of the Court, Of a new Trial.
However shall be granted in a case in such or
by a Co., by no. from y very nature of it, is not
grantible.

Even notwithstanding of such a decision as if a new trial shall be granted in a criminal case, after def. acquitted, or if a Justice of y Peace shall grant a new trial. Thus the determination of yt Co. must be entirely discretionary, & ch. such yt y Rule of Law, not justify in determining either way.

In prosecution for Misdemeanors, as y def. if acquitted, cannot be tried again, there and seem to be no use in the prosecution filing a Bill of Exception. But as the def. if convicted, may be entitled to another Trial in many cases, may he not in such case, file his Bill of Exception.

Post 78.

Bills of Exception are not allowed in prosecution for Reason 1 felony. For The Judges, it is said, are Council for y Prisoner, and must see yt Justice is done. Yet (in Extraordinary reason, since yt Bill is always founded on the Error of y Ct. or y supposed Error.

A Second reason is, that the Ct. laws from its beginning 1 beg benignity towards criminals, will not allow a man to be tried twice for y same offense. Hence, false Reason. So of Preston: authorizing on Bill of Exception, don't extend to such case.

and of course, give the Ct. no authority to grant a new Trial. Note there cannot be a second Trial and Men in y reason why they were omitted in the Ct. it seems. 1 St 85. 1 Brev 63.

Ray 486. Reeling 10. 1 Brev 320, Hrb 324. 1 Wr 721

1 Mo Rolly 325.

It is now the practice of our Ct. to grant new Trials in favour of the prisoners and of
this, be law. I can see no reason why a Bill of Exception might not be filed in his favour. That it cannot be filed by him, I shall observe more particularly on the subject of new trials.

Whether allowed in Indictment for offender not capita


It has already been allowed in Eng, in Indictment for Treachery — 4 B. 85. 1 Ser. 55.

From this last rule, I conclude, it is allowed, but not as the Prosecutor in favour of the Prosecutor; for if acquitted, he cannot be tried again. It lies on favour of the Prosecut.

Regularly, when the Bill of Exception is filed, the Court will not suffer the Party filing it, to make any exception, or ground of a motion in arrest of judgment, i.e. will not suffer any Party to move in arrest of judgment on the point, on which the Bill was allowed, having given their decided, and Party's remedy in form a Bill of Error. The Rule is sometimes dispensed with in 3 B. A. Bulus 3167. 1 B. 327. 1 Bent 366. 2 Lev 237.

Note. By a motion in arrest of judgment on the same point, must be meant, a motion founded on the Bill of Exception, i.e. on the point both on the Record by the Bill.
Confin'd to Special Points

The object of the bill being to draw before a higher Ct. a Judgment as some collateral point - it is regularly allowed not to embrace y general merits of y cause. 18. to draw y whole controversy into a future examination.

A Bill. Therefore made out after Judgment, and containing a general statement of y facts and arguments, vi unadmissible. More sometimes, y exception, is tried - On Count. if the Ct below allow it.


g Ct above will abate y point of Prior. Kirby 330 456 77. Condts 161 1 838 R. 308. Bull 168 3 98 2 16 27. Do not y parties oppose on motion to quash it? 1 Wrigg Tr. 466.

The bill is authenticated in Eng. by the signature of the Judge, or by one Judge, who appears in y Ct above, and acknowledges, he sealed-... Certified.

1 Bae 330 5 18 et P. 32. Condts. 161 1 R. Kirby 466.

On Count. it becomes parcel of y Record.

in the Ct below and is exemplified with y rest of the Record.

On this state it i in y common practice, to state not only the Interlocutory Judgment and the staple facts, but also y grounds of y Exception, and all were taken at y trial-

But in Eng. it need only contain a statement of the Interlocutory Judgment, or deflection of y facts on which it is founded. If y facts are truly stated, y Judges are bound to certify 18. to sign it. Otherwise not. and if they refuse to sign a Writ of Mandamus issued by the Ct of Chancery 22. to 22

2 Lev 237. Show in e. 116. where does this unit lie in Count?*

It was formerly certified by the Chief Justice a presiding Justice. Now there is usually a motion made for a new trial by a Rule of the Sup. Ct. The Authority of not is questionable. Where had they y power? Do think, not.

When to be Tendered.

In Eng. the Bill itself, or at least y substance of it, reduced to writing, must be tendered at y Trial. Bull 319. Talk 285. Holt 301.

In Cont. a party must give notice of his intention to file a Bill. 1 Pult 596. or move to file a Bill, when his J cause of Exception admits, and the Bill must be filed within 24 hours after y verdict, after it is recorded, in y cause of Trial by Jury, and within y same time after Judgment, when tried by this Ct. (excluding sundays), and always before y return of the Ct. 2 Lev 278. 1 Pult 599 70

A Bill of Exception is not itself a Supersedeas of the Judgment below, but merely enables y party to obtain a Supersedeas by allowance of a writ of Error. 1 Baz 327. 12 Mod 639.

In Cont. in form of a Bill of Exception, see Bull 317.

In Cont. y form is: County Bill of Exception A vs B. Action of De. Plea &c. In the trial of said cause, Pltf De offered in Pltf & De. Def. object to De. (Stating y grounds.) Ct decided.
Mite of Errors.

A unit of Error is a commission to y Image of a Sub Ct to examine a Record or Act a Judgment was given in a Ct below, to affirm or reverse it according to Law. 2 Bae. 187, 3 Bae 407. Penkhe. 18, 2 Brot 40. G. Elv. 292.

In Eng. The unit of Error does not summon the Def in Error to appear. Sc. it not being an original unit, he is summoned by a "For the Audit and return of." 1 Bae. 201. 3 Bae. 406.

Scene in Count 2 Swift 176.

Here is an original unit summoning def to appear to hear the original Record and y error assigned.

When founded in a mistake in the legal terms of the Ct below, it is not for the reversal of such Judgment only, as are rendered on some point of Law, appearing on the face of y Record.

But not to rectify an Error in the determination of facts, or weighing of Evi. 2 Bae 182, 3 Com 286, 1 Brot 74, C Ero. C. 233. Brooke 142. Dyor. 30, 1 Dey. 233. 3 Bae. 407. Elv. 496. 3 Bae. 407. 1 Eley. 742.

By the term "Mite of Error" more, it regularly meant one of y above description, 16. one founded in an Error in Law, and adverse on the face of y proceedings or Record.
There is another species of a writ of error, founded on matter of fact. "Debors legg Record. This lies to such Act of Erron only, as can try questions of fact. But not to others, as to Act of Parliament in Eng. but not in y Cocheuer Chamber, for yt Co has no Jury. Evid. 5.

1 146 2 Lev 38 2 Bae 187 225 6 Co 152 1 Chub 788 2 So 408.

Or such a writ may be brot in the Co, in Wh the original Judgment was rendered, and it is called a writ of "Coram Nobis" and Coram nobii it is called.

It is not strictly brot for an Erron of y Co, but consists of an Erron in some extrinsic fact. As Judgment to a Tyme Court alone, y Co not knowing of the coverture. The Baron and Tyme may join in the writ of Erron to reverse the Judgment, either before y Co. yt renders it, or a higher one.
So also, if no an infant, without his having appeared by Guardian as "Prochein Amy" Yelv 58. 2 Cen. 10. 
Hiley 116. Co. 3 & 5. Cart. 112. 179. 3 Bae. 137. Silk. 
402. 2 Rule 253. 3 Com. 177. 4 Brev. 207. 5 Com. 285. 

But a Ct on information will abate a Guardian. 
"ad Litim" Hiley 40. or 401.

So if a def due "pendente lite" and Judgment is 
rendered, y Ct not knowing of his death. 3 Bae 173. 

If def return yt y original Partie is alive, he may 
come into Ct and plead. "in nulla est corr" 
Plater. "death of Partie." Cart. 118. So also, if a 
Deposit, who gave Judgment, was interested in 
y cause, it is an Estimatio gound of Prov. 3 Com. 
177. 1592 or 1639.

So if one sues and recovers as Sr. of BE, if 
being alive, "Temple," a writ of corr will lie 
to reverse y Judgment, either before a higher Ct 
or "coram volo" 3 PA 129. Compare with 5 Com. 177. 
696. 1 Rule 144 Petr 18. The same, if sued as such. 
One no doubt, Judgment may be reversed in this 
case in both ways.

A writ of corrabile not lie on Judgment of a 
Ct. not of Record, for it is founded on the Record, 
as County Ct in Eng. 3 Bae 134. Co. Litt 233. 6. 
A Ct of Record decides "vacuum nulli esse et cor-
rectudine," Rule 291. 1510. 744.

Nor on a decree in sentence of Cby in Eng. for 
ye is not a Ct of Record. Remedy in Eng. is 
by appeal to the "house of Lords."
But in a Judgment given in y petty bay office, it doe lie, wit B.A. for ye Ce know, according to y C Law, and y doe lie—i a Ct of Record  
1 Mod. 376. 3 &c. 489. 2 Bac. 184. 1 Role. 744. Syr. 310.

It lies in a Judgment of non Suit and also by default.  
Syr. 32. a. 108. 1 Role. 744. 1 H. &c. 482. In Cont.  
error may be lie in a decree in Chy.

There are 2 species of error, or wth ye writ lies.  
In matter of Law apparent on the face of y record.  
and matter of fact, not Matter apparent.

Still however, avowing error in Law and in fact together, i e. 2 Bac. 217. 8. 3 Cor. 300. Pl. 9. B. 187.  
1 Role. 147. 93. Lew. 108. Doy. 231. 1 Bent. 282. for  
they require different Truth, fact by the Jury,  
Law by the Ct. 2 Bac. 217. 8. Role. 38. Doy. 38.

But y matter of Law and fact are so  
blended in the assignment. of Error, yet if def  
i Error pleads. in nuleve est evitam in record.  
for tose y advantage of y double assignment  
and waive all excuting. For a Plea of ye line  
generally confess y Error in fact. and those i +  
some room for one Small, and perhaps mot yt.  
for y confess y may conclude y necessity of it.

If def and takes advantage of ye double assignment  
he must demur. 2 Bac. 218. 67. Cor. 388. 9. 1 Bent. 282.  
Lew. 8. 6 Mod. 183. 206. 1 Role. 264.

But it ye said, a General demur is not reach y defect. And it ye called duplicity, and y  
reason i, yt duplicity in a limit of Error, ye not  
and within ye 90. Chir. 107 which requires General  
Demur for duplicity. 1 Bac. 38. 6.  
2 Do. 218. Cor. 388. 9. (The yt dont extend to 20)
Of a nonsensical party that assign injuries and
souffrance, both at once, it will be duplicity, for
either of them is insufficient to arrest Judgment,
and teach more that be a distinct cause, as
these always must be for every error in fact.

So assigning several errors in fact, amounting to
duplicity, 5 & 30. If, as you are a thousand, 1.
Diligent, when several errors in Law are assigned,
duplicity at large to more matters of Law
for more can be into one Issue, as it reaches the
whole Record. CON PL. 115.

But for every error in fact assigned, there must
be a distinct Issue, 5 CON 30. PL. 150. 16. for the
for the former requires several distinct answer,
and Issues. Yet latter answer the whole, "in mullo
est erratum" answers the whole.

Of an Error in fact be well assigned, def
in Err. cannot prevail, ni he traverse it.
A Plea, "in mullo erratum" confesses it.
That PL. in Error pleads. This was an Infant.
Plea, "in mullo est erratum" well confess it.+
Hither, if not well assigned, then such a Plea
does not confess it, as if & assign not.
Record. Part 18, or allege, a fact not assignable
in Error. (July 17, Dec. 19, May 19, 23, 20, Dec. 24, 18.) 192. 913. 249. 249
PL. 150, PL. 151.

Decided by the Sup Ct. of Error. yo assigning
much date, Error in Law. Sufficient Err. in fact,
not assignable. Does not vitiate a suit. This
was in Special Demurrer. Early 27. 30. Fact consid
as Error in suit.

In another case on Plea in Abatement, founded
on the bending of Error in Law and in fact.
Sup Ct ordered the assignment of the Error in
in fact to be struck out and reversed for y others 2 Lev 229 Port 262. (Litur units of Err are not amendable, an assignment of Err or fact 1st contradicts y Record. vii not good 2 Bac 218 2. 1 Hold 759. 1st Mat 3 Be 2: did not sit on the day of y date of the Judgment. That Pllf in Err against appeas when his appeasance is entered on the Record. Bo C 12. Cro K 308. Hillby 174. 1st 204. 1 Port 762. Bo E 469. Dy Dys 69. Ray 301. 5 Com. 107. Sale 262.

So an avowment ye y Impr. acid before the Judgment is inadmissible because it contradicts y Record and therefore y Plea in nullo est corruptum does not confuse it.

General Rule yd a def in an action cannot assign for error. What he might have pleaded in Abatement in the original action, as he so pleaded it & his plea has been overruled.
He is deemed to have waived y advantage 8 R 135 9 H 160 267 283 Carth 124. Pleas in Abatement 16.

When error in fact is assigned y proper conclusion of the Assignment is with an assignment hee bar an 8 R 12. Carth 367 9 Com 303 1st Mat 45 is declared 8 R 38 2 Bac 218. Cornelius according to there shd be to y Country. But Bac seems to be an absurdity in Mi, from Bac some may be thus formed it has bar an est non facere.

Thus if Impravity is assigned Pllf cannot make ye conclusion no Error is formed by it for no one has said yl he avowd an Imprav. Error new matter is alleged as in The Case in 2 Special Pleading in Bac and shd be considered.
in ye same way, with a verification. The case in y eels cannot be long.

By an Ex. Ex., a Special Act of Bankruptcy, concludes to y country: but this is a solitary instance.

General Rule, that for Error in fact: Yet and a wind of Error "coram nobis" liz. 3 Com 283, 1 Role 743, as in the case of a Queene Court and Infants: Constitution. 2 Bae 33. 2 Bae 26. 8 Talk 200. 3 Com 177.

So if me sue and recover a summo ut eit or adm. of y. he being alive: 1 Bent 387. Com 7. 14. into 18. 1 Role 741. 2 Lev. or Nov. 38.

And that it may be carried to a higher Ct; a "coram nobis" is the most usual way in these cases. But this Rule cannot hold, where it renders the erroneous Judgment cannot try an issue in fact, as the Ecclesiase Chamber: H. a. e.

But generally if the error is in Law, y "coram nobis" does not lie, since it was not a question to the very Judges who committed y alleged error. 2 Bae 21. 5 Com 206. 1 1de 203. Contra 1 Lev. 149. Role 743.

There is an exception when the error is occasioned by a default of the Clerk, if y Ct, or Thp. or other officer of ye Ct. Role 746. 1 1de 21. 21.

For in these case the error is not by the Ct. and appears on the Record. Here Error "coram nobis" lies for error in Law, since in these case, y error does not proceed from any fault or mistake of the Ct. If it were the fault of the Ct, error "coram nobis" not lie. 5 Com 206. 1 Role 746 4 Mod 186.
349.

So if y Err is in the process, err "Coram vobis" let for this is not an Err in the Judgment of y Et. The original Judgment is given in the Proceedings of y Err or process from no part. If therefore y Judgment is vitiated by a defect in the Process it is not a mistake at the Disposal of y Et. 2 Boc 210. 2 Em. 288. 2 Boc 270. 9 Teh 181. 1 Boc 746. Co 6.

Process what? s 33. 270.

The Rule is a unit of Err, this but on an Interlocutory Judgment. if not right, the Final Judgment, for y Party might prevail after an Interlocutory Judgment, be hini and thus overtake its necessity. 1 Boc 760.

But in Eng. semble, settled, y the Seat or date may be before Final Judgment. this return* day must be afterwards. 1 Sut 104. 406. 1 H & 3 Boc 190. 1 Bent 250. 3 Sut 508. Bocch 133. * 18 return* day of y unit of Err, that 180. 3 Em. 741. 2 Boc 281. 257.

Thus final Judgment may be awarded and a unit but on an Interlocutory Judgment, either in Eng. or Conn. semble and I can & see no harm can result from this practice, by which useless and technical objections are removed. In Conn the old Rule prevails, and then Et. have decided ye an agreement of y Party to dispense with Final Judgment, that not subserve the Rule. Root 181. 281.

By Unit Parties

It is a general Rule, yt where a Judgment is Unit. or Several, all must join in a unit of Err. 3 Em 507. 1 Boc 705. 3 Em 200. 2 Boc 783. Capi 7. 6.
And if one refuse, there must be a summons and
Severance for an Entire Judgment must be reversed
in Toto and not at all. It will be vexation and
inconvenience, if each side have a Separate Suit.

But in Cont. y Ind慢t. 
Co. 
Co. of Prop. have
reversed a Judgment, as to some of y def. and
affirmed it as to others. Kirby 114. As when there
was a 
Co. Judgment to Several, some of whom
were adults and some adults. Reversal of
y Infants only, as they pleaded by atty D G.
thinks it a Strange Rule.

But the C Law is otherwise. 2 Bae 133. 335.
1 Role 776. Co. 5. 283. Is not the C Law Rule.
Correct in principle? If y Infants had not
been parties, y damages might have been less.

But even by the Eng Law, if y parts of a Judgment,
are separate, it may be reversed in Part, not
as to y Parties, but in the Subject Matter.
Arts 138. 202. 4 Role 1141. Kirby 116. As when
costs and damages were given, when damages
only had been given, it may be reversed as to y
costs, and affirmed as to the damages. Cart 76.

So according to Cont. doubts, if y Judgment is
separable. As it seems as to part of y cost. As
where there shall be no more costs, in damages.
So if Judgment, is not actually separable in the parts, by any Rule, it may be
severed and reversed as to parts, and affirmed
as to the Rest. Case in Kirby 164. Contrary
to immediate see 1 Role 138.

That y C Law Rule is Leenu. 2 Bae 133. 237. 1 Role 767.
General Rule. No person can bring a suit of Damages to any party or parties to the first Judgment, 2 Bae 185; 8 Com 200, 1 Boul 748 50 as heir, 2 Bae 904. Grantor and Grantee. Particular Tenant and Remainder man. 2 Bae 105.

The same Rule holds as defn in Err. It is precisely reversed, and y party [who brings the suit, must be a Party in relation to the subject matter as the party where the subject matter was an Estate of Inheritance, 1 Len 201. The suit where it is personal - as debt or damage.

General Rule. No person has a party to an original Judgment can reverse it, no y Error was to his disadvantage. 2 Bae 105, 2 Bae 280. 1 Lbl 70. 2 Co 39. 3 Do 50.

Therefore if one of several defns. obtain Judgment, he cannot join in a suit of Err. to reverse y Judgment as y other. 2 Bae 105. For 802.

1 Len 210. 1 Ib 39. Story 30. They alone must bring it. Comp 425. for he dos. obtained all y law allows him. 10. his costs.

Exceptions. But a prevailing party may sometimes bring Err. as where the Err is the fault of y Ct and where it alters y manner of y Judgment - (As omitting to agree the party omit go) As omitting to amend y Party, so where the Defendant as where he ought to be amended. This is allowed for y sake of introducing Regularity into y Judgment. Harwood, 1 Bc 371 7 Wto 16 780.

So if in a verdict giving damages and costs,
On these cases the judgment is in itself defective. 18. incomplete, and in these cases, the prevailing Party may recover by a writ of Error. But it may be asked. Why a Party, who is not injured, can bring a writ to reverse a judgment? The reason is, he Judgment is incomplete, and another Party concludes by it. (It is in fact, no Judgment.)

So, if in a conviction of a defect, the whole damage and costs are adjudged to one only, the others may assign it over. For Error. Gilb. 107 n. Hard. 54. v. Mod. 150, 152.

So a Puy may assign for Error, by want of premeditation in y. & or. with the has lost y. action. 2 Exon. 126.

By a Super Sedeas, i mean a suspension of the right of the Party below to take out Execution, or to proceed under it, if issued. In Eng. it seems to have been formerly held, yt much being a writ of Error to an adverse Party, &c. so a Super Sedead, till 4 days, being 3 time presented, for obtaining from the Clerk, in Error, an allowance of it. Roll 482. Had extended. 3 Bae. 210. Barr. 113. 367. 1 Ser. 380. 1 B et P. 173. 2 Fiz. 187. 7 West. 205.

But, 3 allowance of a writ of Error is a Super Sedeas, only for 4 days after Judgment signed, yt being 3 time allowed, for putting in Bail in Error.

If Bail is then put in, y. Sedeas is then continued, otherwise not. 1 Ser. 380. n. and Ex. may be taken into and proceeded under it.
Bail in Br. is intended as Security for y def. in Br. for satisfaction of an original Judgment, and for the event of it being confirmed.

There is no Super Sedear until Bail is entered, for were it not so, y Execution might be a Change in circumstances, become of no use to y Def. in Brm.

On Brm. the recognizance of y Bail is with 2 Sureties in double y amount of y Judgment.

1 Brm 1723. By 2 Tr 1st and 2nd. and 173 2nd and 1 2nd 212.

This bond is meant to secure y Def in Brm. to bear damages, costs, etc. of the judgment. Se.

To all wh. the Bondsmen become liable. 1 Brm. 173. The rest of this note is in code, in good. No Super Sedear with this bond. Quere 2 Day 270.

On Count of a sufficient recognizance with Surety is taken, y part of Brm is a Super Sedear of the Ex. 2d. from the time of y Service, wherein not. and it must a Super Sedear till removed.

2 Day 370.

Ex. 2d. and adn. 2d. when def in Brm. in a Judgment "to bear. (ill. testator) may have a Jackson Voles in a writ of Brm. witht. Bail in England. 4 Brm 1723. Ex. 2d. 3rd. 1st writin y. It Brm. 1d. because a writ in that case. but by one of y parties, is not writin y. It. 2d requires Bail, in order to make the writ. a Super Sedear.

On Count. Ex. 2d. and adn. 2d. must have a bond like other. 2d. in Brm.

On Count. y part of Brm. becomes a Super Sedear of y Def. in y officer's hands, by a copy being delivered to him.
Sine of Pleading in Abatement.

There was formerly no Rule settled in Court as to the time of pleading in Abatement of Miti of Errors.

Admitted without time allowed for other, Read Kirby 52. 26. Nov. 1816. The Rule is established in conformity to the Rule of 26th Oct. 18. by a second opening of 26th Oct. or the second day of 26th Term.

If one party of Error abates, or is discontinued by the default of Party in Error a 2d one rises in 90 days from date. And if Party in Error is nonsuited, he shall not have a 2d Tuit of Error. Le Ray 47. Comb 10. 363. Talk 263.

1 Com. 344. (*not so here)

A lite of it abates by act of God, or death of Party in Error, incident or death of Chief Justice in Eng. 1 Robb 655. 588. Gordo 208. More 701. 1 Com. 344. (*not so here)

Miti of Error not amendable, except to conform the Acts to the Act of Geo. 5. 15. (not at all amendable, by C. Law.) For amendators are allowed to conform judgments and not destroy them. 5 Robb 16. 63. Talk 43. Carter 320. Com. Amend. 2. C. 4. 2 Bae. 202. 3.

In Eng. a suit of Error does not abate by death of Party in Error, but a Suo Fato heis in his Wills. See 1 Robb 655. 2 Bae 202. 9. 1 Kent 34. 56. Talk 264. Gordo 208. Carter 236.


This Rule must arise from the construction of 4 and 5th Anne.
Not a matter of Right

In Eng. and in Court, a writ of Error is not a matter of right in all cases. For in Eng. it is to be allowed by the Act of Error, in all cases, before it is operative. 1 Rolle 492. 1 Bae 210. Talk 264, 321. 4 Bae 681. and in Court, y Judge applying to, to sign it is to examine y Record and y
the thing. Here is no probable ground of Error will not sign it.

Does not lie in Discretionary Proceedings—

Error is not irreducible in general of proceedings, as are entirely discretionary, as of y proceedings in a petition for a new trial.

Suppose a new Trial granted on a case, in which from its nature, it do not be granted— at Common Law it is to be set off or at Common Law for itself. Error not to Error, until 5.6. Pint 47. as by a Court not having power, to grant one, as by the Justice of y peace. Error with its guite will be irreducible.

Daily 41.

Does not suspend debt on Judgment.

Debt on Judgment may be sustained notwithstanding a writ of Error, on the Judgment, for the y debt is suspended or suspended, y debt a duty remand since an erroneous Judgment binds, the same by unit of Error. 1 Tr. 435. 3 Mc. 340. 1 Rolle 742. C 387.
2 Bae 211. 2 Rolle 490. Bayn 105. 114. 3 144.
a 6. 1 Shewer 133. Suppose there is a Recovery, and the first Judgment revered? This overrules y last Judgment also.
Proceedings in debt on Judgment stayed

(Debt on Judgment may be sustained) note

But in some cases y Ct will stay y proceedings in debt on Judgment til a decree is had on y writ of Error. 2 P.C. 748. It is a matter of discretion with y Ct. 2 Cris. 479.

But if a 3rd person obliges himself to pay what shall be recovered in a suit ex a. B. he is not enabled pending the Error to A H B. to 212.

As if a recovery is had ex a. B. and a writ of Error by him, such person may plead y pending of a writ of Error in a suit ex himself, on the obligation for pending y suit of Error y suit ex a. B.

is not determined.

Not a supersedeas of an Exn executed.

When y Exn is completely executed, as by taking debt's body and embarking him, y suit of Error is no supersideas. 4 Bae. 170. 1 A B 207. So if y property has been taken and sold, 11 Bent 384 Bae. 584.

But if goods are taken and sold, 11 Bent 384 Bae. 584, but remain in the Shiff's hand, when y suit issue according to 2 Role 421, 2 Bae 210 11. 370 4 Bae 584. It does. (C P says nothing)

But this seems not to be law. for execution when begun must be completed. 11 decided in Eng. 4 Bae 574. 11 Bent 565 12 Calk. 47 523. Law Ray. 183. 8 C 587. Also in Cant. 2 day 879. 3 Bro. 563 375. it is an indurate act.
Intire on affirmance.

In a Judgment of affirmance, y practice is to allow interest on the original Judgment, in Eng. and Court. So on a Bond. 1 B. & C. 26. But in Eng. it is allowed to the Bail, in Eng. 2 Hil. 37. 78. Doug. 723. see last p. in this Title exemplify &c.

Bails Disability

According to Court practice, an original Judgment is as to y Bail, to original Bail, as a Bond, etc.

If y original Bail, if not subjected by the 1st Judgm. of not liable on it Reversal. 2 H. & C. 105. 6.

Note s/f. This is by B.

Vees in Eng. 1 B. & C. 212. 3 B. & C. 114. 115. 750.

General Rule. One cannot assign for Err. on which the right may have been based in Affirmance—Carte 114.

S. 3 C. 105. 2 & 3 Hil. 234. 238. For Exception to ye Rule see Pleadings. Adjudications.

Emitting to assign Error.

If Ref in Err. does not assign Err. Judgment is not affirmed in Err. because there is no proceeding in it. But y first Judgment remains good. Def in Err. does not recover therefore costs on the writ but must resort to the Bond, 2 H. & C. 216. 114. 115. 750.

Note 32. Errors are returned after the return of a "Rei Soc" ad audieniam &c.

If y Ref in Err is remitted after assigning Err. there is no Judgment of affirmance or Reversal, but merely for def in Err to recover his costs.

A Reversal of a Judgment in some cases overcomes
y proceedings on y Issue on y original Judgment. As if goods are taken on the Issue and kept by y Officer, or if goods or lands are delivered to y creditor, at a valuation, and Judgment is afterward reversed. y Property is restored to y original def m i Edd. 1b. Pitt i Com. 2 Bae 234. 370. 3 Role 779. 3 Com 177. Cro J. 246. Yell 178. 3 6. 143.

The reversal by destroying y Judgment, destroys y title acquired under it.

In others, it don't. The Rule laid down by Co. i. y collateral things executed, are not affected by a Reversal. Collateral things Executed are.

& Co 142. a. and b.

Thus if lands or goods have been taken by the Chiff. and kept by him. or delivered to y creditor on administration: y property is restored by Reversal of y Judgment. for y very ground of y creditor, title is destroyed. The collateral thing is Executed. 1 Role 779. 2 Bae 231. 370. Cro J. 246. Yell 142.

But if y property is sold by the Chiff. on the original Issue to a stranger, he will hold it notwithstanding y Reversal of the Judgment. (1c. where y Chiff. is required by Law to sell.) for y Law will not vacate an act authorized and enjoined by itself.

If y property be lands? Rule contra m Com. led Queere. 2 Bae 251. 3 Yell 186. 8 C. 143.
Co C 276. Mode 573. Cro J. 246. 3 Leon 87
Here however, y party may have his remedy, in damages, to y amount for wh y property was sold. & Co 243. a. Cro J. 246.
So if one taken in Execution on the original Judgment, escapes and before Judgment recovered from the Shiff fore escape, the original Judgment is reversed. The action for escape is gone by the Reversal of the Judgment, for "null sell record" may be pleaded to it by the Shiff. Sussex if Judgment and Case have been determined as the Shiff in the action for escape, before the original Judgment was reversed, for the Judgment so far as the Shiff, and remain to the Shiff notwithstanding a good of error and the Reversal of the 1st Judgment.

8 Co. 142. 1 Summ. 38. For here the collateral thing is executed (c) the action so the Shiff is ended and finished. In this case "null sell record" do not be pleaded to the 1st Judgment, y reverse being subsequent to the Recovery so the Shiff.

But in ye last case, ye Shiff might be relieved by a writ of "andet alia boni lata" 6 Cr. 646.

2 Hob. 223. 2.

But suppose property taken and delivered, according to Law, at an abstractent into y hands of y Party, into y hands of y Party, in whose favour y covenant Judgment was and he sells it, after wh y Judgment is reversed, is y property restored to y Shiff or in err?

8 Co. 143. 6. 6 Cr. 278. 33 Eliz. 1. 2 Black 187 8.

Because it must be. The Purchaser must look to his grantor's title and abide by it, for he has no means of knowing what yt title is, and his remedy must be on the Grantor Letter-Covenant, or warranty of title, (express or implicit) of any of note and no fraud practiced on him in y sale, he must bear the loss. (Bran. 1 Widd. 1 Ch. 153)

And if a Shiff had sold property, even to a Stranger, when he is not bound by Law to sell it, it is restored on Reversal. 2 Bac. 292. In case
of y goods of an outlaw taken on a "Capias
ut Legatum" when the Pltf is not requird to sell,
but to keep ym for the King.
These y calls cредes, noitten, it not being warranted
by Law. 1 Bole 795. 5 Co. 23. Ex 2 229. 3 Bae 175.

To of Lim as to extent of Cmv barred in Eng-
within 20 yrs from y entering Judgmt on Record.
2 Bae 157. 3 Crn 132. To 837. To 10 11. Mm 3-
in the United Genter 10. yrs. by The Land of Angers.
On Comnt. 5 yrs.

Costs and Damages

When Judgmt is for Def. wi Cmv. he recovers his
Cost on Suit in Cmv. If for Pltf wi Cmv. no cost
are taxed on the Suit in Cmv. for costs are
considered as Penal. But if in this case,
y Judgmt wi Cmv. brings an End to y controversy
(as it will generally, if a Def by Law be Pltf
wi Cmv. and prevails) he recovers costs on the original
Suit 16 costs under y name of damages incurred
in the Ct below.

If y Judgmt in Cmv. is for y Pltf in Cmv. 15.
If Judgmt for Reversal does not put a period
to y controversy, as it will generally, if a Pltf
Def below in Pltf in Cmv. and prevails, y original
cause may be entered for a new Trial, reversing
the original Judgmt. or remanded to y Ct below
for yt purpose, as the case may be. To 157.

In yt Ct above when yt can by an Action wi fact-

And if he finally prevails, he will wi Ct. recover
all his costs, wi on a Suit in Cmv. If he don't
proceed to further Trial by entry. 80 and he is not
entitled to costs. 1 Crn 12 150. 150.
34. If P 77 in Eq. has heard any Thing on the erroneous Judgment, he may recover yt sum as damage, on Reversal, together with Interest. If nothing has been heard, no damages are recovery by him: ni for costs below.

But on Reversal, P 77 in Eq. recovers as damage, yt costs wh he ought to have recovered below, ni he has further, Small, or as now decided, he has a right to bounce ye Suit further 1 Com R 187.

If he has, or if y controversy is not ended, y whole of his costs must await final Judgment. If he has a right to prosecute further, and does not, he loses all his costs and recovers only, what he has been compelled to pay on the erroneous Judgment, 1 Com R 187.

On common cases, allowance of Interest on y original Judgment, is in Judgment of damages discretionary, with y Eq. 1 Eq. 4 & 1 18. 183 et P. 210. Fo ni Comt.

Do is not however allowed in Eq. ni debt, in recognizance 124 Bait in Eq. 3 Eq. 19 78. Doug. 723.

Hence, y reason to be, yt y Bait is not within y Eq. Do is however, y rule of practice to allow it in all cases.

If original P 77 recovers a Judgment below, wh sees by himself, ni a case where he has a right to prosecute further, does not, he loses all his costs, for he not becoming his Claim, is Eq, yt it is a weak one. Thus the Suit declares is allowed insufficient on recidiv. Remover, and he brings a suit of Eq and recover it, if now he don't proceed in the new action, he loses his costs, if he does, yt whole costs follows y final determination.
Every State has its own Rules, as to costs.

Upon a Judgment of assumpsit in Errm. a prevailing party is entitled to interest upon the original Judgment, at 6 per cent of $10, for every part of Error hasrunr and the collection of it, and Interest ought to be allowed.

It leaves it discretionary.

In Connt. it is universally allowed; and as it believes, it is generally in Eng. For Connt. 123 et R. 129.

Cases exemplifying the effect of an assumpsit, or
Reversal of Judgment on a suit of Error.

Court Below A v B.

Case 1st. Judgment below for $100.

Case 2nd. Judgment reversed for insufficiency of declaration, before A has collected any part of his cost. Judgment above it, to B Judgment below be reversed, and that B recover of $100, the amount of costs incurred by B in y Ct. below.

But no costs are recovered by B in y suit ni Errm.

Case 3rd. The case as before, ni that A had collected y contents of his Errm. $20 debt, and 10% cost. Judgment of Reversal, as before, and y to B recover $30. And, it to A. in the erroneous Judgment, and 10% cost, with B ought to have recovered ni y Ct. below.

Case 5th. Judgment below in favour of A. affirmed in the Ct above, iy yt y Judgment below be affirmed. That A. the def ni Errm. recover his costs in the suit ni Errm. The Judgment below is again operative. Interest in the 1st Judgment, is also allowed, if y Ct. in their discretion. Minte brother.
and let issues for it. At Court 12.
Practice is to allow it of course. I believe.

Case 5th The Judgment below was in favour of B. 
y def. below. A by a writ of Eon. reversed y 
Judgment. The Judgment in this case is merely a 
Judgment of Reversal; if y Ct above is competent 
to try y question of fact. As B A in Eng and 
Inp Ct in Cunt.
A on the judgment of Reversal, enters y cause as 
y Ct above for the Suid p on final issues. Judgment 
y he prevails, receive together with his debt and damages, 
all his costs wh assessed before the Judgment of 
Reversal, as well as those wh have assessed 
since. But he receive no costs on the Suit in Err. 
If A had paid y costs traced as him in the 
Judgment below, he now have receivers yo on Judgment 
in Err. as damages. But A must enter y action, 
of ut all. at y same time, in wh y Judgment of 
Reversal is rendered. 1 Robt 50. Practice 23-

Case 6th The Ct. not reversed the Judgment in y case. 
This case was not competent to try y case. It must 
be entered in some other Ct.

Case 6th Demurrer in the last Case below to y declar. 
Declar. alleged to insufficient. In suit of Eno. Judgment 
is reversed. Here it not be generally allowed for 
A to enter, since his declaration is adjudged 
insufficient. In Err. Judgment is reversed. Here it not be generally allowed for 
A to enter, since his declaration is adjudged 
insufficient. And Def below, never wishes to enter for 
small. Still y biff may enter, as yo if his 
declar. may be helped by amendment. he may have 
an opportunity to do it. Ruled by State Court.

Case 7th Declaration in the Ct below adjudged 
insufficient. Reversed on Writ of Err. Here
A writ in War, if ye be above can try ye question, 

of fact, for he has a good declaratin, y merit

have not been tried, since ye Ct above have

rendered only Judgment of Reversal, Not a Judgment 

"pro bono publico" and ye Ct above cannot say 

Judgment of Reversal ascertain y damages.

Case 8

Pla in Bar demurred to below and 

adjourned sufficient Judgment reversed. A enter for 

War. for as yet there is no Judgment for A 

to recover and in this case of a written, for ought 

yet appears he has a right to recover.

Case 10

Pla in Abatement. Judgment below that 

y Plea abate. Judgment reversed above. Plt enter 

for War. for he has a good writ and has a 

right to prosecute to final Judgment.

Case 8

Pla in Bar alleged insufficient Below.

Judgment reversed above.

If a show enter, it may be to no purpose. B and 

wish to enter for his Object is only to defend. 

and that Object is attained by the Reversal.

Case 11

Pla in Abatement, as in Case 10.

Judgment of "Respondeas utter." in the Ct below.

Reversed in Error. A cannot enter for he has no 

writ. May he not enter if his writ can be 

amended as in Case 6.

Case 12

Of Error in Court for y admission or 

rejection of Evi. Plt enter below. may enter for 

War in reversal. whether he is in Evi. Plt or 

Def and whether y Judgment or Reversal is for or 

wont. As y Witness was excluded below.

on a Bill of Exception, y Judgment is reversed.

A enters for War, Here he is Plt in Evi and
and y Judgment ni Enr in his favour.

B's witness was excluded below. Judgment reversed. Here B is Plf in Enr. and Judgment in Enr in his favour. Yet a may enter for Trial, if he pleases, for he may properly & possibly prevail notwithstanding y admission of B's witness.

Note in all y cases above, in nbo y original Plf is supposed to enter for Trial on a Reversal of Judgment, y Et above is supposed competent to try questions of fact. If it be not a case, y question is remanded to the Et below, and there y final Trial is had. write 4. and 5. case.

"Antore. Et Cont"

Where the Judgment ni Enr buts an end to litigation between y parties, y action ni never entered ni y Et above, nor remanded for Trial. The litigation is always entered, when the Judgment is affirmed. But in many cases. See in a Reversal of Judgment.

Mode of

**New Trials**

Applying for. A new trial requires no definition.

The mode of obtaining it, in Eng. is by motion, made in Bank. (in y Et of Westminster for instance) and not at Enr Prin, where the first trial was Granting a Rule to Show Cause, in y motion, suspends the Judgment. It prevents it from being entered pub. and y reasons of y motion are afterwards discussed in Bank.

It may be granted at any time before Judgment, but never after. Doug. 760. Generally after verdict.
and before Judgment.

When this country was first colonized, new suits were not known in Eng. The remedy was by attainder. To go our Co. having no Law to direct them, made their own Rules.

An application for a new Suit, is in general considered as an application to the discretion of the Co. Therefore, when are not usually granted, when substantial justice has been done. And some mistakes may have intervened. 2 Bld. 306, 3 Bld. 326, 3 East 457, 15 S. 335, 4 W. 194, 4 W. 210, 1 Jern. 94, 299.

After when a point is saved by the Judge, in such cases, is the matter itself in y places of a Judge at 1 8, 1 82, 2 333, 32, 32, 1 82, 2 82, 3 82.

Hence when verdict is found for def. on what is called a hard case, as in a prosecution under game laws, such are consid. contest. The Co will not grant a new Trial, even and there were an error as to admission or rejection of evi. or any other mistake. 1 8 2 63. Where Law Hen wür speaks a presumption raised by the Jury contrary to evidence. On such case, no new trial if verdict is according to Equity and conscience. 3 Bl. 301, 2 Mod. 18, 644, 1 Bim. 304, 2 8 4 38, 1 8 3 38, 4 8 4 63.

The Rule don't apply in all cases. Post 57, 61, 2, 67. Hence not granted to def. to let in a defense of being under age, coverture, &c. 56. 6 33, or of any unconscionable defense, in general. 1 Bet. 82, 4 54, 1 Bl. R. 35, Post 1242, Post 67. As to the 1 Co's Limit, see 5, and see 1 Bet. 228, 3 8 124.
On y same principle, y Ct. can misuse such terey, as it please. Upon y party, wi whose favour it is granted. Damagem of facts, production of books, and paper. &c. In Eng. Examinem of Witnes. in form. 3 El 392. Tulk. 148.

So discovery of certain facts, under oath. 7 IR 324.

In Eng. if the ground of affirmation is any thing, wh. is said. vi et al. at y Trial. The information, in wh. y et al. is taken from y ced, Peking at y Trial. By affidavit. If it ne'er apppeared at y Trial, it is declared at y Trial. 3 El 397, 1 Sid 230, 2 Lev 109.

Err is not preclusive of y action of Ct. vi granting or refusing new Trial, it being matter of discretion. Hilly, 41. 1 Dav 364

Is this surplusage to granted in a case. vi vi it ant granted under any circumstances?

As no one tried for Peeling. on this point, authority differ. ant ante 37. post 76.

There were not known in y ancient practice of y Eng. Ct. The only remedy for a false or unjust deliver, being by attaint. 3 El traces, 91, 215 to y repair of Case 3d. and others to y times of Cromwell. Indeed they have not become general and collected, till after y Restitution. 3 IR 181, St. 181. 3 El 397, 5. 1 Barn 594. Tulk. 648, 6 23 ac 240. 216. 1 El 392. 136. 1.

The causes in Case 3d. were misbehaviour in Cromwell's time, excessive damages, as affording a presumption of misbehaviour. But since more time, they have been granted for various other reasons, and have contributed much to a just admittance of Justice. 1 Barn 526.
In Eng. they have of late given grants
(wheresoever admitted at all) as well after Trial as
Bar. so at A B, and for y same reason of
impropriety. The former, they use to term
impropriety, as in such an event. y case not have been
adjudged by the same Court. But Judges
sometimes give a forementioned opinion, 
which they are unwilling to retract / Bar. or B: 360. It. 385
1105. 5 Bae. 243. La Hay. 1587. 1586. Boc. Prize. 261.

Formerly held, that no new Trial can be granted
in these cases, ni for unbehaviour of Jury. B: 243. I li. 43. Talk. 604. 7 More. 37. Bae. Treat. 2.

Any new general maxim now is, yt in all
cases of sufficient importance, a new Trial may
and ought to be granted, if it can be made
so appear. Mal injuriies has been done at y
First Trial. B: 246. 3 Boc. 395. 92. Boc. 388:
263. 9. 665. 2293. 61. 17. 786. 15 More. 262. 401. 97. 175.
It is not "Innuence from"

The general Rule yt motion for a new Trial cannot
be made. in Eng. after motion for arrest of
Innuence, for by it, y motion venire do y admitted
to be good. Talk. 647. But y General Rule
cannot hold, e convees in

Exception, when yt cases of new Trial was unknow
at y time of moving, vi arrest. B: 261.

Since yt reason yt. yt Innuence has be
arrested, yt granting a new Trial will be
museless. Talk. 647.

It has been held, yt where there are several
def and all convic'tes, o part convic'tes, and
part acquitted, no new Trial can be granted, as
to one or a part of ym. for y precedent, it is said,
must stand or fall "in totum" ante 30. July 625.

This seems now to be operated in Eng, and a
new Trial may be granted for one or part of them
only, and y case will be a very hard one, if an
innocent man or not have a new Trial, merely
because another was joined with him. 64. 688.
619.

In cases of y e kind, when a new Trial is granted
to one of several in def. when the Record is not down
for a second Trial, y one convicted is y first,
and he only is to be tried, for the other having
been once acquitted, cannot be tried again—

Causes of Granting De

1st. Want of due notice to def. of Inform. 5. Bae 244

On y case of y want of notice, and non-appearance
of def. y e. T. presume. are not left to their
discretion, so far as to refuse a new Trial, because
practically has been done.—for there has been no Inform
and def. has an unqualified right to be heard.
Thus, consent of party can remove all other
objections to Injunction, than those wh relate
to subject matter.

2d. For defect or mistake in y Judge, before whom
def. ex of defect.—when y Judge is interested.
5. Bae 244. 11. Mod. 442. If mistake in admitting
improper Evi. or excluding yd and is for non-
5. Bae 244. "Inform" 2. 1. 6. Mod. 6. 242. 7. To 33. 641. 106. 106. 202
So of a misdirection of a Judge in point of Law. Bell 327. 4 T.R. 735. any mistake which might have influenced the verdict.

In some cases, new Trials have been granted in Blank, for misdirection and admission of improper Evi. by the whole &c. in a Trial at Bar - not common however. 1 Burr 320. 4 T.R. 830. 11 T.R. 1120. &c. &c.

The grounds for granting a new Trial in Eng. at Bar. are great value, probable length or probable difficulty in y Trial. Doug. 420.

No New Trial for misdirection in law if justice is done. 2 T.R. 6. The y improper admission or rejection of Evi. is good ground for Trial.

Yet y incompetence of a witness (not objection to at a time of a Trial &c.) if not known) is not a substantial ground for a new Trial; it may have its weight among other things. 1 T.R. 797. 71 T.R. 391.

Bath 603. 1201. 1584. 1 B.R. 1531.

If, when an objection made to an admissible witness, he is admitted by the Ct. or forser Evi. is rejected, in either case a sustaining Party Party may maintain a motion for a new Trial - Per Evi. 134. 1 B.R. 184. 7.

But the last cases breasted in the ground of neglect.

The Infamy of a witness was known at a Trial, but y Record was not adduced. 1 T.R. 717.

1 E 3 79. 23d. y cases contemplated by the Rule must be those, in which y objection was not taken, or facts of Infamy not proved at y Trial.
If y facts were not known at y Trial, a new one not perhaps be granted, nor Lucre, for it has been determined in Eng. yt y incompetence of a witness arising from discovery after y Trial, is not of itself a sufficient ground of granting a new Trial. If a fact, it was called on to prove was established by other Evidence, it not denied and defended proceeding on a collateral point. 3 East 167.

Character of y witness produced. Of this he must take his chance, Formerly held yt witness might be interrogated as to y fact of his conviction. But it now is yt it must be formed by Record. If Record of his conviction had been produced at y Trial, y Instance and not have admitted his testimony, but, as ye was not done, y Party Guilty of neglect, ought to suffer for it.

3d For defects or incompetence of y Jury, or any one of them in certain cases, as If a Bure might have been challenged as incompetent, but y fact was unknown at y time of y Trial, by the Party as whom De. 5 Bac 254. 7 Mod 54. 1 Bent 36. Stiles v. Hrr 126. Lucre on cause of challenge goes to y Impartiality. Cause on sent 65. New Trial was refused in the ground of y Jury not do not object. But that does know of y cause of challenge, at y Trial. In Stg 126. party must have known of y cause.

4th Misconduct of y Jury, as corrupt practice, to partiality - Inattention. If they refer their decision to chance. 5 Bac 200. 38 St. Bingly. 57. 2 Le 140. Pleas 14. or 17. 3 Bac Trial 2. 4. Verdict &c. St 602.
To for misconduct of one Juror, as when a foreman had declared yt y Jury shd sever have a verdict whatsoever, Ev. he advanced. 5 Bae 297 Indet 2. 4 Talk 640.

But y Jurors must in former times, perfect unanimity was not necessary, or this Jury, but for a long time past, it has been—(5 Bae 278. 3 Bl 870. 6.)

In Eng. if they dont agree, earring the lesson. They are to be caried round y Circuit, till y end of y same term. and y Judge will not receive y paper, till they do agree. 5 Bae 287 Indet 4.

This has been done by M. P. 1 Circuit 2o 9. 7. 277. 3.

But both in Eng and Court. If y Jury are not unanimously, unanimous in thair verdict, it is wi

strictness bad and must be set aside—(5 Bae 291. Lem 14. Holy 140. 2 Le 307.
Bac. Indet 2. 4 Verdict 4. 7.

An expedient has been resorted to to evade y regular of y Rule. and this is by permitting y minority to come in silent, 12. without direct objesting or asenting. and the dissenters are not afterwards permitted to testify. yr dissent.

Misbehave of y Jury. In Eng. after y Jury are locked up, it is misbehaviour in ym to eat or drink without liberty from y Court. till they have agreed in a verdict—(5 Bae 299. Verdict 7. 3 Bl 370. and returned it to thir Judges. Moore 38. 1 Sent 120.

But y verdict is good, notwithstanding their eating (unless it is at y expense of y favournde party.) thay they are liable to be fined—

Of the pursu-ant or annite at y expense of one y party, before y verdict is agree on and return, and they find a verdict in their favour, it is bad, and there must be a new trial. 5 Bae. 290. Verdict 4 h. 1 bent 12d. Co Litt 227 12 mod 111.

Priori Verdicts—For y purpose of relieving the hardships of confinement and obtrusive, lie y verdict is delivered into 0. Priori verdicts have been awarded in Eng. 16. verdicts, written, sealed, and delivered to the Judge out of 0. Yet a priori verdict is not binding upon a jury. They may vary from it. In the verdict [given in open court. 5 Bae 282. Co Litt 227 12 mod 111. h. 1 bent 33. Plov. 33. 3 33L 377.

So yd a priori verdict in effect only acts to yd. yt y Jury's drinking or eating after it, at the expense of one of y Party, does not vitiate y verdict, ni thay change it in favour of y party treating 1 bent 12d.

For in ye case there is a strong presumption of fraud. If they do this change it will be set aside.

Priori verdicts cannot be given in case of Yld. no in any case of life or limb, nor where y personal appearance of y def is necessary to his conviction. 5 Bae 283. Ray 183. 1 bent 96. Co Litt 227 6. For the dinner, in such cases must look upon 100 Pounds. When they deliver the verdict.

Receiving Cit out of Court. Be it said ye Bany have an right to finish y verdict, party on their own personal knowledge. Thi don't seem to be Law. 1 REd 123 3 Bl. 374. 5 5 Bae 287. Verdict 4 h. 2 69.
It is a Rule, sente, that no Fower has a right to communicate his knowledge to his Fellow after they have retired, if he does, y verdict must be set aside. He shd take it new after Ct. 1 & 3 & 4 Edw. 23. Alter the verdict is bad, for each Party has a right to reexamine. So it also seems to be inferable from granting a New Trial, because y verdict is entzpny to Evidence.

Besides he ant under oath, The Jury have no right to reexamine a witness in private, after retiring. Co. C. 183. 411. 44. 5 Bae. 289. Verdict H. Verdict is bad and a new Trial is grantable.

If the Jury take with ym. any written Evidence not exhibited at y Trial, y verdict is bad, and is a cause for a new Trial. 5 Bae. 289. Co. C. 411. Verdict H. 2 10 Edw. 418. 1 Pitt. 333. 6 Edw. 9. 27 D. B. 2. 116.

In Eno. The Jury cannot take with ym. any written Evi. that is exhibited at y Trial, wtht y consent of y Parties, or leave of y Court. If they do, to a high misdemeanour. Co. Litt. 32. * and so most of the L. E. I. T. think.

But if y writing published Evi. on both sides, y verdict is good. Alter not. It may be important on one side. Jesus in the other. 5 Bae. 289. 2 Rolle 714. 1 Edw. 148. Co. C. 44.

This distinction is a vague one. Later Rule not so strong as yo. relating to Parl. Evidence, see by the Jury. For Parl. Evi. may vary 12 Mo. a 250.
But this a Party's misconduct makes a verdict yet they are not permitted to testify to y fact.
The Ear of it must be derived "ab alius " "oliui contu" resemble. S Bae 288. 1789 1 St. 11. Barney 438 41. See no former.

May not one Juror testify to a misconduct of another? Reason why he cannot testify to his own, is probably not only y maxim, yet no one need examine himself but also the power it will give any unscrupulous Person to set aside any verdict.

If a former delivers a wrong verdict by mistake, it may be set aside, and a new trial granted, and the Jurors are admissible witnesses to bring in fact. They perhaps not compellable to testify to it. S G Minn. They are compellable. 1 Burr 388.

The Jury's finding a General Verdict, when directed by the Co. to find a Special one, is not regarded as misconduct. But in such cases, y verdict is set aside upon y motion of the Co. and there may be a New Trial granted.

This finding a different verdict is only an auxiliary reason. and is not sufficient. Ter Heac 197. 139.

The latter case cited seems at first to espouse y Rule, but that was a motion after a Trial at a Bar. A new Trial was refused.

In Convict where the Jury have misconducted, "at Supra" motions in arrest of judgment are concurrent with new Trial, see Pleading.

S 35 Finding General Verdict in direction.
This is not illegal conduct. This direction is generally founded on the application of one Party or Both. If by y Demurr of y Co. a new Trial is granted, The Jury have a right to find a General verdict, wh y Co cannot control.

5th. Direct to Evidence which is a cause of a new Trial in Eng. 2 to 1105, as well as in y Country. 1 Com. R 42. 5 Bza 245. p. 20. 1 Tmp. 3 Bl. 382. Rule 326. 7.

This Rule has been much objected to, as it is favourable of the Jury to determine credibility and weight of evidence or testimony. But it is to be observed, that y Co try every issue of fact, as well as of Law and the Jury is only a instrument by wh y Co try question of fact. As the Record is an instrument by wh it is tried or as a question of manage is tried by a certificate and infancy, by inspection etc. However the Co decide y question, when they then grant a new Trial, they must take it from one Jury, and give it to another, and such power is absolutely without limit in the Co. for in cases of which verdict is to the weight of Evil, and this manifestly - a new Trial will be granted. The Co must either presume corruption or obstinacy, or ignorance, neither of wh y Co may gate of Justice. Not granted in this Case. If y scales of Justice merely balance. 3 Com. 238.

But it has been said, in this Case. There must be no Evil in support of this verdict, or so little, as it amount to nothing at all. Ps. 1142. 1106.
But this seems now, not to be the rule, and it is now held, at the Ct ought to grant a new Smal, if in y opinion of the Jury, y verdict is clearly to the weight of Ct. The matter must be handled devided, as Ct in the Smal pronounced Rule 322. 2 Sa 247. 2. 4 Burr 142. 1 Burr. 1 Ba. 322.

Banc. 322.

1st. If the jury have given a verdict in y miscon, of a point of law, or generally at law, a new Smal is granted. 2 YR 5. 3 Do 420. 2 B. 10. 2 Ba 147. 3 YR 467. La Ray 47.

Not many cases of this kind. 1 John 273. 3 Tr. 420.

2d. If new Smal has been granted for no cause, where the case was a hard one, or where justice has been done. 2 YR 5. 3 Do 420. As in point of law. 3th. In this entitled to nominal damage, only and the verdict is for the def.

New Smal Smal is not granted, because y cause is too small, and justice has been done.


These cases may occur, when either y facts are agreed upon, or when the Ct is perfectly clear, and the Jury makes a wrong conclusion, from. But if of a Jury makes a mistake as to law, y Ct feel themselves must under an obligation to grant a new Smal, ym when it is done by the Jury. 2 YR 6. 3 Do 420.

8th. Smallness of damages.

Is a cause for a new Smal. But other ground of seems, may is good, in an action in a contract
A promissory note is no for a sum liquidated, or on a bond, or note without instrument, and no suit of payment, and no duty of payment, but half a cent, it is his duty of 9 to grant a new Indent, 2 Co. 21. 5 B. 248. Sale 4. 2 I. 48. 340. 2d. 1051. 1 Stow. 332. 2 Do. 366. 6 T. 635. 7 Bull. 317.

The case of 4th in which a ground has produced and 4th General Rule is 12 to it, and the 4th, thinks, it shall apply. 2 101 to 384. and 4th and 366 among.

The Rule, however, restricting new Indent, for smallness of damages, to every case, or sum liquidated claim, does not hold, when the Duty has made, and damages small. This mistake in point of law may occur one of the Pllf's grounds, of Recovery going, where it was not, and where Pllf has been deprived of strict damages, by an inquisition, as decruing the Duty in computation. So, in these cases, however, it is not of smallness of damages, but of a right, and of mistake, proceeding it. 47. 125, 121.

9th Expense. Damage

This is a good cause for a new Indent, in case of contracts and Indent (claim held entire in a case of Indent) Bull 311. Cond. 7. 426. See 3 B. 242. "Indent" L. 4, where it was granted, because damages were excessive, and the duty appeared partial. 48. The Rule now is, see 13 B. 606. 1 2d. 1846. 6 Cond. 337. 4 T. 637. 7. Do. 320. 2 May. 244. 40. 3 Do. 62. 3d. 691. 5 T. 287. 1 T. 277. Pitt 319.
Of by mistakes of the Jury in combination, &c. Ptlf has a verdict for more or less due, where there is a forced rate of damages, as in an action in a suit of band. New Trial not granted, if Ptlf will release the Exem. 7. T.R. 113. 13. Ch. 213, 14. Bl. 88. Corb. 571. Boyle 90. 2 Mac. 262. Cast 637. Post 73.

To if mistake is occasioned by Ptlf's misconduct, Ch. 213. note 3. Reeve, found in the books, 120. Applying for a new Trial, for excessive damages, &c. 3 granted 11111.

From your current of cases, presumption of partiality so much urged, by some as the grounding Exterior in causes for new Trials, on yo ground seems unnecessary. This same even of your modern authority look, yt away. 8 Com. 150. 2 Bl.

Suffering a default is only an admission, yt something is due. Ere yt action is lost on a written security, &c. in this case, Judgment is taken for too much, a new Trial may be granted. 4 T.R. 302. Ch. 193. Rule 278. 12. 244. 3. Mil. 153.

A new Trial has never been granted for excessive damages in cases of Com. 4 T.R. 65. 5. Do. 204. 5. Bae 629. 1 L.C. 472. 1 Dan. 609.

In a Plurimum seems to doubt, 4 T.R. 654. 0. whether a new Trial may not be granted here, &c. Rule 3 think. They may in some cases, and with some 0. euncor.

New Trials on Mit. ground. granted in case of Assault and Battery. 1 T.R. 272. 5. Do. 204.
Now is it, for delinquency, Plt's daughter &
No case of New Trial 2 IR. 5 147 3 Mile 18.

In case of slander, semble, new trial may be granted.
1 Stov. 219, 2 Pl. 10, 1 Done 263, 2 Pl. 142, 2 Salt. 344.
1 S. 140, 3 Pl. 384, 1 Do. 269, 1 Do. 167, 3 Mile 18.

In acting on y case, it's by a Parent. Is his good
sentiment amicably for an enemy done to his
child, execute damages is rarely a ground
for a new Trial, for here y damages are in
a great measure presumptive. 2 IR. 167, 3 Mile 18.

In action relating to property, that is, there
is in a degree, a definite Standard. But in
action for Personal Injury, a ground being
more vague, y damages are more presumptive.

Ed Mansfield 1 IR 277, says yt it may be
granted in any case, whatever, and yt a
matter entirely discretionarily with y Co. But
whether granted wthnt any standard, by rule to measure y damages. 4 IR. 233. This seems
to be the true Rule. Ed Mansfield's opinion
is well supported by modern authorities. Conm
Trial 21, 4 IR 204. 5 Do 207, 2 Do 166.
2 BL R 350, 1326. pack 649.

The strong language of Law
2 IR 25.
250. 403. 44. Contradicted by a great number of authors cited 5 Con 1603 5 IR 237. Salt. 647
10th Mistake of Counsel in pleading, a wrong plea in count, is cause for a new trial.

But unless no rule in Eng, corresponding to the defence, rather from want of a found in R. Broshe, so it is not a cause for granting a new trial.

In Eng, any number of defences may be pleaded, because in Count as there is a reason why a difference of Rules. Bac. 307. Small L. 3. 3 Edw. 1380. 3 Edw. 2 1232 c. 13. 69 Mod. 324. 8.

Neglect of Counsel or ally, not a good cause here.

In Comedy in Med. Alt. 5 Bac. 307. Small L. 3 Edw. 2 1222. 21 Eliz. 54. 6 69 Mod. 324. 12. 12. It counsel neglect to attend.

Do it ever grant a new trial to enable the def to plead their own defence. It of any injury or coverture. semble not. 31st of Bankmontley 1 B. et P. 52. 228.

I shall doubt, an even in Count when Mispleading is made a ground for a new trial, y Brit and allow it for y want of y Count in these cases. In these defence, P. I take for y countable to be. Those defences are found in unanswerable public policy and convenience, and dont alter y Britright between yt Party themselves. Indeed this regulation, for once public, they are strictly disposed to y private justices of a case. For such new trials are granted usually, 12 Bl. & 30. 1242. 3 Edw. 2 468 34 and El 24.

In Count new trials are never granted except in pleading (in case of Mispleading) not must state y plea, he must know, he make, yt he et see an it is sat, alas ye he is able to prove it, who he must, do on y hearing of y Petition. He must also show yt y new one can not be given in Evidence under y General Issue to y former one.
In The Eng. practice, this is not "served" a substantial ground for a new Trial, will connected with other circumstances, it will have some weight.

If a material witness is absent for inevitable accident, or age, it may be a cause. 5 Bae 252. II Eliz. 1 9. Do 22. A witness taken suddenly ill - The Trial is

But in Eng. a new Trial is not granted for ye cause, a witness makes affidavit of what he knows, yt yt may sec. an it is material - Talk th. Case will be granted in favour of def in this cause, if y def meet to be proved in unanswerable. 5 Bae 252. 2 Sm. L. 3. Pl. 11. P.9. Moreover, a new case as not be granted? Morgan Lewis 84.

For trial will not be post-poned in such a case. 1 B. et Pl. 417. 'a Statut' a new Trial will not be granted.

So if y attendance of a material witness is prevented by Cour, of y opposite party, as by arrest - 5 Bae 252. "Statut" L. 6. To for Motting or any foul practice. Post 72. II Eliz. 141.

But in Eng. Rule to show cause, it not granted if a material witness is absent wilfully, or more negligence of his own. Remedy is no witness by an action on the Case. The remedy is the witness
A new Trial is never granted, for absence of witness, whose testimony might have been secured by due diligence used by the Party. 5 Bac 252. "Tindal" 6 Pl. 134. 1 Com. 157. Salee B 647. To 631. Mill 98. 2 Mod. 22. Pr. Chy. 134.

It seems from 2d at 319. To 321. yt on any of the introduction of manifest error, is no ground for a new Trial. But 1d. It is decided contrariwise in 3d yt in yo case of Austin and Pagland.

But here was in thi case yt a mistake in yo error of one witness.

In Eng. a mistake made by a material witness in hi testimony, or Trial, is not a ground for a new Trial. It need be of dangerous consequence to grant one. 5 Bac 253. Pl. 17. Tindal 6. 5 Wm. 4th


Who is material? Said to be a good cause for a new Trial in Eng. But the Law is not so. 1d. Penney says, that as often as application on go grounds have been made, they have uniformly been rejected. It is settled yt if by the adversary a party supposed might have known of y error, it is never granted. 12 Mod. 684. 5 Bac 252. Pl. 2d. Pl. 18. Pr. Chy. 134. Mill 98. 7 Ld 269. Salee 273. Kirby 282. 2 Law 270. 1 B 7 P 428. 30. 1 Thr. 84. 2. 115, 710.
13 The

Misdemeanor of a Party.

Tending the Jury, (and
32.6) Keeping away parties, witnesses, etc. 68.

Good Grounds for new Trial 11 Mod 141.

Bac Trial 1. 6.

So if a party solicits a favor to find for him, or makes any representations in favor of his own cause, etc. and y verdict is in his favor. New Trial granted. 5 Bae 232. 2 Rob 746. D. J. 187. 1 Money. 65. 2

Even wind from the air, & being ad not find 73.

"Therefore" 7.

The same practice by the party, etc., has the same effect, as when a test before Trial wrote to a favor stating the hardships of his client's case, the

et al. not inquire an it have any influence a not.

5 Bae 232. 2 Trial 1. 6. 2 bent 173.

So any kind of Embracey practiced by either party is good grounds for a new Trial. 5 Bae 232.

Trial 1. 6. 11 Mod 117. 1 Bent 120.

"Embracey what ? 4 Bt 140. 4 it is an attempt to influence a Jury simply a note as by promises, bribes, entertainments, etc. 4 Com 140. 1 Haw 237.

In Geiment. In Eng. formerly held to, they were not granted in action of Geiment because the Brammbt was not conclusive. 5 Bae 258.

Trial 1. 7. 1 John 225. 4 Rid 646. 52. In Count.

Brammbt is conclusive - no fiction. More - 2 Cor. 11. 6.

The Rule now is in Eng. if in these acting new trials are as ready to be granted, as in others, if verdict is for Pltf. Secus when for def.
"except for very particular reasons." When verdict is for P, if it changes, the judge. Secus, when for Def. in Grot門s (More y Parties are in status quo, 1 Barn. 324. 4 Barn. 224. 5 Bae. 253. Index 2. 7.

Formerly, held. But after 2 similar verdicts, a new trial ought not to be granted. 6 Mod. 32. 3 Plm. 195. 5 Bae. 243. Falk 648. 1 Lev. 94. 1 S.P. 133.

Now not so often as often awarded. In other cases, 3 Bl. 387. But the old rule is now exploded. 4 Barn. 2108. and there are instances, where there have been as many as 6 new trials, granted.

Mr. Mansfield says, there is no good reason for saying, yt a new trial cannot be granted, because there has already been one. 4 Barn. 2128. and Ch.

J. Parker. Mr. R. late sitting in Philadelpheia, said that he had not more any grant new trials all y year, untilt doomsday. Yf y thing continued, he's verdicts so manifestly unjust—Same Judge granted 4. in action of Grot門s—

New trials, must grantables, in ground, not taken at y first, if it might have been there taken.

10 Mod. 262. 3.

**Criminal Cases**

In general new trials are not granted in criminal cases. So the def. And they are in many cases in his favour. Granted. 1 Port. 867. Consol.

37, 3 Moz. 108. 2 P. 528. 1238. 1 Phil. 17. 3 De 52. Generally in criminal prosecutions for offenses higher yeu Misdemeanors, new trials are granted, in Eng. to neither Party. 6 IR. 688. There cannot be a second Trial in such case. A man cannot twice be put in jeopardy of his
life, 10, but twice in trials for the same offence.

Note 9. If one is clearly guilty, condemned, and constitutional power rested in the Executive, it is a safe recourse.

When a offence is not higher than a Misdemeanor, you may grant a new trial on the same issue.


Now for you the may discharge you before the jury, or combed the two, or not agreeing on the verdict. see 2 Hals. C. 27. 31. Bayn. 84. 2 John 3:16. 4 Co. 45. 2 Barn. 466. Lamb. 371. John 356. Governor case. It seems it cannot be done for a mere disagreement of the jury, even perhaps with prisoner's consent. Clearly so. I think, nothing to case. Cock, and others so the Prisoner's case, cannot be tried twice. Proct. 1:13. 1 Knolles Cae.

But suppose the jury die, or prisoner is taken ill, during the enquiry, no such and other of clear physical necessity, seems it may be done, even in felony, and a venire de novo awarded.

In Court, new trials are granted in favour of def. even in cases of felony, not in favour of y Public. 1 Post 657. So in the 18. Ct.

But where a low offence don't exceed a Misdemeanor, y General Rule is, ye no new trials can be granted, for the def or delinquent, y General Rule being that no man can be twice tried for y same offence. St. 105, 1338. 1 Plea 157. 1 Plea 17. 3 83 39. 15 B. 254. St. 392, 1232. 1 Barron 316.
Excepting this Excepting to y last Rule. 1st. Where def has praetiously fraud to obtain acquittal. Ps 1285. 3 Blac. 2054. to by Bribing a Juror. 1 Port. 53. Tulk. 644.
1 Port. 567. lue of y cases were capital?

2d. Where y acquittals is occurred by the mischanc of the Judge. in favor of Law. 3 Yor. 20. 4. Yo 783.
But. I e. thinke. thi not not be good ground for a new Trial.

And in a Qui tam prosecution, a new Trial cannot be granted as to y civil part, ni it is grantable and granted as to y criminal part.
1 Port. 567. 10. if def is acquitted from y fine and imprisonment, a new trial will not be granted to y Procurator, to investigate part of y case.

Wi y damages and forfeiture not be claiming.

A new Trial is most granted to enable def to plead the L of Limit. To wi Count. it was refused when y object was "reason."

Granting a new Trial after Indictment, vacate, y Indictment: but Costs are imposed, when necessary, and of Pending y petition for a new Trial, y Defendant due. hi 1st may be cited in a "See Lest" (as in actings) and y petition may proceed, provided, y right of action survives to or for the Def.

Note as to ye contract, y 6e relating to abatement and amendment of parts, was made before Count 69, had "power to grant new Trials," see Plowd. 1. 273.
If the right of action does not survive in your last case, your petition must fail, for no new trial can be had, subject to your foregoing qualifications. The petition might as well be pressed, if bending your petition, your petition shall die.

De have been observed, ye new trial may be granted after final judgment on the original trial. In such cases, it vacates your judgment. 10. When the grant is unconditional, and the right are determined by the second trial.

As to costs, see 1 ST. 61. 14 B. 63. 41. 3 ST. 577.

In Eng. when your costs are directed to abide your event of suit, if your party who was unsuccessful in your first suit or trial, succeeds again in ultimately unsuccessful, he shall have costs of both trials. But if your party, in whose favour your trial was granted, succeed in your 2nd trial, he has costs in the 2nd only. Yet in your case, your other party has not costs of your 1st trial. These are not awarded in either side. Labour as to costs.

But whereas a new trial was granted, and nothing was said as to your costs of your first, then the same party succeeds in the 2nd trial, he shall not have your costs of your first. Tong. 421. 3 ST. 401.

In point, costs follow the event.
Proving in Chancery

If the manner in which Suits in Chancery are instituted and conducted.

A Suit in Chy is commenced on behalf of a subject by preferring a Bill in the nature of a Petition to the Chancellor or to the King, if the Chancellor is a party. Mitf. 6. 7. 4; 2 Exem 380.

In Comn a petition is to the King et al. or county et al. "setting in Chy" or as a Ct of Chy.

If a Suit in Eny is on behalf of a Crown, a complaint is called an Information, exhibited by the Attorney General or Solicitor General. Mitf. 7. n. 1; 2 Exem 227; 390. 1 Exem 169. 4; 2 Exem 262.

A Suit by Bill, or Information is usually called in Eny. "Suit by Eng Bill" because both have in general been in the Eng. Language. Mitf. 9. 8. 1; 1 Bll 154.

Every Bill must be founded on one or more of the grounds of Equitable Remission. If Remission in some cases extends to a decision of a matter in controversy Mitf. 8. 32. 35. 7.

In some it is only ancillary to the decision of another Court or a future Court Mitf. 8. 32. 7; 133; 148. 2; 121. 55. In these former relief is prayed—"in y latter not. In some cases also, where there is no actual wrong, equitable remedial relief may be prayed for a threatened wrong Mitf. 8. 1; 1 Exem 931. 284.

And a Ct of Chy a high Ct of Chy, has cognizance.
Every Bill not for a "certiorari" requires an answer by the defendant. This is not writing, and becomes a suit for a Court Roll, called an *Ex Parte* Record, Act 3, 24.

In *Ex Parte*, the answer is sworn oath, not when a Peer a Corporation aggregate is def. In the first case excepted it is made in the name of a Def. In the last case, under the Corporation Seal, Act 3.

The object proposed in requiring an answer is to enquire into the Bill with proof, and to discover what the def knows, and is aware of its defence. Hence, the sole object of a Bill is the discovery.

3. To every Bill (not for a certiorari) a def must make defence in some way, not by declaring will not answer, but by writing to a subject and taking, and he must make answer, unless he discards, or can deny Pitt's right to compel an answer. Act 10--37.

In *Ex Parte*, a Bill for a discovery, a def is bound to answer under oath, as in *Ex Parte* Act 5--81. Formally, however, a answer was such as cannot "avaeriate", not so now in *Pitt's case*. Old Rule of mode if believe, is still practised when a inquiry is a simpler one.

4. In other cases, def is not compelled by *Ex Parte* practice, to make any other answer. For, if an allegation in the Bill are not true, and even if
The defendant may make a particular answer in every case. But except where a discovery is sought, the rules must allow it to be given in under oath. 1 Root 581.

In Court, when Plaintiff compels a discovery by Defendant, under oath, he cannot contradict his testimony by other Evi. 1 Root 588. Not agreeable to the English principle.

The grounds on which defence may be made are various—some of them extend only to y relief prayed, not to y discovery. Some to y discovery. Some to y discovery only, and some to both—an animatone discovers a never compelled. Unit 11. 12. 13. 14. 15. 8. 10. n.

The defence may be founded. 1st. On matter apparent on the Bill, or some defect in it, in no case, y defence is by demand. Unit 13. 14.

2st. On matter not apparent, but stated by Def to defeat y Claim, which a formal answer, under oath. Unit 13. 8. 9.

On this case y defence is called a Plea. Unit 13. 14. The plea is confined to one point or ground of defence, as at Law. Unit 16. 17. 233. 3. A sort of Special Answer. Unit 8. 3. 10. 2.

3st. On matter in the Bill, and other matter offered in the defence. To the Defendant is to be given on the whole case, as developed on both sides. On this case y defence is termed an answer. Unit 13. 14.
All these modes of defence may be used in one case, of adopted respectively, to different and distinct parts of a Bill, Act 18. 13. 18.

But def may avoid the necessity of defending at all, by declaring all intent in matter in question. This proceeding is called a declamation Act 14. 10.

125 A demurrer admits an allegation demanded to, and in judging upon it, if in favour of def but, an end to & eject to the Pet, is so much of it as the demurrer extends to. Act 14. 10.

130 Indigmt definittive.

If a demurrer is overruled, def may make a new defence. This may be done by plea anew, or a demurrer, end extensive, but not by a demurrer of the same extent. Act 15. 17. Proceedings upon the new defence, y same as on an original

17 The plea admits for y purpose of trying its own validity, all y allegations, with it don't deny. Act 15. 18. 2 ath. 37.

But a Indigmt on the sufficiency of a Plea, is not definitive. If in favour of def. Pet may afterwards deny the truth of it, by a Pet, and they close an issue in fact upon it. Act 15. In this case the Pet is closed y Pleadings. Ibid 15.

If a Plea is overruled (10. Indigmt admits for Pet) def may make a new defence by answer, demurrer, or new Plea. Act 17 to a new Plea allowed in C 5
The answer generally, denies all Pltf's allegations, or a part of them, and states other facts to show y deft rights wi y subject of y suit. art 15.

Sometimes, however, it contains all pltf's allegations and with a Mention stating the facts, submits y case to the Indictmt of y Ct. art 16.

If y answer admits any material alleging in y Bill and states no new facts, or such only as pltf is willing to admit, no further pleading is necessary, and Indictmt definitive art 17.

But if y answer does not admit any material facts or states any, pltf will not admit y truth of y answer, or y part of it, which may be denied by a Rpl. art 18 concludes y pleading. art 16. 2831.

A claimer, as it admits, no rights in y Def. and denies, more claimed by the Rpl. pltf, admits of no further pleading. art 19.

When y suit is best to remove a suit from a Court & Jurisdiction, there is no defined and of course no pleading beyond the Bill. art 17. ante 12.

Of the manner in wh Suits in Chy are instituted & Conducted. When the Bill itself is defective, or y Suits in y original form proves inadequate to its object, by reason of intervening accidents, as often happens a new suit may become necessary to continue or render effectual y original Suits. art 18.
Suits for any of these purposes are commenced by Bill. Hence arise many of the decisions, under which different kinds of Bills are classified—Obi 18.

Errors and defects in the draught of a Bill are generally rectified or supplied either by amendment or a Supplemental Bill. 1 Poth 379. Those in the answer by amendment, or further answer. Obi 19.

By and at whom a bill may be exhibited


But Infants, Some Poets, Lunatics, Deeds cannot sue in Chy. Save by themselves alone. Mit 24. 188. To 708.


The if y. Infant attain 21. and then proceed as a suit. This commenced, he is liable for a whole suit. Mit 20. To 708.

Another y. next friend in his name can testify in y. suit, he being interested in the event, as far as respects y. case. But if it be necessary...
his name may upon application to ye Co. be erased
and yt of another inserted. Mit 26. 3 all 511.
To 708.

The y Infant consent and necessary acts, yet
if of it be represented to the Co. yt the Suit is
not for his benefit, yt Co by some of its officers
will enquire into yt fact, and if yt representation
is found true, yt proceeding will be stayed
Mit 27. 3 PM 140.

If 2 Suits are commenced for the same but one 12.
by 2. next friends, yt Co will enquire why it
most for his benefit, and stay proceedings
in the other. Mit 27.

On Comp. Infant sue in Chy as at Law, by
Guardian or next friend

1st Suit in Chy in favour of some ancestor are
regularly instituted by husband and wife jointly
Mit 27. 35. 88.

But when she claims a right in opposition to
her husband, yt Suit is brought in her name by her
next friend, Co t a Bill in such cases cannot
be filed, without her consent. Mit 28. 2Ber 452.
Po Chy 376.

3d. Deeds and Lunatics sue in England, by
the Committee of New Estates, if those to whom y
custody of New Estates, and being in "committed",
by Ed. Chancellor. Mit 28. 3 PM 118.
1 Equity Co 16. 278.

She be atty General in some instances, exhibits
information for ym., they being considered as
In Court, they are by their conservator, appointed by the Co of C Plead, St. Comt 233.

Rile, in Chy may be exhibit by all persons and corporations, Act 29.
When birt is a Jene Comt, her husband must be regularly made a part, in her case of her banishment, abstraction, Act 24, 93.
3 alb 478. 2 rem 132, 613.
2d If she claims in abstention to have, or disabuse her defense. She may obtain an order to defend separately. 2 alb 55, 2 Eqgy C, 66.
3d If husband, is Pllf in a Suit, and make her def. no order is necessary. 3 alb 478.

4th If he is intend in abstention. 2 rem 613.
Pre Ch. 328. In all these case, she defend as Jene sole, Act 29.

When an Act or Surnaise is sued, y committee of his estate, must be made a party (def.) in Eng. his Conserva tor in Comt. Act 29, 94.
St. Comt 233. The committee is appointed by the Ct. of course, y guardian for y brifone. If he has no committee, or if y Committee has an adverse Interest, Ct enforce Guardian "ad Litem" 2 Bac. 680. Pr 369, Act 94.
So if def is by age or sickness, reduced to second infancy, Act 94, Pr Chy, 429.
Generally, distinct and separate claim in different person, standing in y same relative situation, can't be joined in one Suit - by Land contracted to be sold to several, in porcelly, they cannot
Several Kinds of Bills.

Bills are divided into 3 kinds:

1st. Original Bills. These relate to new matters, not before litigated in the Ct. by the same Parties, standing in the same Interest. Mit 31. 8th. 19.

2nd. Bills not original, who are either in addition to, or in continuance of an original Bill, or both. Mit 31. 9th.

3rd. Bills in y nature of original Bills. There 15 are bills occasioned by some former bill, and the effect of ym. is to obtain y benefit of some former Suit, or Judgment, or a Reversal of some former Judgment, Mit 31. 3. 4. 36.

There are not strictly original Bills, because they relate to matters before litigated, i.e. no strictly Bills not original, because they are not in addition to or continuance of any original Bill but seek a sort of original relief.

1st. Original. There are divided into those praying relief and those not praying Relief. Mit 32.

An original Bill praying relief may be

1st. A bill praying a decree of y Ct. respecting some rights claimed by the Pfl in opposition to some rights claimed by def. Mit 32.

2nd. A Bill of Antecedents. A bill claiming no right in opposition to y right claimed by def., but still praying a decree Touching
y night of def. for y safety of y Pltf.

3d a Bill praying for a suit of Certiorari
to remove a cause from an Inferior Jurisdiction.
Mit 33. 40. Rinde 28.

Originate not praying relief are of 2 kind.
1st Bills to habeas curia, & testimony of witnesses.
Mit 33. 50. 180.
2d Bills for discovery of facts, resting in the
knowledge of y def. or of decree, hunting dr.
in his custody or power. Mit 33. 32. 130. 140.
Rinde 32.

7d Bill, not originate - There are of 3 kind.
1. Supplemental Bill, a bill of ye kind
is merely an addition to the Original Bill
Mit 33. 1 Rind 370.

2d Second Bill of Revers - a bill of ye kind,
is a continuance of the original Bill, when
in consequence of y death of a party, or of y name
of a same Pltf. y suit vi its original form
cannot proceed.

3d of Revers and Supplement, a bill of ye kind
both continuing y original suit, and supplying
defects & deficiencies since its institution. Mit 33.

III. Bills vi y nature of original Bill, if
these y substitutes, are numerous.
1. A Crossbill exhtibited by def or Pltf.
or after parties, touching some matter in litigation.
Mit 75.
2. a bill of Review to examine and revise a
decree when a former Bill. Mit 78.
A Bill in nature of a Bill of Review, 
but by one not bound by the former decree. Mit 83.

4. To impeach a decree on the ground of fraud. Ibid 84.

5. To suspend a decree, under special circumstances, so as to avoid it, for reasons occurring subsequent to it. Ibid 85.

6. To carry a decree into Cont. Ibid 85.

7. In nature of a Bill of Review or several. It lies in certain cases, and does admit of a continuance of the original Bill. Mit 66. 68.

8. In the nature of a Supplemental Bill. Ibid 67. 89. Mit 34. 5.

Of the Structure and End of Several Bills. 18.

1. Original Bill. Not original. In nature of original, "it ante."

2. Of Original Bill. The course of these will in a great measure involve the consideration of Bills in General.

3. Those praying Relief. 2. Those not praying Relief.

First, Original Bill, praying a decree of Ct respecting some right claimed by the Plt in opposition to some right claimed by the Def, must show y right or Interest of y Plt, y nature of y inquiry, or in what he needs y assistance of the Ct, and that he is without adequate remedy at Law. Mit 37. 40. 1910 873.

In Eng, a bill always brings in def may answer when oath of several matter charged. Mit 37. 43.
18. The prayer for an answer is, yet the def may answer not only according to his knowledge, but according to his remembrance, information, and belief, and to prevent evasion, he may insist specifically interrogating respecting every material fact alleged. Nut 43.4.

The bill then prays for relief, by nature of not been, with y case. Nut 37.43.

The usual mode is to pray for particular relief, to ask the def to think himself entitled, and then he adds by way of caution, a general prayer for such relief, as y case may require. Nut 38.20. 2 Newst 31.2. Nut 578.

As the prayer of particular relief may be framed with a double aspect 10 it may ask for the same ye relief as the alternative, as the ce may frame such prayer. Nut 30.2 att 3201.

20. But it seems, that a prayer of general relief is itself sufficient, and ye def or the core may make such a prayer, and the def may adopt the relief to y case. Nut 38.3. 3.2 att 3.141 3 att 132.2 182.220.3. Nut 578.
Lastly, a bill in Equity in Eng, pray ye a
writ of subpoena may issue to require y
def appearance, and answer. Mit 37.
This is no part of the Bill in Court. Process
is annexed to, and issues with the Bill.

It is by from a summons, or citation to appear
to def. Leaving it optional with him (ni where
a discovery is prayed for) to appear and show
cause, or not. And if signed by some
magistrate, or ordinary & law breaker i

All persons, who are concerned in the demand,
or who may be affected by the relief prayed
ought to be made part of, or parties to. Brown &
Inwood's Pr Eng 83. 2 after 350. But if necessary parties
are omitted, or unnecessarily inserted, the will
in general be rectified & borne alteration to be
made. Mit 38.

Practice in Eng, is to charge a combination of
persons with, other unknown to s/c, for
purpose of adding other names, if necessary.
But Mai seems an unnecessary form. Mit 40.

In Court, when it is discovered that other ought
to be added, as def. &c. &c. in General
in motion, continue y cause, that they may
be cited.

Whatever is essential to the suit, and necessary
certain Pl'ts knowledge, they be alleged
positively, and with certainty. As material
facts at law, tha be. Mit 40. Mit 56.

Seems as to facts charged. to rest in def
knowledge, or not, if they exist must be
within his knowledge, and not are the subject
23. On such cases, it is usual to insert in the Bill, before the prayer of process, or prayer for theSPECIFIC order, so required, and then the Bill is commonly named from the Act, or Writ so prayed, as an INJUNCTION BILL &C. Art 46.

Provisional INJUNCTION to stay proceeding's at Law, not usual. O'bray in Contra. The Act of Law must continue y Bill, as long as necessary in motion.

Every Bill in England signed by Counsel and if it contain matter criminal, unimportant or scandalous, it shall be expunged and no Counsel must pay costs to the party aggrieved. But nothing relevant is considered scandalous. Art 47. 1 Cr R. 104, 2 Nbr 24, Hinde 304.

Not so in Contra.

23. Secondly, Bills of Interpleader. In these Bills claim no right, or opposition to any right claimed by Def.

This bill is the proper remedy of a person holding property or being subject to duty claimed adversely by two or more persons. He not knowing to whom of these Claimants, he ought
Under these circumstances, he may exhibit a
Bill of Interpleader vs. the Claimant, praying
that they may interplead, so that the Ct
may judge to whom he belongs, and yt
he may be indemnified (Mit 48. 2 Citty C.
Ab. 137.)

And if a Suit at Law is already commenced,
as has by either of the Claimant, he has also
pray yt y Pltf at Law may be restrained
from proceeding, till the right is determined.
(Mit 48.)

The Pltf in the Bill must state his own
rights, and their General claim to show
yt equitable interposition is necessary. (Mit 48)

This Bill does not extend to ordinary cases 24
of Bailmnt, as this parties in these cases
may be compelled to interplead at Law
(Mit 48.)

As the ground of the Suit is y danger of
y Trmt. in the danger of the Pltf being
injured, her Ct wont permit y proceeding
to be used collusively, to give an advantage
to either Party, or to delay y payment of money
due from the Pltf. (Mit 48)

Therefore y Pltf must annex to y Bill
an affidavit, that there is no collusion
and if money is due from him he must bring
it into Ct., or at least offer, in his bill to do it.
5th "Cotswold Bill" bringing a suit of equity, to remove a cause from an Inferior equitable Jurisdiction. No Subpoena Prayed.
no appearance by def. no pleading beyond
5th Bill, Art. 69. The Bill stated merely a
Proceedings below, y insufficiency of y Act and
prays y suit. Art. 49. Now for y original
Bill, praying Relief.

If Original Bill not praying Relief. Art. 25
1st Bill to perpetuate y testimony of witness,
2nd Bill of Discovery.
1st A Bill to perpetuate. De must state y
matter, to such all testimony is to apply, and show
y Act has an Interest in the subject Art. 99.
S. 1st 698. Art 334 & 1st 378 Et also show
an interest in the def. to contest Ptff's Title.
Seems no need of y Stop (Art. 97).

It shall show that y facts to such y testimony
will relate, cannot immediately be investigated
in a Ct of Law. (as if Ptff is on the uncontrovertible
proof of y subject.) or yt before an Investigation
can be had. Some material evidence is likely
to die, or depart the Realm. Art. 37. 131.
1 = 117. 1 So. 77. 1 atte 452. Henie 32.

The Bill then prays leave to examine y
witnesses, that y testimony may be preserved
and perpetuated (Art. 97.
The deposition generally taken by commissioners
appointed by Ct. for yt purpose. Henie 32. 401. 2.

Secondly. a Bill of discovery. In Eng. every
Bills requiring an answer is a Bill for discovery.
or at least prays a discovery. Art. 52.
But a like distinction by that title, is one
which for a discovery of facts, resting in the knowledge
of the def. or of dead, writings by in his custody
or power, and seeking no relief. Obid 32. Hindes
36.

The Bill is commonly used in cases of of
Inscriptions of some other Co. who cannot compel
a discovery, as to enable the Pltf to prosecute
or defend in a Suit at Law. But 32. 1&2
St. 209. 2&3 407.

The Bill must state the subject of a discovery
of interest of the Pltf. and def in that subject
and the Pltf might be a discovery. But 32.
Hindes 36

When a Bill seeking a discovery, of deed, &c
prays such a relief, as might be obtained at
Law, if they were in Pltf's hands. he must
answer an affidavit, that they are not in his
custody, and that he knows not where the
in his def. hands. But 32. Hindes 36.7

See in where discovery only is sought. 1&2
St. 347. 2&3 341. 3 at 132.

There is an affidavit necessary in Count
in the former case? I suppose not.

II. Bills not Original. 2&3. 1 Supplemental. 2&
of Reversions. 3 of Reservations and Setlements. But
33. There are an addition to, or continuance of
an original Bill or both.

Remarks. A bill imperfect in its frame may
generally be perfected by an amendment. But where
the state of the proceeding's forbid an amendment.
a new bill (not original) is necessary. But 33.
To a new suit originally perfect may become defective by subsequent events. By change of interest, death of party. In these cases a new suit may be necessary. Mit 23. 4. Hinde 42. 3.

There is a 
Interest of a party in the subject of the suit, becomes vested in another, binding the suit, in its original form, generally becomes defective. Mit 30. Hinde 48.

And if such change of interest is occasioned by the death of a party, whose interest is not determined by death, or by marriage of a female, Plff. y suit becomes in part or whole discontinued. Mit 30. And if y party dying or a female marrying, is Plff. y whole proceeding are in General discontinued. - Ibid. 1 2 3 4 5.

Upon the death of def also, all y proceedings abate, as to him and his interest. But y marriage of a female def does not discontinue y proceedings. Mit 50. 2 Rem. 1/47. 1 Mem. 3/8. 2 Bex 182.

The be named in the subsequent proceedings. But if the interest of a party dying determine absolutely, so as no longer to affect the suit, it does not abate. Mit 17. As Death of Tenant for life.

So if y interest of a party dying is transferred to another, as one of 2 Ex. So if husband dy. being a 1st party with his wife, is he right. Mit 50. Rem. 2/48. 3 alter 726.

So if on the death of his husband, (he and his wife being Plff) she doit proceed in y cause, it will be considered as abated and
After a decree on a Bill of Interposition, there is generally an end of it. But as to Pltf. if his death does discontinue it, 
mit 37. 1703. 1802.

It is a general Rule, yt if Pltf. may not in the subject of the Suit, be transmitted to another, pending the cause, y latter may wholly defect, in it if defective and continue it. yt abated.

"mit 38."

And if def. may not in the subject be transmitted, y Pltf may perfect or continue it as y please, to whom ye. Bidt.

The means of supplying defects and continuing are.

30. By Subpleademented Bills. When y

indefect of a Suit arises from a neglect in the original Bill, or y proceedings upon it and not from any subsequent event, it may be perfected by an addition in a Subpleademented Bill.

As further discovery prayed, new matter but in Issue. Parties added, when y State of y proceedings will not allow of amendment.

"mit 39. 3 Aliis. 370. 2 Ch 32. 142.

And this may be done, as well after a decree as before. 

"mit 39. 3 Aliis. 138. 110. 217."

This bill is never allowed, where y and can be obtained by amendment. 

"mit 60.

This Bill also supplies defects occasioned by events subsequent. As by alteration in y interest of a Party or a new Suit Interest in one not a Party. 

"mit 60. 1 Aliis 281. 3 50 217."

She not liable for y cost. 

"mit 37."
If the Interest of a Sole Plff, suing in "aut
a duit," determined by death, de and another, become,
chilled to it, it may be added to, and continued
by a Supplemental Bill. As death or removal of
the assignee of a Bankrupt, Mit 61. 1 alis 88.
84. For here a question of Title in the Plff is not
vened ... y merits are y same.

But if a Sole Plff, suing in his own right,
is deprived of, or bars, with his Interest in y
Subject "pending lite" y benefit of, y suit cannot
be obtained by Supplemental Bill, but by one
in nature of 3d. as Plff becomes Bankrupt.
O cells his property, Mit 62. Con. B 382.
The reason is, that here a question of Plff's Title,
is vened y merits different ... e A new
Original Bill necessary, Mit 62.

So if y whole Interest of a def is determined, and
y Subject vested in another, not claiming under
former y benefit of the suit not obtained by
Supplemental Bill ... as tenant in tail, def.
dead, and remains vestes, Supplemental Bill
does not go y Remainder; man but one is nature
of 3d. Mit 62. 7. 9. Reason that Interest and
Title, are distinct ... new merits ... new Bridgton
matter. new half not bound by former acts.

Genesis of Def's Interest is not absolutely determined,
but merely vested in another as he always
in derti ... Here defects may be supplied and
Suits continued by Supplemental Bill.
So the purchaser is subject to y same Guilt
As Grantor, and Suit may not be
defeated by def. Mit 63. 1 alis 88.
1st. Bills of Revivor. Where a Suit is abated by death and the Interest of the deceased Party is transmitted to his representative, as ascertained by Law, to go to a person only, and not the Title of the Representative, it is to be ascertained by the Court continued by Bill of Revivor.

So if a Suit is abated by marriage of a Female Petf. Mit. 64. The question of Title is the same as before.

2d. Bill of Revivor and Supplemenet. If when a Suit is abated by death or Marriage, no rights of the parties are affected by any other event, (as by a disposition of Trustees), a bill of Revivor and supplement to bring it case properly before the Ct. Mit. 65. 6.

Supplemental Bill not sufficient, because no suit requires to be continued as served, as well as added to, and a bill of Revivor only is not sufficient, because no suit requires addition, as well as Revivor. The Bill under enазви is a compound of both Mit. 66. 74.

3d. If by death of a Party, whose Interest is not determined, a suit appears with such a transmission of the Interest, yet Title to it, may be litigated in the new, neither of the former Bills will give a Claimant, in benefit of a Suit, but one in nature of a Bill of Revivor Mit. 66. 88. As device of Real Estate. Mostly 44. 1 Ch. C. 528. 672. 2 Bro. P. C. 520.

4th. If an Interest of a Party wholly ceases, and the same subject vests in another, not claiming under him, neither of these Bills will answer, but one in nature of a Supplemental Bill
Mit 67 62 82. As Tenant in Tail, dies, remaining rest, not bound by Tenant, et al. D by C.

If the Structure of Bill, not original. 33. 4.

Supplemental, This must state y original Bill, y proceedings upon it, and (if occasioned by any event subsequent) it must state y events and consequent alteration in the suit and in general. It brings in Eng (not in Cont) generally, yet y def may appear and answer. Mit 69. 3 atk 217.
Hinde 43. 1 Root 578.

If y event subsequent works an alteration in y Interest of y def, or of a person necessary to be made def, y Bill may be exhibited in the person alone, without y other def, and may be brought a decree upon the Supplemental matter as himi alone. Mi y Interest of the other may be affected by it. Mit 70. 3 atk 217.

And where the bill is filed for y more purpose of bringing new Parties before the Ct. as def, y original def never be made Parties to it. Mit 70. 3 atk 217.

1st Bill of Revivio. This must state y original Bill, y proceedings upon it, and be abated by death def, and it must show a right to proved the cause, and pray, yt it may be revived. Mit 70. 3 atk 217. Hinde 48. 3 Phil. 348. 1 Root 578. And it may be necessary to bring an answer. Mit 70. 1. 2.

The object of y bill is to but y suit in y situation it not it stood at y time of y abatement and
to enable y Plff. to proceed in it. Mit 72. 3.

After a decree, Def in y original Suit, may
file a Bill of Reversio, if y opposite party does
not. Or when y right of y Partie, are ascertained
and both are entitled to the Benefit of a dece
Mit 73. Pr Ch. 137. 1 Eq. 1. 3 attq 684. 2 bem.

In this case, the Bill merely substantiates y Suit,
but it must bring before y Ct all y Partie
necessary for this Purpose. Mit 73. 1 Eq. 1. Ab. 2.

A Suit abated may be revived as to part
only of subject matter or as to part by one Bill
and as to the other, by another. As when y
right of the Plff. rested at his death, partly in
his Real, partly in his personal Representatives.
Mit 74. 1 Eq. 1. Ab. 3. 4. Hinde 48. 2 cem.

5th A Bill of Reversio and supplement, being merely
a compound of 2 former bills, is formed and proceed
both in its separate parts, according to Mit 20
respectively. Mit 74.

III Bills in y nature of original are of 2 kinds,
Mit 74. 1. Capt. bills, bilt by Def in a former Bill
pending in Plff. or other party, touching y matter
in question under y former. Mit 75.

usually bilt to obtain a discovery, or full relief
to all Partie - Mit 76.

It may be bilt by one or more Def in Plff.
and other Def. This is necessary, if a question
arises between different Def, for y avoidance of
brining the whole merits before the Ct. togeth
Mit 75.
It must state y origin Bill, and proceed upon it and y right of y Party exhibiting, 16. y ground on wh it is founded. Mit 75. 6.

To be in y nature of a defense, or a proceeding to procure, a complete determination of y matter in question already. Mit 76. 3 att. 812. Har. 100. Thus when after issue joined, a new ground of defense occurs. (as a Release) a Crossbill may be necessary to take advise of it. Mit 76. 3. Ch. 13. 18.

So when a Bill in its original form cannot settle y rights of all y Parties, as when a deft are in discordant interests, a Cross Bill by one a more of ym. in y regular mode of bringing all y rights of all y partes, to a decision. Mit 77. 5 Ch. 1. 248. 3 att. 116. 1 Post. 572.

2d Bill of Reversi bitt to procure an examination and Reversal of a decree upon a former Bill, signed and enrolled. Mit 78.

They may be bitt upon error apparent, upon y decree in reverse y discovery of new matter. Mit 78. 1 Ch. 1. 1 34, 1 Nolf. 382. Pr Chy. 262. 2. D. 717.

When bitt upon discovery of new matter, it resemble, vi. it affect, and effect, an application for a new trial at Law. 1 Post 578. An appeal to dom law bitt in such case in England. Dares if like alleged error is apparent? Mit 79. 1 Bem. 416.

If on a Bill of Reversi a decree has been reversed, a new bill of y same kind may be bitt on the bill of Reversal Mit 78. 1 Bem. 517.
In Eng., a Suits of $2,000 from y time of faying
y decree, is a BG. to y Bill, and after, a demand
has been allowed to no Bill of Review, a new
one cannot be butt on the same ground.
Mit 72. 167. 1 R. P. C. 40. 3 50 30. 6 50 330. 18em
130 47. 447. 13 2 40. 120.

It is a Rule of a Ct in Eng. yt the bringing
of the bill shall not prevent the & of y decree
and if money has been decreeed to be paid, it is
regularly to be paid before the Bill is filed.
Mit 80. P. C. 240.

This Bill states y former Bill, y proceeding,
y decree, y point in wh Plth is aggrieved,
and y Enr. a new matter discovered. Mit 80.
Ch. P. 49. 4 Addi 414.

If y original decree has not been carned into Ef
it is sufficient to pray a Reverse. If it has, Plth
shall also pray to be released to the situation wi
wh. De. Mit 80.

To render this Bill necessary, y decree must
have been carned before. yt y proceeding
are "ni Hici" and y decree may be reversed
by a Mere of Supplemental Bills. Mit 81.
2 aft 136, 3 aft 811.

If the structre and of the several kinds of
Bills contained— 1st of Bills in y nature
of Bill of Review, but by one, not bound by
a former decree. as where y decree was to a
person, having no Interest, or no such interest
as it makes y decree binding uppon another
claiming the same or a Similar Interest. Mit
34. 83. 1 Ch. C. 172.
As decree by Tenant for life, affecting y right of Remainderman me State, or me fee. The latter may have art. Bill. It must show the Error in the decree, y membroetey of a former party, as Tenant for life, to sustain y that his own Interest, and pray a Proeeding and appearance and answer by the opposite Party. Art. 83.

4 ½ To Impose a decree for fraud. In this ease, the estate remain y party's to their former situation. Art. 84. 2 PRIM. 83. 3 Sibb. III. 133. 3. 2 24.

It lies not only in case of direct fraud, but in those having the same operation as where a decree is made. No interest, y Actin Doy Smit not being a Party, and y Smit is not discovered and in similar cases. Art. 84. 1 Ch C. 107. 3 Ch B. 30.

To, it is said, when an an infant's decree has been made to an Infant. Art. 80. 1 PRIM. 737. 2 Ker. 232.

The bill must state y decree, and previous proceedings and the circumstances of fraud. Id. Art. 80.

3 ½ To suspend a decree under special circumstances, or to void it for matter subsequent, as where after decree of foreclosure. Mortgage has been prevented by irresistible necessity; from paying at y way, y it may suspend it, and make a new decree when the matter subsequent. Art. 80. 6. 1 Ch C. 61. 257. 2 Sibb. 8.

6 ½ To carry a decree into Eq. Art. 86. Where from y suggestion of Party, or other cause, benefit
cannot be obtained without a further device.

This happens generally where y Party, having neglected to enforce it's rights under it becomes so embarrassed, as to require a new device to settle ym. and in some other cases. Mit 86. 2 Ch B 128. 2 Bem 402.

Thus it may be brrt by me 152 an Agreement, to a party to y device. Mit 86. 3 Ch Co. 231. 3 B/M 127. 4 B R. C. 168.

The Et generally only inforc'd and not vary y device and it is said, that y Law of a device might not be examin'd as in Bille. Mit 87. 3 be. 253. 6 B. R. C. 370. 2 To 323 1 Be. 218. 586.

7th. In the nature of a Bille of Revivr. It is brrt in certain cases. in Ash. after Abatement, a sable bill of Revivr will not continu y Suit. As where the Interest of a party agayn s is so transmitted, or the Interest, may be litigat'd in Chy. as in cases of a demise of the Estate. Want of Legal privity between them forbids a remedy by Bill of Revivr. Mit 88. 9. On such cases, the benefit of the original Suit is obtained by that Bille. Mit 88. 66. 2 Bem. 584. 572. Pr Chx. 134. 2 Br C. 629.

It states, y original Bille and proceedings in y Abatement, y transmission of the Interest, and y validity of y Pltf. Titled Mit 88.

42. 813. In the nature of a Supplemental Bille. Brrt to obtain y benefit of a former Suit, when the Interest of y Pltf is entirely ceas'd, and y subject is vested in another...
not claiming and a life... as Tenant for Life.

def ties. and Remainder next... Supplemental Bill

ties not. Nor of Remainder New Interest new

merit. new party. not bound by former acts.

Init 62, 67, 69.

It states y original Bill and proceedings upon it,
The Co. ask determined the Interest of y forms.

party. and the Title of y Person, to whom transmitted.

Init 90. 1 Br 9. C. 320.

Information follow y nature of Billy, except

in Their Bills. The underestimation is offered to y

former, often by way of Information, not of

Petition. Init 7, 21, 90.

If the nature of y Several kinds of defense... 49.

Defence is made by demurrer. Plea. or answer.

Init 97, 18. and all These may be used. if

they relate respectively to distinct parts of y Bill.

Init 13, 98.

I. of Demurrer. By demurrer. y def admits y

matter of fact alleged. but demands answort

on he shall be compelled to answer. Init 14.

37 9. 3 P/M 80. 390.

The principal object of a demurrer was to avoid

a discovery - to aver a defective Bill. It becomes to prevent an Investigation of it

so to save Expense. Init 100.

For any other purpose. it is of little use.

For in General, if a demurrer was hold.

y Court rules not grant Relief. The Def

has answered. Init 100. 3 P/M 107, 12. Med 47.
First. If damner to original Bill and
under ye head. 35° of damners to Relief
(As frequently includes damner to discovery)
2d. To discovery. As sometime, consequentially,
affest the relief. Mit 104.

When the discovery saith he only assist to
y relief prayed. a damner to the Relief will
extend to y discovery. But if y discovery have
further object. Plt may be entitled to it. fso
he has no blame to Relief. Mit 103. 148. 11. 12.

1st of Damner to Relief. That y subject
is not within the Jurisdiction of y Ct. is a good
ground of damner. Mit 102.

Thus if the plt has an adequate remedy at
Law and y remedy is clear and certain, a
Damner will hold generally. Mit 111.
3 att 740. 3 Brd. P.C. 82. 2 P. M. 296 271 11. 1. 546.

And when an affidavit annexed to the Bill, is
necessary to En. to give Jurisdiction to the Ct.
y want of it is good ground of damner.
Mit 112. 26. 11. 1. 546. 248.

Demner will hold. If plt has adequate Remedy
in any Ct of ordinary Jurisdiction. As execution
in Eng. and Probate here. Mit 114.

On a great variety of other instances, y
Jurisdiction may be declared defective and we alt.
mere regularly. a Damner will hold. Mit
116. 32.

So if another Ct of Equity has a proper Jurisdiction
of y suit. def may demner to ye Jurisdiction.
y Ct will dismiss it on hearing. So in Eng.
in some cases. Mit 130.
Personal Disability in a Bill, is a ground of demurrer, as of Time Court (in ordinary cases) over alone. Infant without next friend, the court, or Committee. Mit 135.

But if there is no disability does not appear in the bill, there must be taken of it, by plea. Mit 135.

His objection extends as well for (to) Bill, of discovery, as to those for relief. Mit 135.

That Pllf has no interest in the subject, or no title to institute the suit, is a ground of demurrer. As Pllf claims under a will, from circumstances of which it is apparent, yet he has no title. To this he may have an interest, but no right to sue. As one claiming under foreign letter of adm. Mit 136. 2 a.d. 310. 2 deo. 247. Dr. Chy. 389. 3 B.M. 370. Amb. 229. 2 deo. 38. Ray. 73.

This objection also extends to Bills for discovery. Mit 138. 1 Hen. 10. 1 Co. P. 99.

So that the claim is unlawful, as to enforce. Mit 137. 2 Co. 264.

This objection also extends, as well, to a Bill for discovery, as for Relief. Mit 138. Lovech. 10. 1 Hen. 9.

But if Pllf states a complete Title, and a legitimated one, a demurrer will not hold, as for relief. Mit 138. 2 Co. 264. 2 deo. discovery, as adms., may, bounding a suit, to release the adms. Mit 140. 1 Hen. 106. 3 B.M. 370.

She the Pllf has an Interest, and a right to one, yet for want of priority between him and def. this latter may not be liable to y suit. If so demurrers held. As, a legatee has no
has no right to call on Trustee debtor, for the satisfaction of his Legacy. Mit 141. 2 attk 384.

So confusion between y Personal Representative and y debtor, might afford a distinct ground on such to claim relief. Mit 141.

Plt must also show some claim of Interest in Def. Shows y latter may demur. Thus if in a bill to set aside an award, or enforce one, y arbitrator are made deft. They may demur, and in general not only to the Relief, but to y discovery. Mit 142. 2 Eqty. Co. 78. 2 Bem 380. 1 Bem 180.

She it seems, if a Bill is laid to impeach an award, for gross misconduct in arbitrator they may be made deft. Mit 142. 2 attk 383. 304. 2 Ven. 376. 17.

If a Bankrupt is made deft in a bill by his assignees, he may demur to the relief, having no Interest. But, sement, if a discovery is sought of his Act, before Bankruptcy, he must move to set part, praying a discovery. Mit 146.

Of by reason of any defects in the substance of y case, as disclosed, by the Bill, y Pltf is not entitled to relief, y demur may demur. Mit 144.

49.

The want of proper parties is a valid ground of demur. As one st Tenant Pltf, should bring alone for a legacy given to his wife. Mit 144.

Pr Ch. 392. 1 Ch Ch. 41. Ten. 4. 113. 82.
202. 2 B. M. 311. 31. 2 attk. 67. 1 att. 290.
But a part of y executor for the estate of a decedent person may sustain a Bill in behalf of themselves and y next for an account of the estate and payment. But in that case the same may come in under y decree. Mit 145. 2 Bev. 312. Pr Chy 572.

If a valid reason for omitting a necessary party is suggested by the Bill, a demurrer will not hold. As if he is resident out of the Jurisdiction of y Ct. Mit 146. Pr Chy 83. 2 after 570.

So if y Bill seeks a discovery of y necessary party. Mit 146. 1 Ben 35.
A demurrer for want of Party, must show who y proper party are. not indeed by name for this might be impossible. but by some sort of description. Mit 146.

Amenable has been allowed after Indictm. upon Demurrer for want of Party Mit 146. 2 Ch. 2 P 137.

That y Bill demands several matter of different nature or several deft is sufficient cause of demurrer. Added to burden each deft. with unreasonable costs. some of yre being stronger for a part of y claim. Mit 146-7. 1 Ben 416 413. Had 337.

So if y Bill relate to only a part of y controversy between y Parties. to prevent multiplicity of suits. Mit 148.
A Demurrer to Discovery. In a bill praying relief, as well as a discovery; the latter being merely in aid of the former, is in general incident to it. To the demurrer to a Relief extends to a discovery also. Mit 148.

But as discovery is sometimes sought without Relief, it may be, as in a Bill praying Relief, may show a title to discovery, this not to relief, n'though case, a demurrer may hold to the Relief, and not as to discovery and vice versa. Mit 148.

When the Bill prays Relief, a discovery is material to the Relief, includes a right to discovery, unless something in different situation render it unimportant. Mit 149.

But in a bill but for discovery merely, or becoming so. Pllf must show a title in why it ought to interpose for a mere purpose of compelling a discovery. Mit 150.

Generally need not aid of a Indictment of another Court to enable Pllf to prosecute or defend. But if a prosecuting at another Co. is not well seen, a demurrer to the Bill will hold. As Indictment or Information. Mit 150. 2 175 388.

So if Co of ordinary Indictment, in which this is pending, can itself compel a discovery. Mit 150. 1 288 1 208 2 407. An action of Account at Count.

That Pllf has no Interest in the Subject, or not such as to entitle him to a discovery from Def.
That def has no interest, nor claim to the subject.

Manifest of Priority of Title between Pltf and def

But in general, if it can be supposed, yet the discovery may be in any way material to it, it is sufficient in defence of a suit it will be compelled. Mit 156. 1 Pet. 240.

The situation of def may be a ground of demurrer, as if the discovery may subject him to a penalty or forfeiture or hazard, a recovery title, equal in Equity to Pltf. Mit 157. 162. 2 Muster 240. 1 Pet. 9, ab. 131. As if callee may, when to desire a Company. Mit 157. 2 Muster 246. 2 So 401. 1 alt. 430. 2 So 383. Tench 75.

3 Dip. 376.
But if Pltf alone is entitled to a Penalty, and expressly reserves it in his Bill, Def is compelled to make discovery. Mit 158. Thm 60. So if def by his own agreement is bound to a payment in nature of a Penalty, in the event of his doing a certain act. Mit 159. And if def has covenanted not to make any demand to the discovery, he is bound by it, penalty notwithstanding. Mit 158. 1 Co 4. Abn. 77.

So def is not bound to make a discovery, if he may find cause to plead his own guilt of any moral infirmity, as the birth of a Bastard Child. Mit 160. 2 Cor. 4. 337.

Nor when the discovery may subject him to a forfeiture of Interest, as whether a case has been assigned without license. Mit 160. 1 Cor. 56. 2 Atk. 392. 2 Cor. 263. 1 Co 131.

Secus of Pltf alone is entitled to a forfeiture, and reserves it by Bill. Mit 161. 1 Cor. 56. 2 Atk. 353.

Def not bound to make discovery, nor was subject him to any thing in any nature of a forfeiture, as in Eng. as he was educated a Fairfax. Mit 161. 3 Atk. 407.

If def has an equitable Title, equal to Pltf's. And not perfect at law, he is not bound to discover, or defect in it. If so fact so appear in the Bill, Demurrer will hold. Mit 161. 2 Cor. 408.

In a Bill for discovery merely, some grounds of demurrer, not so extended as well to discovery or relief in a Bill bringing relief, will not hold. Such demurrer for want of Party, will
not hold to Bil. praying discovery only— for it seeks no decree. nor in General for want of Equity in the case. for some reason. not because y Bile extends y discovery sought to part of y controversy only. Not Mit 163.

Second. Demurer to Bile not original and 36. Biles in The nature of Original— many of y Rules given under y former General decision, will apply to ye. Mit 164. 4.

If a Supplemental Bil. is brot, where y original may no be perfected by amendment. Demurrer will hold. Mit 164. 7 afft. 817.

Demurrer to a Cross Bill will not hold for want of Equity. for Plff is brot in Cho. by the original Plff, and a Cross Bill is generally a mode of defence. Mit 165. Hara 165. 3 afft. 812.

Any irregularities in the frame of a Bile of any Sort is a ground of demurrer. Mit 166. 5 afft. 802. Bumb. 36.

Demurrer are signed by counsel. but in written oath. as they assert no facts. Mit 170.

If def answers to any part of a Bile, to what he has demurred. he waives the benefit of y demurrer. so if his plea be. For the demurrer demand, intent an Def shal answer. and to y answer a Plan. Plff may reply and adduce testimony and then proceed to a hearing. Mit 171. 3 PAVE 171. 2 afft. 137. 282.

Regularly after a demurer to y whole Bile has been allowed. there can be no amendments. Mit 174. But after demurer allowed. to part of a Bile. 
whole may be amended. for y suit hare continue in Court. Mat 174.

A demurer upon matter of form. Was allowed, is no bar to a new Bille. Seven of y contorts have been decided upon it. Mat 174. 2 Ch. 3. 133. 1 Nerm 135. 4. 441. 2. 2 to 120.

When y bille itself dont disclose y whole of a case, on v of fully disclosed. now can put a demurrer must resort to "plea in which he may allege what Pluff has omitted." Mat 178. 8.

So in many cases, what constitute a good defence by way of plea, will be a good ground of demurer. if it appeared in the Bille. Mat 176. 3 after 220.

III of Pleas. First to original Bille. Secondly to other Bille. Mat 176.

First to original Bille. there are of 2 kinds.

1. pleas to relief. 2. To discovery pleads.

1. to relief. When the objection to the suit is not apparent in the bille, y Def must, if he can take advantage of it, show to y Ct. by plea or answer special matter. ask create, y objection.

Mat 177.

A plea is a sort of special answer, resting y defence upon some one point. the defence. then, whi i better for a plea. must be such as reduce y controversy, or a part of it, to a single point. if it depend upon a variety of circumstances, or several distinct points, it shd be made by way of answer.

Mat 177. 234. Hence 170. 1 alle 54. In Cont. y hearing is either case. is frequently at large. 10 without plea or answer.
Plaew of 3 Sorts - 1st For the Annulment,
2d To the Person of a Pltf, or def 3d In Bar of y
Suit. Mit 171 8.

The objections rch may be made, by Plea to y
relife prayed, or nearly, this not necessarily in lawe,
as these rch are intents of demand, when the
grounds of objection is apparent on the face of y
Bill. Mit 171.
The principall defenses, proper to be made by
Plea, are y following:

1st That y suit of y Suit is not within 4
Annulment of % C. (ie any C.) of Equity. C. is
called a Plea, not to the Annulment, but to y
Bill, because it does not deny the particular
Cognizance of the Particular C. (of Equity) apphia
nt, but the principle of Equity extends to y case.
Mit 178, 180. Be goes to y meritt.

There. That some other C. of Equity has the
proper Annulment—ye is a Plea to y Annulment
Mit 178, 182, 17b, 233, 17bem 32, 212.

3d That Pltf is disabled to sue by reason of
Personal disability—ie Outlawry—Aliena, Alienage—
Mit 178, 185, 17bem 184, Co Lit 134, 2 after 380,
1 Bnt 57. This is called a Plea in y nature
of a Plea in matenent Mit 172.

4th That Pltf unto y Person he pretend, to be,
or does not sustain y charatter, &he be assumer,
As Man he is not Pltf Mit 178, 183, 17bem 498.
This is called a Plea in Bar. Bnt 6.

5th That Pltf has no Interest in this suit sec.
This is also of a Plea in Bar. Bnt 2 after 380.
It extends as well to discovery as to relief Mit 181
That def. is not liable to be called upon, touching y subject in question, as where there is a want of proficiency of skill between Platt and def. This is a plea in bar also. Mit 173. 132.

That def. is not the person he is alleged to be, nor dont sustain y character, in which he is sued. Mit 182. This is a plea to y person of y def. ibid 173.

That def has not such an Interest in the subject, as to render him liable to def.\'s demand. Plea in bar. Mit 183. Item 426. But generally in such cases a disclaimer in purses. Ibid 183.

That for some reason founded on the substance of y case, def. is not entitled to the relief prayed. A plea in bar. Mit 178. 184. As a former decree or order of y court, by which the right of y parties are determined 3 alter 526.

Or (May) another Bill for y same cause has been dismissed Mit 184. Item 310.

But the decree or order pleaded must be a final one; or it is no bar. Mit 185. 501. And so much of y former proceedings must be set forth, as to show that y same point was then not in issue. Mit 195. 2 alter 503. 2 be. 577.

In order dismissing the former Bill for some cause can be pleaded in bar, only when the def. has determined, that def. has no right to relief prayed. Of course this dismissal for want of proof is no bar. Mit 196. 1 alter 591. Item 310. 1 Bros PC 281.
So a decree of another Ct. of Equity determining y matter in question, is a good Plea in Bar. Mit 192. 3 Br. P. C. 384.

So another Suit pending in y same or another Ct of Equity for y same cause, is a good plea, under y head. Mit 192. 3 Ch. C. 187. 530.

Not necessary. But the former Suit to be between precisely y same parties, as the latter - as a Pltf sells part of y property, pending the Suit, to B. who sues for his part. Plea of y first Suit pending will hold. Mit 192. 1 Ch. C. 241.

So where one Lpsr owner of a Ship, files a Bill vs y Captam for an Account and all y owners join in a new Bill. But in case of the former practice is to dismiss the first, and to direct def to answer to the second, in res pt paid. Mit 192. 1 Ch. C. 241.

But when a second Bill is brought by the same person for y same purposes, but in a different right, the pendency of the first Suit, is not a good Plea. As no one ever at Pltf, when he is not Pltf then takes out adm2 and sue, as adm2 Mit 173. 2 after 44.

If Pltf has a Suit pending to Def for same cause at O Law. Def after answer must in may by application to the Ct, compel Pltf to elect wi Law or Eq. to proceed. But the pendency of the Suit at Law, is not pleaded in Bar (formerly Contro) Mit 200. 3 P.Mr. 90.

But the Sdment of a Ct of ordinary jurisdiction
A good Plea of a Bill in Equity, for some cause. Mit 204. 1 Rec. 397. 2 Rec. 876. 1 P. Wm. 389. 2 Abr. 286.

Plea of an account stated, is good in Bar of a bill for an account, but it must show y
balance. Mit 208. 1 Rec. 180. 2 abr. 1. 3 So 303.

A Release may be pleaded in Bar of a Bill at Law, but it is said, that a plea of Release
must state y consideration, when y bill is founded or made, rather. Mit 203. 3 P. Wm. 318. 2 Rec. 128.
4 Harr. 188. 3 Blr P. C. 366.

The Def of fraud, in many instances, Def of Int
and other Defs may be pleaded in Bar, as well
in Chy as at Law. Mit 210. 14. 2 abr. 150.
Bo Chy 402. 533. 1 P. W. 770. 3 P. Wm. 309.
2 abr. 286.

The Def had a high claim to y protection
of a Ct of Equity, to defend his Power as Plff,
has to assert his Power, in a good Plea in
Bar, as purchasers of Trustee with notice
of the Trust. Mit 215. 2 abr. 397. 630. 2 Bent.
361. 2 P. Wm. 281. 1 Rec. 246.

The insufficiency of y Bill to answer y purpose
of complete Justice, may be objected to by Plea.
A objection is founded usually in y want of
proper parties. Mit 220. 1 Rec. 118. 2 abr. 37.

A Plea of Recovery only. 157. That a case
is not such as to entitle the Ct of Equity to
assume a Jurisdiction to control a discovery

Mit 222.
2nd That def has no interest, or not such as entitles him to discovery, if that fact appears, demurrer will be held. Mit 222. de Plea. yt def being as heir or Lessee is not hurt be.

3rd If def has no interest on the subject, (he has an interest in him is alleged in the Bill) he may protect himself by pleading the facts or by disclaiming. Mit 223. 1 Bev. 420.

4th Of the situation of def render it impracticable for equity to compel a discovery, he may avoid a discovery by Plea. Mit 223. 2 Bev. 245. 1 Bevem 100. If the fact is apparent on the Bill, he may demurr. Mit 137. Sec. 10. He must plead.

The cases on this Plea in barrier are 115. 65. where the discovery may subject him to Punishment of any kind. Of them the discovery sought, tenor to prove a crime upon def. he is not to be made to answer, and if in fact is not apparent, he does plead it. Mit 224. 137. 1 Bevem 110. 2 Bev. 240. As. Bill for discovery of a marriage, not if discovered was known def guilty of Breach of Peace or. 3 P. P. P. 76. 3 P. M. 375. 1 Anl. 33.

2nd Where discovery tends to subject def to a forfeiture of Interest, as Tenant for life charged with waste. Mit 100. 225. 1 Alker 326. 8. 1 Bev. 26. 1272. 2 Bev. 383. If it do appear in the Bill demurrer will hold. Mit 100.

But def in such case, is protected as the discovery of no other fact, yn yt. not was occasion the forfeiture. Cog. mi the last instance, plea was not held, as to the facts of def, being Tenant for life. But as to yr waste only. 2 Bev. 100. Mit 226.
And in case of forfeiture, if Pllf alone is entitled to the benefit of it, and waives it by his Bill, Def is bound to make the discovery, [mit 227. Mostly 75]

34. If y discovery sought is a fact, y knowledge of wh. Def acquired from y confidence reposed in him, as Counsel, Alty. or arbitrator he may avoid a discovery, by pleading, that his knowledge was so obtained. [mit 227. 8. 1 Ch C. 277.

45. That def is a purchaser for value concealed notice of Pllf title, is a good plea to avoid a discovery of his title - as purchase under Mortgage, by defeasance being perfected - purchase of goods of a Bankrupt, before y commissin, and before notice of the Bankruptcy, [mit 288. 162. 1 Item 27. 2 Ves. 450.

Cartjournal Bill, admit of no Plea. [mit 48. 228. Secondly, Pleas to Bills, other ym original - many of the Pleas to Bill, already enumerated, will hold to the other kinds of Bills, according to their respective nature, and some of y latter admit of Pleas, wh do not hold to original Bills. [mit 228.

If a Bill of Exchange is lost without sufficient cause, and Mir is not apparent, Def may show it by Plea. So if y Pllf is not y purcher party. [mit 228. 3 Ch Pnr. 348.

So if a Supplemental Bill is lost, where matter, wh arose before the original Bill filed, and is not apparent, Def may plead it [mit 229. 230.
it and title is not liable to any Plea, nor
not hold to any original Bill, in nature
of an original Bill, Mut 230.

And it is not liable to Pleas to the Jurisdiction
of the Court, nor to Pleas in person of Def.
ne exhibite vi nay name of some def alone.
who cannot sue alone. As Infant. Sane Achet,
Debet. Lunatic. So Palt in the original Bill
has submitted to the Jurisdiction of y Ct. and
oblige'd the def to defend. Mut 230.

In Pleading, More must be generally y same
strictness as to substance, as least in Equity as
at Law. Mut 232. 3 plr. 70. lvplby 40. 40.
2 Ves. 108.

It seems that a Plea ought not to contain
more. yng one defence. Double plea. informal,
and inproper. Mut 233. 4. 5. 1 PL. 370.
3 plr. 341.

But a Plea may be allowed in part and overleave
part. 16. it may be allowed as to part of y Bill
answer'd by it, and overleave as to the rest. Mut
232. 1 pl. 45. 3 pr. 44. 10 pl. 284. 3 to 389.
1 Ves. 285. Pleas of demurrer. 2 plr. 89.

The answer may in general be positive as at Law.
except in certain cases. As that an account
pleaded is just, according to the best of his
knowledge, and belief. So in case of negative
answerm, and avermert of facts, not within his
knowledge, immediately Mut 235. 6. 3 plr. 70.

All material facts must be clearly and distinctly

§ 26
If a Bill contains any charge, not being answered would defeat the effect of the special matter alleged in the Plea, the charge must be deemed not only by the Plea, but by answer also. In this case the answer is used, merely to support the Plea. It is not a general answer constituting a distinct defence. Mit 236. 1, 242. 3 a Mal. 304. 810 B. 3 P.M. 145. 3 Bar P.C. 373. 2 a Mal. 246. Not required in Court practice.

But if the Plea is accompanied by answer to any part of the Bill, answered by the Plea, (i.e., to any part of why Plea is in avoidance) it overrules the Plea. Mit 237. 254. 2 a Mal. 155. 2 Bar P.C. 230.

Or if neither party wishes to try its sufficiency in the first instance, Pltf may take decree upon it without a decision upon its sufficiency—Mit 240.

As to the effect of allowing a Plea simply, allowances reserving the benefit of it to the hearing and ordering it to stand for an answer see Mit 239. 243.

Pltf, by replying to a Plea, admits its sufficiency. If therefore he takes issue upon it, and def foresters it true, y Suit so far as the Plea extends is bound. The Plea itself is not good. Mit 240. 3 Bar Par. Case. 74. 3 P.M. 94.

Of answers and Disclaimers—

Of a Plea is overruled, def may insist in any way matter by way of answer. Mit 244. 3 P.M. 95. 2 a M. 402.
And whatever part of ye Bill is not covered by Demurrer or Plea must be defended by answer, mi def discharging Mit 244.

The Pltf in ye Bill is entitled to a discovery by def if he can avoid it by some mode of defense, and if he don't burden himself by Demurrer or Plea, he may still in his answer insist. But he is not bound to make discovery Mit 244. 3 PIV 338. 3 Bos 491. 8 5th 276.

In this case, Pltf may except to the answer as insufficient and upon ye exception, it will be determined, mi y def is bound to discover answer, or not. Mit 475.

If several distinct grounds of defense, as in Bar said, Def should state them by way of answer, instead of Plea, and may have the same advantage of rem as is pleaded in Bar Mit 245. 6. 1 5th 37. 2 PIV 140.

For so much of ye Bill, as is material, def must answer directly, he must confess or deny ye substance of each charge. Mit 245. 7.

Particular and concise charge, be answered particularly, not generally. Mit 247. 2 5th 68. 69.

If ye answer, states any thing not material, in the def case, it will be upon application to ye Co be retracted, no of any thing scandalous, but nothing relevant or deemed scandalous. Mit 248. Morely 48. 70. Hinde 254.

The answer usually begins with a Reservation of all except it to ye Bill. It then gives particular
answers to ye several Charges, consisting of a denial of ye. or a confession of ye. with new matter by way of avoidance or Title. Mit 248.

It concludes with a General denial of all other matters contained in the Bill. This is unnecessary and absurd. if ye whole is before answered, as is usual. Mit 248. 8 P.M. 87.

When def is an Infant, ye answer is expressed to be by his Guardian. In this case, the reservation of Exception to the Bill, and a general traverse, at ye conclusion, are omitted, for he is entitled to the benefit of every exception, of course, and ye answer cannot be excepted to. for breafheud. Mit 250.

The answer of a Lunatic is de jure. is addressed to be by his Committee, or by the person appointed his Guardian, by ye Ct. Mit 250.

Answers are signed by Counsel, if when taken by Commission, Mit 250.

If Plef object the answer to be insufficent (ie. not full and explicit) he may except to it, stating such parts of ye Bill, as he omits, are not answered, and praying that def. may, as to those parts, make a full answer. Mit 250.

A further answer in this case is considered as part of ye first, and an answer to an amended Bill, as part of ye answer to ye original Bill. Mit 252. 3 alk 504.

Def may disclaim all right and Title to ye subject or to any part of it. But a disclaim is cannot.
be made with an answer. For a disclaimer is only a denial of present existence. But def may have had an interest, and disposed of it, and an answer is generally necessary so far as to ascertain the fact. Mit 203.

The form of a disclaimer is: 'I def disclaim all right and title to the subject demanded. Mit 203.'

A disclaimer admits no reply, and so on. Will in General on disclaimer made, admits a bill with cost. Mit 204. 3 al. 1843.

Def may demur to one part of a Bill, plead to another, answer to another, and disclaim as to another. But these must respectively refer to different and distinct parts. Parts of a Bill. For he cannot plead to what he has demurred to, nor answer any part to what he has demurred, or pleaded. A demurrer, in pleading a demurrer, can he shall make any answer, and the Place on he shall make any answer. Nor can he alibi by answer, what he has once disclaimed. Mit 204. 2 53; P.C. 20.

A plea or answer, mens, venire a demurrer, and an answer, a plea. Mit 204.

Replications. A replication is folly, not to reply, plea or answer. Mit 205.
Formerly it was usual for Plt to reply specially, to Special matter alleged in the y plea or answer; unless he thought it advisable to deny the plea, or answer generally. Mit 205.

The consequence of no practice, was frequently a long train of Special pleading, with much found

The practice is now altered. Special Replication are out of use, and PltF is to be relieved according to your form of the Bill. Whatever new matter def may have alleged. Mit 235. Hindoe 234. I Root. 586.

And if PltF otherwise go from any new matter, offered by his def, his bill is not properly adopted to his cause. He may amend it, and to the bill thus amended, def may make new defence. Mit 236. J Hindoe 236.

The General Replication now in note, is yt. PltF's bill is true, certain and sufficient, and the plea, def is untrue, uncertain and insufficient Hindoe 235.

Of PltF does not reply at all, y plea or answer. is taken to be true. Hindoe 233.
Public wrongs.
Persons capable of committing crimes 460. Principals and accessories 463
Felony 468. Homicide 471. Justifiable 471. 2d Le defendendo or secutable 475. 3d. Felonious Homicide 479
Manslaughter 480. Murder 483
Petit Larceny 493. Arson 494.
Burglary 498. Larceny 505.
Forger 521. Perjury 525
Bail in Criminal cases 532.
The term "Public Wrong" all crimes and misdemeanors in any other words all offenses to the immediate law.

A crime or misdemeanor is an act committed or omitted in violation of a public law forbidding or commanding it. 4 B.C.I. 31.

Crimes and misdemeanors are broadly speaking, the two common acceptances. The former denote offenses of a more serious kind, the latter those of a less serious nature. 4 B.C.I. 32.

A crime of any kind is a violation of a public right inherent to the whole community, as in short an injury to the whole community, as stated. A civil injury in the other hand is a violation of a private right.

If, however, that in almost every case a public wrong actually involves, as it is a civil injury, yet the public offense is one thing and the civil injury another. As Battery, Trespass, Murder. That is, Battery &c is an injury to the public. But it produces a civil wrong. As a Public Murder. 1 B.C.I. 32.

When a Malicious act causes the civil injury, it is the effect of the law to afford to defense as far as is possible, a defense from reasons. The individual to the public. The other to the Individual. 4 B.C.I. 30.

Yet if the offense amounts to Trespass, the private injury is regular, as the law provides, in the public offense, and no private reason can be have. As battery, Murder, Robbery, Larceny. 4 B.C.I. 36. 1 Roll 155.

The aversion of Mergers has been said to be found in
the policy of a Law, in object of not to prevent
offenders, from escaping from punishment. To prevent
an companions, of Felony. 3.T.C. 17. C. 15. argued.

"Ride Intra"

But the real true and natural foundation of the
description seems to be at the punishment of a public
law. 17. C. 17. rendering it impossible for the offender to make
2 to pay a reparation for the public injury, it being in General
a forfeiture of both life and property and his relations
left to a time of offence was committed. At 182.

On the other hand of a crime not amounting to felony
injuries in Individuals, he has his remedy at Bulkley.
L Performing, for here the punishment being two
days leaves room for private compensation. 4. B. 4.

On Contra. This doctrine of Mergers seems not to have
been regarded. Civil Suits have been sustained for
punishing. 

Good to tell no French. Chawon or Hunt.
Forfeiture of property for crimes obtained, here only in
2 cases. Our destroying Magazine, of II. D. 2. in time of peace.
In manslaughter, 182. D. 6. 235. and no other
case of life forfeited.

Its action not being to form Suits for abandonment
of property. Bulkley vs. L. C. of Error. Subsequent
case at Bell to the same point, for it being between
the same parties, two in Magna. The former Judgment
Declared. Mal a by Subsequent. He obtained Judgment
on such Judgment. But then he was a Witness for the
defendant in no Case but between the parties.

The right of punishing for crimes, it is founded on
the Law of nature. & is some instance, it authorized
by the Revealed Law of God also; as in the case of
Murder. This right in a state of nature was vested
in every Individual, for it must have existed somewhere.
Otherwise the Code of St. Louis, the Sanction, etc.

In a State of Society this right is transferred to the
Sovereign Power, and then it is no longer their Judge
and Avenger.

Society's right to punish is said to be derived
from the consent of its Members, express or implicit,
and therefore to be founded on Contract. 4 B. & C. 8.
This foundation is broad enough to authorize many most
punishments; but not at all, the Capital punishment
for things which are merely "Mala prohibita". Ordinary
criminal conduct cannot confer a right to inflict Capital
punishments in such cases. See an 11, offering not
the "Mala prohibit" as in an individual who had
a right to punish in a state of nature, has a
right to transfer it. 4 B. & C. 8. 4th bullet 14. Paley 341.
2 Blackstone 142.

Consent of the Criminal is in no case valid to authorize
Capital punishment 4 B. & C. 9.

But the most rational ground of right, not only as
"Mala prohibita" but of all offenses, is necessity or
necessity. In Sovereign State, this regarded as a "Moral
Duty", has attributes different from those of a Physic.
Individuals, different right, different duties, different nature
and Science.

The King of humans punisheth is the prevention of crime
and at this day it is well settled, that it has nothing
in it as with vindictive punishment. This end is to be
attained in one of 3 ways:
First By reforming offenders.
Second By depriving of their power of doing future mischief 345.
Third By deterring them from offending 4 B. 11. 12. Paley 434.
All the excuses which protect the offender from punishment are reduced to two heads, considering want or defect of "will." To constitute a crime there must be a will and an act concurring. 4 B. & C. 20.

Defect of will in three cases:
I. Where there is a defect of understanding. 1. Hawk 12.

II. Where there is no understanding, there is of course no will.

III. Infants under the age of discretion not capable of distinguishing, are deemed to have guiltless of all crimes. They are punishable by any

Infants. If a offence is one of omisian, money, infants are generally punishable at 14. but by the age of discretion, do not

such offence, in an infant, are deemed to result of

such act, and not to an criminal intention. 4 B. & C. 22. 1. Hawk 12.
A person deaf and dumb from native may be tried and punished even for a capital offence, if it can be ascertained to have been done. 1 Wilson 624. 2 Hale 372. 3 Hale 817.
2 Hawkins 202. 4 Bc. 324. 4 M. 32. 153. 1 M. 32. 331.

If one commits a capital offence and before arraignment and before trial, he can't be tried, if after verdict after judgment, no judgment. 1 Co. 159. 2 Hawkins 2. 3 Part 40. 1 Hale 324. 350. 4 Bc. 24. 390.

If it be doubtful on the prisoner is not amenable or fact must be tried by the King. 4 Bc. 32.

He who incites a man to do an unlawful act, is himself the offender. 1 Hale 32. 350. 1 Hale 277. 4 Bc. 3. 35. Beding 53.

Voluntary Intoxication is no Excuse, makes an aggravation. 1 Hale 32. Co Lit. 2. 242. 4 Bc. 203. 1 St. 2. 53.

Habitual debility of mind produced by a long course of Intoxication, excus and presumpt.

So if the intoxication unconsciously produced by force or fraud, I presume.

III. There is a defect of will, where a man under undaining mis sorted not witted. Here the will is not active.

General rule, ye if one commits an unlawful...
...are by misfortune in absence. If it is committed, there is a
in the house. Reeling 123. 1 Cor. 126.

But if one who voluntarily deserts his lawful wife, for
his own convenience, he will answer.

1 Thess. 3:4. 4 Cæc. 27

Undue separation is unlawful; he who deserts, for
his own convenience, will answer for it in the latter case. The wife, if she
remains with the act.


Ambition. There is a defect of will ensuing from habitual
or voluntary. Here the will of man is destroyed or at
least does not abide it. 1 Thess. 3:4. As of the translation,
the word signifies an act of separation, a divorce. The party is executed on itself for an act under the designation of false confession.

1 Thess. 3:4.

A crime must be in many instances accused from perjury.
when the act is unlawful; and the act are the husband
or wife, the same thing. Imit. 4:20. 4:25.


But if the consent these come, voluntary, or by base
command of her husband, she is not accused.


But if the consent these come, voluntary, or by base
command of her husband, she is not accused.


But if the consent these come, voluntary, or by base
command of her husband, she is not accused.


But if the consent these come, voluntary, or by base
command of her husband, she is not accused.


But if the consent these come, voluntary, or by base
command of her husband, she is not accused.
Corrie done by the command of the Prince of Wales.

1 Suleman 3. 3 Bst 34. 4 Bl 28. 1. Hale 44.

Another species of compulsion not being a defect of will is done by command. This commences many unlawful acts. As reasonable not executed in connexion of the Enemy.

3 Bst 31. 1 Hale 43.

Curing to release extreme want of food or clothing. As justified by the 3 Law 4 Bl 34. 1 Hale 43.

**Principals and Accessories.**

The may be a principal in an offence against the law. 1 Hale 43. 2 Hale 63. 3 Hale 43. According to Black, offence in the last case are principal, in the first degree. 2 Hale 28. 3 Hale 43. 4 Bl 34. 5 Hale 43.

The latter were more clearly consummated in wearer, etc.
To save and effect a known awnemone will make a Principal or Felony.

The above Rules hold in name of the old Felony.

2. The lading 52.

Even a constructive presence and always necessary, to make a Principal in the first degree, 6 preparing 6. [aborted, and taking on offence or absence. Th is sh. Pity's, setting out wild Beast, with intent to do mischief. Here the 6. offence is principal in the first degree.] 14 Text 349. 2 Hark 438. 4 Bel 34. 3. 6. 35.

A Special verdict finding only of the persons was present, not later, to warrant a Judgment as here.

decency. An Accessory is one who acts at the chief actor in the offence, nor present at it, but absent, some may concerned as it before or after a fact.

4 Bel 35.

In High Treason there can be no accessory, all concerned are principals, an account of the actery of a master besides the bare consent to commit Treason, in we come under actual treason. 12.4281.2 1 Hark 438.40. 4 Bel 35.

Whatever makes an accessory in felony, maker him a principal in high Treason. 1 Hark 438. 4 Bel 438.40.

4 Bel 35.

Counselly questioned as to accessary, after the fact (in felony).

There may be accessory, in Petit Treason. Modern and other Treason. ni More 6. in judgment of Law are unforeseen injuries, as manslaughter, ni 6. there can be none before The Object. -
In bold Surn. and all crimes under 1 degree of
Vend. no accessory, all concours are guilty as
Principals. 2 Hinde 441, 130, 120, 132. Co. Lit. 57
Co. Eliz. 132, 291. 1. S. 301, 312.

An accessory cannot be guilty of a higher crime
than the Principal. As Tenant because a Stranger to
murder his Master, (or husband is so served by his Int.)
Tenant being absent, he is accessory to the crime
of Murder only. But he had he been present and assisting
he would have been guilty of Petit treason as Principal
and the Stranger of Murder only. 1 Hinde 132, 532, 440.

Accessories are of 2 kinds. 1. Before the fact. 2 after
the fact.

An accessory before the fact is one who procures,
counsels, or commands another to commit a crime,
being himself absent at the time of the act.
Absence is necessary, for seeks he not have
been Principal?

He who abets another to an unlawful act is
accessory to all that ensue upon the unlawful act.
but not to any thing substantially different from it
and not directly ensuing upon it. As a Command
B to beat C, if he does, he A is guilty of the
Murder in accessory. Co. a. 131, 132 to possess
C and B, which or shall have, he B is guilty as accessory
of death in the substance. But if a Command
B to burn C's house, and B, in doing it, robs the
house also, it not accessory to the Robbery. Plew 470:
Flete 27, 1. 3d. 111. 4 Bl. 37, 2. 1. Hinde 30, 2 Hinde 444, 443.

So to doth one to commit a Felony, (or felony) any
other offence in a misdemeanor. If the crime be not 3 East 511.
committed, 2 Cox, 7 R. 7, 1 Give 15. 2 East 51, 6. Ned. 11. Lit. 15.
If the abettor retires before the act is done, he and an accessory, Velon, 2 Hauk 418. Int. 394, 1 Hauk 577.

If the abettor, as well as those at a time, admit of delay, and the State is delayed as to them, the former having the incident of the latter, Velon, 1 Hauk 114.

The base concealing of an intended Felon is said to be only a Misdemeanor of Felony, which is punished only by Fine and Imprisonment. 2 Hauk 417 4. 3 Hauk 127.


Persons who are accidentally present, when a Felon is committed, and do not endeavour to prevent it and apprehend the Felon are guilty of a Misdemeanor and may be fined and imprisoned. 8 Stat. 110. 111. Hauk 238.

422.

Felon. 110.

A person who is accused of a fact in a person, and receives, relieves, comforts, or helps a Felon, knowing him to be such. 4 Oct. 117. Reeling 43 77. 2 Hauk 418, 188. 204. 5.

But like an accessory given must be made intent to hinder public justice as to prevent the Felon from being apprehended, tried, or hanged.

And hampering, concealing, and bringing Felon with a horse to escape, relieving, assisting, or helping from bailout, according to the Felon. To relieve a Felon in bailout makes the reliever in no offence. 4 Oct 33.

By more or receiving stolen goods, knowing there to be stolen, made no accessory at Law. The offence was a mere Misdemeanor. 2 Hauk 418. 4 Oct 107. 110. 2 Hauk 418. 4 Oct 107. 110. 2 Hauk 418. 4 Oct 107. 110. 2 Hauk 418.
objects above. 

By our 13. recession at each added is made Principal.

Taking must be complete at a time of its occurrence

To make an admission the date if a verbal promise and

Assistance rendered before death of the party, 2 Hunk. 451. 4 Bl. 30.

If this is counted the admitting the husband, next estate

But an actual delivery, declared occurring. But no other

Relation essential, are current and their. Thus and so,

and their assistance not accorded in assisting a wife

then the heir commits to beloning. 4 Bl. 39. 8. 2 Hunk. 43.

I 204. 1 Hunk. 621.

If one is entitled as according 2 Hunk. 39, 30.

That he may accredit to one is false. 1 Co. 119. a.

2 Mr. Kelly 540. 42.

Or a person else if the 2nd. Man accredits after

The same lund and as Principal: 4 Bl. 37.

But accredits, after the fact, are now by the co.

entitule to benefic of any more was. 4 Bl. 38

Formerly held thou an accredit shall not be considered,

To answer till the principal may afterwards 2 Hunk. 36. 43.

Contrary now held, but may the county, which

be this or be there (not be denied it) till the principal

is answered at if the principal is true at the same time.

2 Hunk. 453. 4 Bl. 40. 4 Bl. 40. 4 Bl. 18.

2 Hunk. 423. 4. 39.

But if the 1st. time, and 22. 42. 34. the accredit

may be true in certain cases. When the principal

have been attempted or even tried. 2 Hunk. 453. 4 Bl. 323. 4.

2 Hunk. 423. 4.

But if the principal is attempted, the accredit is discharged.

And if the attempt of the principal is reversed that of

the accredit at these facts reversed. 2 Hunk. 452. 3.

4 Co. 43. 1. 623 1. Rale 717.
But at the death of the prisoner before attending, or after conviction, the charge is discharged.

"As we are shown by St. of Ann. 4 Bl. 323. 2 Hawk. 453.

If one is acquitted before or after the fact, he may afterward be indicted as principal, but if acquitted as principal, then can he not be indicted as accessory, before the fact, 2 Hawk 323. 10 Leigh 251. As an accessory after the fact he may be.

1. Hawk 325. 4 Bl 40. Foster 361. 2 Hawk's

Breth of crown was guilty as accessory will not avoid an Indictment and him as principal.


An Indictment on one as accessory and not state that the principal committed an offence, that is what the principal was convicted and then to charge the known or declaring. 2. McHally 464. 7 Jr 460. Foster 360.

Yet the accessory on his Trial, the court after the arrest of the principal may consider the alleged guilt in favor of fact or law. 2 Hawk 466. 4 Bl. 324. Foster 121.

9 Co. 143. 2 McHally 464. 67

So he may when both are joined together.

2. McHally 463.

FELONY

Felony is any offence not occurring at 1St Law, a total forfeiture to the, a lands in being. 4 Bl. 324. 30. The term is general to not respecting any one specific violation.
The word death originally denotes any crime but the
legal consequences of certain crimes. Generally, death
is the sequestration of a fine or penalty, whereas, in the
ancestors' time, it was a forfeiture and in an easy decision
rendering those making a forfeiture of good only. 4 Bk 39.

Secrecy is strictly a felony for it causes a forfeiture.
Ancestry confirmed since the name. 3 Part 15: 1 Rank 2
5 Bk 314. 5. But now to dwell on itself as an offense
standing alone, 3 General 33. 4 Bk 36.

Capital homicide and necessarily a consequence of death.
This almost always subsumed as ill-treatment.
Commission by Charles Hattley and Paul Larranaga. 4 Bk 637.
15 Part 140. 2 Bk 47 0. 14 Bk 6 0 5. 2 Bk 14 2.
So a crime does not take offense are no felony.
In theory at least a landfill matter when assimilated
in an antedate. 1 Bk 64. 4 Bk 39. 3 Bk 45.

All felony, not are punishable with death, make
a conjecture of all lands at infamous. 3 of goods and
wealth, than of goods. 4 Bk 67. 4 Bk 38 0 5.

But by general usage the word felony is now
used to denote a capital crime and indeed
includes all capital crimes. 4 Bk 38.

Since if a £1 creates a new felony, so this matter, it
shall be punishable with death, as well as forfeiture.
So a cent of the £1 renders a felony capital offense.
punishable to any offense. £1 offense is £1 contribution
to felony. 4 Bk 69. 1 Arist 140. 1 Hal 52.
64 Part 11. 2 Bk 64 29 29. 2 Post 14.

But if a £1 subsumes an offense or seems of
punishing all he has, it only a misdemeanor.
This offence is made felony by arteful and sly decease, with 1 Bae 544, 1 Cal 527, 541, 703, Co 561, 2 Bae 469, 706, 283.

There, where the cause is defective (not known) are ai. 1 Bent. 529, 5th 288. and no jurisdiction. And no jurisdiction. nor in the case nor in the time of a manslaughter. 2 1 Bent. 288, 2nd 182, 183, 6 Rep 3 570, 67.

The possible offence is there in no the benefit of clergy at all.

This is virtually a kind of Piety. 1 166, 382, 14, amounting below, even the convicts from hanging of death.

2 Harkness 230, 1 166, 218.

But the goods are forfeited by conviction and are retained.

4 Bca. 373, 37.

At the same time allowed at Pell treason and at most capital security, not more at all. 1 166, 372, 14. It may be allowed, or High Treason. Pell Treason, or more than man.

The prisoner, or most capital security, committed by St. 29. Char. 3, 4 Bca. 374, and sentenced to Pell treason. 20th.

Originally allowed only to be seized, in Oster, in the clergy, afterwards to every man. who on a good, his being list of his being a clerk.

But not to women. They being executed by their law from personal offence.

Now by new Eng, it especially 21. Bca. 1, 3, 4, 16. 3-17.

And many more, since the privilege or detriment in case of clergy, is seized, to all persons. as reader see now.

But some persons are by it a strange breach in the hands, to others. wherever, or corrupted, or misapplied, or given or to another.
But Clerks, Peers and Receivers are some.

They remind however, are entitled to it but once.

Clerks, as often as they offend. It is, as often as they commit Cleregetable offences.

By it, allowance for any particular felony, or hinder.

Awards charged, not only of these, but of all Cleregetable offences, before committed.

At present in Eng. Clergy is allowed in all cases.

A felony was by the 5 & Eliz. Act expressly taken away by the 1st act of Parliament.

Benefit of Clergy formerly pleaded in Eng. "Declarationidea" but now required before Indictment and before or after conviction normally.

No benefit of Clergy, no crime.

Homicide

The killing of any human creature. 4 Eliz. 177. 1 Stain. 114. Page 110.

Homicide, there is.undo. Justifiable. Executable,

Felonious. 4 Eliz. 177. 1 Stain. 114. 115.

Homicide therefore must necessarily be madecp. The first

kind has no Guide. The 2nd very little even in judgment of law, until only a nominal President. 4 Eliz. 177 85.

Tort 253. 2 Stain. 113. 1. War. 108. 9.

Justifiable, of several kinds.

1. Homicide is Justifiable when occasioned by necessity.

In a Siff. in the best of his office acts, a malfeasor.
who has been condemn'd, there is a legal necessity.

4 Bk. 178. 1 Hawkins 168.

But in this case the law must require the act to be done, and done by himself or his deputy.

1 Hawkins. 4 Bk. 178. 1 Hale 497, 521. 3 Bae 574, 168.

Of a private murder voluntarily and wantonly kills, a horned bull, murder. Vide.

The officer himself in executing a sentence of death must pronounce the sentence. Therein he will be guilty of murder. As he begins for hanging, hanging and blood must run.

4 Bk. 179. 3 Bae 574. 2 Mc.Nair, 529. French L. 31, 1 Hawkins 168. Co Litt. 128, 1 Hale 571.

So the sentence must be be by an officer, or competent executioner. As if 2 or 3 in Esq. 1 Corn Plan. it cannot be done and venera of death in a Court for a crime of they have not condemned and in executors the officer who executes it and the death are guilty of murder. 4 Bk. 178, 1 Hale 497, 521, 528, 3 Bae 574, 5 Co. 106, 2 Mc.Nair, 333. Co. Ch. 48.

But if the Esq has condonement in the offense, and more sentence of death when the officer does not subscribe to it. The Obedly may and not the officer are guilty. For this is not new common cause. 1 Hawkins 168, 3 Bae 574.

A homicide is justifiable in certain cases, when committed for the advancement of public justice. As in those in attempting to make a legal arrest, is resisted and kills. The party resisting, as he resists being killed, he may even kill. It necessary, and the legal debtor even of private person. He is justified rather by the commission than the committing of same. 4 Bk. 178, 1 Hale 65, 2 Mc.Nair, 529, 574, 1 Hale Law. 494, 1 Co. 106, 7, 3 Bae 574, 9 Co. 68.

As if an actual color occurs or flees from his master. And they be private persons and without menace, they are
And if an innocent person indicted for felony, resists an officer, with a fear of arrest or death, the officer may, if necessary, take life, but not wantonly.

Sider. 318. 2 McHally. 572.

If a privy or person without warrant attempts to arrest an innocent person or disturb one of duty, he kills him.

It is also justifiable where an officer attempting to make a lawful arrest in a civil suit, or lawsuit, so that he cannot apprehend the offender. Then, when an officer acts under a lawful process of arrest, it makes no difference on it in civil or criminal. If he is resisted, it is his duty to overcome that resistance. 1. Hawkins, 167. 1 Rob. 183. Sider. 270. 3. John, 36.

So there are various other cases, in which he may lawfully take the life of a person arrested, either on the immediate belief of his warrant, to prevent an escape, or if persons attempt a rescue, and the officer cannot overcome it, he may take the life of the rescuer. Sider. 499. Sider. 203. 4. 2 Mo. Hally, 555.

Justiceable. To prevent any forcible or abnormal crime in one attempting to murder or rob another, or killed by the latter. So to breaking a house in the night by a flock of ducks or turkeys. 4. B.C. 180. 1. Bae. 675. 1. Hawkins, 105-9.

1. Rob. 486. 37. 453. 4. 4 Rob. 137. Sider. 271. 51. 2. 250.

If any person is apprehended with force or breaking forcibly from publishing a libel, 2. 2 McHally, 562.

So if by force be possible, yet if it be not also abstaining.

2. Since the nature of felony, a homicide committed for the prevention of it, will not be justifiable. 1.
an attempt to break into a house in the daytime, for this is no more than a civil trespass.

It follows then, that a person may not take the life of another merely to defend his house, his goods, or his person, from a bare trespass, nor he may use some violence.

4. 5 Cl. 360. T. S. 273. Ch. C. 333. 1. Hawkesw. 158. 3. 1. 5. 485. 3. 5.
To quote a singer B. but with no such violence as to occasion serious bodily harm or endanger his life. It would be justifiable in taking the assailant’s life. For if he assault in such a manner as threatens loss of life, a hurt, or other bodily harm.

There is no modern case however in which one has been found guilty of murder for killing his assailant and the general rule is that if one kills another in defense of his property or a trespasser’s offense in trespassing merely.

The general principle is that when a crime in itself capital is attempted with force that force may lawfully be repelled, by taking the life of the offender, so that the homicide is in such cases justifiable and there is no degree of guilt. 4 36. 181. 283. 50. 3. 2.
But the Law have given the rule a more liberal construction so that if the assault threatens to great bodily harm and he resists by taking the assailant’s life, he will be justifiable.

So if it be an consequence of any unlawful act, not naturally condemned to Blood shed.

So if one does an idle act, nor must manifestly
In Self-Defence. Executable.

This happens where one in a sudden assay kills his antagonist in self-defence. 4 & 6 Eliz. 152.

This is excusable and distinct from that which is committed to prevent the perpetration of a capital offence unto.

Such note to be material, who gives the first blow, if he who kills in self-defence, was forced to fight.

But to excuse this kind of homicide it must appear to have been by only probable or at least probable means of preserving one's life. 4 Edw. 184. 5 Eliz. 157. 1 Nov. 108. 13.

Hely 128. 1 Fost. 273. 2 McNally 563. or at least from escaping from great bodily harm. 1 Hawk. 105. 13. 5 & 6 Eliz.

When too to preserve one's life, it seems nearly akin to justifiable committed to prevent an injury and forcible ensnare.

Dissatisfaction between My and Manslaughtre.

It is often difficult to distinguish this Manslaughtre.

General Rule. If both are fighting 18. Fowling for victory, when the moste blow is given, to Manslaughtre, but if the Slayer hast begun to fight or having begun and his to decline and cannot without danger to his life or great bodily harm, to "be Defendingo"
According to some, the aggressor himself, when pressed (not asked) and trying to escape, is excusable in killing to save his own life. 3 (Bac. 877) Now, holdeth Counsel it seems, for this fault. 1, Hos 118. 1, Col. 478 80. 2, Heb. 38. 61, 40. 295. 278. 4 66. 685. 6.)

And if one strikes with malice presence and having fear and tried to decline, kills the other to save his own life, it is Murder. 1, Sir 118. 123. 1875.

If both agree beforehand to fight a duel, and one being pressed, not asked, kills, then he is not excused. — Murder for present malice. 3, Bac. 877. 678. 65. 123. 131. 4 66. 685. 6 1, Col. 478. 79. 1 66. 65. 122. 123. 4. 114. Not so in all the States.

I am asked whether it comes of fighting in general, by a preconcerted agreement, when two not allies and another act of revenge. 1, Tit. 125. 5. 112. 22. 1, Sir 117. 1, Col. 88. 475. 79. 1 66. 65.

To the Friends of him who kills in a duel. are murderers and killeth one, y others there. 4 66. 65. 1 65. 66. 123. 124.

This because of self defense extends to y chief civil relations, as Husband and Wife. 1, Sir 117. Parent and Child, Master and Servant. The act of y relation is condoned y act of y party attacked. 4 66. 65. 1, Col. 88. 84. 3 65. 868. 675. as to prevent great bodily harm. 66. 65. 475. A stranger may justify to prevent a terrible habitual crime. 65. 66. 675. 84. 65. 475. 868. 885.

Killing an officer who attempts to arrest the Slayer.
in the execution of his office, nay, Executable Murder by Warrant is singular, and illegal to good men's face of it. 2 Bl. 62: 40, 561. 5 H. 2 455.

No one can accuse the killing of another by bleeding Misadventure or Self-defense. It must appear in B.c. under the General Law. 3 Bl. 56 1 H. 2 478.

Punishment. Executable homicide is by misadventure or "De Defendendo" is said by Co to have been hanged with death. 2 Bl. 143. 310. Denied by later printers. 4 B. 183. 1 H. 425. 1 H. 114. Isto. 282. 6c.

The hanged is said to have convicted of a Total or Partial forfeiture of goods and chattels. 4 B. 183. 1 H. 420. 115. Of Total, a offence will be Felony, not B.c.: page 4: 4 B. 183. 7. 1. Hawkins 114. 2.

Hawkins 44. It seems to be strictly a felony, but it and charged with Felonious homicide, because not Capital. Felony being now used as synonymous with a Capital crime. 4 B. 183.

But as far back as English records reach a part has even been as he states it, entitled of course or of right to pardon and restitution of goods. Co. B. 7 hanged or in at worst but nominal. 4 B. 183.


Indeed the Eng. Judges never did or permit a general verdict of acquittal. 4 B. 183. Isto. 288.

No accessory is Executable Homicide, because not Felonious.
III. Felonious Homicide. This is the killing of a human creature with malice or excess and may be committed by killing oneself or another.

I. Homicide by killing oneself is called selfmurder. 4 B.C. 182. 4 B.C. 182.

Telo De Se is one who deliberately puts an end to his own existence, or commits any unlawful malady or act, the consequence of which is his own death. 4 B.C. 182. 4 B.C. 182. 4 B.C. 182. 3. As one attempting to kill another and the gun bursts, killing himself. 3 B.C. 54.

If one requests another to kill him and it is done, the former is not Telo De Se, but the latter is a Murderer. 1 B.C. 182. 3 B.C. 54.

A Person to be a Telo De Se must be of years of discretion and Composed Mente as in other Telenes, but Infants under seven. 4 B.C. 182. 180. 1 B.C. 412. 4 B.C. 182. 4 B.C. 182.


In Count no such consequence. Suppose.

2d. The second kind of Felonious Homicide consists in killing another person without justification or excuse, and is either with or without malice. 1 B.C. 182. 180. 4 B.C. 182. 4 B.C. 182.
Sence 2. Killa. Manslaughte and Murde is one and the same, i.e. malice, v. other witt. 1. Rowl. 167. 4 Bc. 131. 1. Rowl. 466. Malloc is any unlawfull or wicked motiue. 4 Bc 138. 3. in "Civil Descri" Por. 228.

Stat. of Manslaughte. It is the unlawfull killing of another by the malice eich bef. or implicable, 1. Rowl. 466. 4 Bc 131. and it is either voluntary or involunt.

No accuseres before the tale. Ut ante unsw ceremonie, 4 Bc. 131. 1. Rowl. 115.

As to voluntary. If 2. persons upon a sudden ground fight and one kill, y the in Manslaughte.

If they immediately go out aside and fight, for it is one continuous act of passas. 4 Bc. 131. For. 297. Reb. 115. 134. 8. Leah 157. 155. 2. Malby 563. 8.

Different from the case of dueling, by agreement.

There is a deliberate intent to kill, i.e. murde. So. Sible, in case of preconceiement or agreement to fight generally, 1. Rowl. 112. 122. 4 Bc. 86. 131.

If a person attempting to part others, who are fighting upon a sudden affray, i.e. killed, the offence is murder. Provided y by slayer knew or had notice, yt. the object was to part them. Also Manslaughte.

Reb. 637. 114. 115. 1. Rowl. 127. 8. For. 118. 372. 3 E 81. 61. B.

If one is greatly provoked, by another, misconduct, as hueling his nose or other great indignity, and immediately kill, him -- Manslaughte generally.

So is on a sudden provocation, one executes his wrong immediately but in such a manner as manifests a deliberate intent to kill or do other great bodily harm, and death ensues even accidentally it is murder. As Thrusting a boy to a horse's tail &c.
1. Ruck. 126. Or Ch. 131. Palm 545. Ex 127. 1 Sam. 473. 4. Port. 292. 2 Chr. 124. 2 Misc. 564. 5. Parent correcting a child outrageously.

If a husband slays a man in the act of adultery with his wife and kills him instantaneously—Manslaughter in the lowest degree. 1 Chr. 131. 2. Sam. 473. 4. Ps. 73. 103. 104. 105. 6. 292. 316. 564. 567.

Bare words or gestures, breaking promises, threats on land, never a state provocation to reduce even a sudden killing to Manslaughter. Any killing is voluntary or of manner of beating manifestly endangers life. 1 Sam. 124. Ex 130. 131. 35. 1 Sam. 105. 6. 473. Or E. 177. 103. 103. 105. 292. 316. 564. 567.

Seems it appears clearly from manner of beating that he intended only to chastise and that the killing was unintentional. 1 Sam. 14. S. 4. 1 Sam. 15. 4. Port. 292. 5. 4. Misc. 255. 2. Merch. 364.

If upon an affray between A and B. B. friend of A. suddenly interfere and kills A. he is guilty of Manslaughter only. In Presence Malice.
Manslaughter on a sudden provocation, differs from homicide "se defendendo" in this. In the latter case apparent necessity for self preservation. In the former, no necessity, out of sudden Revenge. 4 BC 192. 184.

As to Involuntary. This as the Term imports, is always unintentionally, but ensuing upon some unlawful act. "Mala sunt lex". 4 BC 192. 1 How. & N. 12. Foster 238. 2 McHarg 553. Tost. 261. Differs from homicide by misadventure in this, as it is latter ensues upon a lawful act. 4 BC 192. Commentar. 830.

If death ensues upon an act, not in merely Malum prohibitum, y Rule is no same, as if the act were lawful. Tost. 237. 1 Hale 475. 2 McHarg 553. 4. The homicide is by misadventure an act of smuggling.

If one accidentally kills another, while engaged in any rash, bold, and dangerous sport, as by sword playing. For Manslaughter. These are unlawful acts. 4 BC 193. 192. 3 Inst. 56. 1 Hale 472. 3. Foster 261. 292. 1 Flaviken 112. 294.

So if an act in itself is done in an unlawful manner, for, here mind its circumstances, the act is unlawful. As throwing down a house of timber or stone into the street; in a City, tho' y party gives warning. 26. 40. 41. See shooting a gun, where people usually resort. 2 BC 192. 184. 40. 1 Chaucer 112. For 284. 1 Hale 472. 473. 5. Foster 263. 293. 2 McHarg 553. 13.

If a unlawful act is done, only. The killing is manslaughter. If felony be murder, not murder. 4 BC 192. 3. 1 Flaviken 128. 17. 5. 296. 40. 41. How. 457.
Punishment. A capital felony is no capital in Eng. in the first instance. But y offender forfeits all his goods and chattels and is burned in the hand. not his land because not capable. 1 Pet 193. 201. 387. No attainder.

In Convict he punished by St. when voluntary. With forfeitures of goods and chattels to the state. whipping, branding and disability to give evidence or evidence. Involuntary not within our St. (St 828) What at C Law i involuntary. Maimlètht i in Convict but a Misdemeanor. Do. St 8. boyly 1853. State 177. Rogers. But voluntary may still be punished here on at C Law.

MURDER

This name was once used to a direct killing of another. for no more bile or if too poor. He hundred was amended. 4 Pet 94. 5. 1 Pet 11. 1 Pet 121. 24. 1 Thal 447. Tor 281. 3 Bar 661.

Murder is now described thus. Where a person of sound Memory and discretion unlawfully kills any reasonable creature in being, and under the peace with Malice aforethought. (Act 127. 1 Pr 95. 1 Thal 113. It is the unlawful killing another with Malice present.

Difference between this and voluntary Maimlètht. The latter proceeds from sudden kaping. The former from wickedness and malice. 4 Pet 190.

Of Sound Memory be so must every offender be 192. 20. 23.
Unauthorized kills another. Legal anger from killing without warrant or cause. Must be actual killing. He must not invent killing in a misdemeanor only. This former murder, 1. Bal. 420. & 4. Bc. 135. 3 Bae. 664.

Not only deceit and falsely taking away life, as by a blow or stab, is killing with in the definition. But if any set of it, the probable consequences of death and not eventually occasions death, it is wilful and deliberate murder. As poisoning, 4. Bc. 135. 1. Rashi, 118. 3 Bae. 662. Palm. 348. Modes of killing indefinitely vary. Gt. 884. Neph. 47.

So if a son who came out his sick father, so his bill in a cold stream, 26. of a woman, who left her child in the field covered with leaves only, was eaten by a kite, 1. Bal. 420.

1. Rashi, 118. 4 Bc. 135. Palm. 348. This is killing and murder. So, if an officer who is inflicting a child about, till it died. 4. Bc. 135. Neph. 47. To a dealer knowing a borrower to have an infectious disease wantonly confines it to have another, who take it, and die. 1. Rashi, 118. 3 Bae. 663. Gt. 886.


If a person having a Beast used to do mischief suffers it to go abroad, or turn it loose even to plunder beastie, and it kills the owner in guilt of the killing, and in the first case of manslaughter in the law of murder, 4. Bc. 135. Palm. 431. 1. Ral. 436.

1. Rashi, 118. 3 Bae. 663. 4.
If he die in some cause, when the killing is by another, as if one intered a Makrman, to kill another, or lay, he shall be taken it. 1 Hen 11:8
Pleas 47:4. 1 Co 8:1. Cor by means of Embarrass
compels another to accuse an innocent person
who is condemned to death, on the litigant evidence
Ex 14:3. 3. 1 Sam 3:11. 3. 1 Sam 31. 1 Gad 14:31.
436. 142. 457. 3 Bar 563. Pleas 19. a. 1 Sam 53.

Whether bearing false witness with intent to take
away one's life, is such a killing as to amount to
murder, as Law, provided the innocent person
is condemned, and executed there. Gad 446. 1 Co 32.
It was by the amount of Law. The instance for many
ages. 4 Bar. 563. 1 Co 132. 2. 1 Sam 11b. 1. 3 Bar 48.

In Comt by the bearing false witness falsely,
and of purpose to take away another's life, any man's life
is punished with death. 1 Co 132.

If a Physician do give a potion ye to cure, but not
kills, homicide by Mistake only. But it has
been helden that all the person be not a regular
Physician, i.e., at least Manslaughter. Gad Square. 4 Bar 137
4. 1 N. 257. 1 Co 230. 3 Bar 664. 1 Hark. 131.

But no person can be adjudged to have broke another
man's law, nor he aginst himself, nothing a year and an
day, in committing not the whole day. He is to be
reclaimed the first. 4 Bar 137. 3 Bar 664.

But if he die within that time, no excuse for the
other, yet he might have recovered if he had not
neglected it. 1. Co 11. 3. 1 Bar 53. 1 Co 23. 1 Hark 1.
1. Co 428. But if the wound or hurt be not mortal
and the party is killed by the remedies used and
not by the wound, he is not homicide, but the must
If a person Indicted for one Species of killing not convicted by Cit of a totally different Species by pronouncing for shooting, slaying for drawing, unless when they differ only in circumstances as wound given by an axe &c. but alleged to have been given with a sword. 4 Bk. 186. 5 Bk. 149. 2 Hal. 155. 2 Me. Malby. 20. 22. 2 Hal. 291. 3 Co. 67.

But if several are Indicted 2 as giving the blow &c. 2 as present, aiding &c. Pri that B gave the blow, & that A was present, aiding, and abetting will maintain the Indictmen. 1 Hal. 431. b. 2 Hal. 232. 4 Co. 87. 122. 5 Co. 22. 6. 1 Plowd. 21. 2 Me. Malby. 522. 5. 539. For both are guilty as Principals.

The Indictmen must state that the person gave the deceased a mortal wound, or bruise. Leath 38. 12. 1 Supper where the means employed were violently by stabbing, &c. Fees of Poisoning. Shooting &c. To conclude.

A reasonable creature in being and under the peace, Men's and slaves are within the Rule. Killing any person whatever in an alien enemy, in time of war may be Murder. 4 Bk. 197. 5 Bk. 37. 1 Hal. 453. 3 Bk. 565. 4 Hawken. 121. All under the peace.

Killing a child in ventre, 1a there is a great punishment only, not in nature for this purpose. 3 Brum 865. 4 Bk. 198. 1 Hawken. 121. Murder is a high offence, under the degree of capital, but bordering upon it. 4 Bk. 198. 1 Hal. 71. 2 Hal. 574. 1 Hawken. 86.

But if the child be born alive, and afterwards die of the wound, 1a see in ventre sa mere in Murder.
by the better hearing: 4. 2El. 183. 1. Serm. 121. 3. Serm. 37.
4. Abel 433. 4. Serm. 10. But the death must be within one
year and a day.

Es that reasonable in the definition means human
wisdom, not "having the faculty of reason.
Madmen, "deeds," are within the definition
because of a madman to kill himself, guilty of Murder.

If one counsels another to kill another in defence:
here, and being bon, it is killed in consequence
he is accessory to Murder. 1. Causeri 121. Dyer 186.
3. 1st 37. 2El. 127. 1. 1. Serm. 429. 433.

By 6. 31. Jan. 1. and by the last 24 Law of Court
if the mother of a bastard child (found dead)
endeavours to conceal its death by burying it honestly
or in any other way, deemed guilty of Murder. 1. Bates 138.
unless the same persons by one witness, at least, that the
was dead. 1. Serm. 124. 3. Bae 665. 4. Court 321. 2. Mc Malley
587. Now, the former 2 of Court refusals. Punishment
under new 25 siting on the gallows, hanging to
a good behaviour, and employment at discretion of the
Court.

The conviction given to Megs To hare and no Eng
makes necessary to the murder connexion, presumptive, but
at least, that the child was born alive. 4. 2El 193.

"Mise Malley aforesaid released on Bonds.
Grand Citation - it not strictly these or Malice means
to the deceased, but evil design in General is to the
cited, forsees, malignity mind 2. Mc Malley
The 2d and not the Jury are Judges of the Case. 1st. Malice, 2d. Phot. 143. 2. St. 773. 4 Burn v. Bae. 336. 474. 23 35 35 418. 15. of what sort of law to Malice so that the facts being given, yo don't it's a Question of Law. 2. The Case. 574. 3d.

Malice C. Presum. in Cohens or Ambled. 1st. to be Cohens. Where one with a deliberate and formed design to kill or otherwise personally to injure. Some particular Individual, kills him in the End of that design. As lying on Malice former Menace. Old Cohens, &c. are Coi of that formed design. 1. Rule 137. 1. Hardin. 121. 2. 3 Bae 664. Rule 127 3d.

2d. Where one kills by an act not indicating enmity to all Mankind. As shooting into a crowd. 4 Bae 133. 200. Remb. 1st. 227. 3 Bae 660. 1 Rule.

Distinctio not well taken by Bae. 4 Bae 137 200. Cohens Malice seems to me. to be that. Not in point of fact concurs with 2 act of killing. Ambled. And not as concurs only by Implication of Law. 1 Hard. 122. 2d. 11. Discharging a ball, with intent to kill or hurt. &c. or whenever it may strike - 2d. Doing some act with intent to kill and steal an ox.

So in the cases of deliberate malice. it is Cohens. 1. Hard. 122. 1 Bae 85 17. Rule 129. No excuse. That the party slain attacked first, or that he didn't intend to kill but disarm. for the deliberate design is Cohens. Malice. 3 Bae 171. 1 Rule. 402 2d. 3. 3 Bae 189. Rule 274. 3 Per 587. Rule 236 7. 2 Meh Hally 58 8.

So the Seconds of the person killing are guilty of Murder. by Cohens Malice, and have some more force of the opposite party. Bae 1 36 138. 1 Hard. 124.
Giving a challenge i: at a Law. a high Maitremonn 3 Cast i-81. Here the same thing is presented b: 76.

If a person upon no provocation or a slight one, suddenly attacks one and kills him, is Murder by Malice. 1 Cor 27. 30. 12. 27. For so humble and feeble an act, in such a case in Rov of hardened, deliberate Malignity towards the Deceased. 1 Thes 24. Fort, 238. 36 calls. They implied Malice 1. 36. 200. Que son whi right. It seems to me Schreft. borne.

So generally, if one in even a sudden and great provocation, one beats the other in a small and mundane manner, and kills him. — Kill Murder by Expression Malice 1 36 200. In case of the boy told to the house, teld 1. 1 Thes 472. 473. 74. 1 Thes 127. Cro. 2. 131. Palm. 54. 55.

So if in a sudden quarrel he who kills, seems to have been Master of his position at the time, is Murder and the Malice is Expressed. 1 Thes 123. 1 Thes 35.

If one committing breach of peace, as by fighting, suddenly kills an officer of the Peace who attempts to suppress it, he is guilty of Murder. 1 Thes 127. 1 Thes 66. 2. The Malice 368. 73. 3 Esk 52. 4 Co 70. 1 Thes 68. Fort 308. 10.

As of a private person acting in aid of a person who is officer, or if no officer be present. 1 Thes 65. 114. But y object of the interference must be made known, or in the case of an officer known to be such acting within his aid, in aid. See only Manslaughter. Fort 70 138. 81.
Malice is implied, when the killing is in consequence of an unlawful act, intended altogether or necessarily for some other purpose. Menace that of killing the person the person slain. 1 Chaucer 122. 21. 4 Bl. 202. 201.

As one shoots at a bird with intent to shoot and kills a person accidentally, or shoots at one and kills B or kills person for A, and B takes. 4 Bl. 202. 201. 1 Law 126. Feb 15th. 1 Tulk 425. 74. Ms S. 77. 1 Law 111. 1 Bac 207.

But y intended act must be intended. For the killing is regularly Misdemeanor. 3 Bac. 275. 7. 1 Law 112. 115. 268. Feb. 15th. 7. 4 Bl. 183. 182. 8.

Because seems to be that, not in form of fact, consorts with y act of killing the person slain.

In such that, not only consorts only by implication of law. 2 Mc. Mally 229. 1 Tulk 122. 6.

As supra and y following. The gives poison to a woman to procure abortion and it kills the woman. Malice implied. 4 Bl. 201. 1 Tulk 425. There is the act intended. 1 Tulk 50.

Law and gave his wife a powdered apple to kill her. She gave it to her child and killed it, not herself.

Implied. 1 Tulk 126. 4 Tulk 249. 3 Bl. 57. 1 Co 61. Bacon 550. 1 Tulk 425. 441. 67. 2 Mc. Mc. Mally 314. 55.


But when one kills in consequence of such act as indicates enmity to all mankind, this not be deceased in particular. In Scotland, as willfully shooting into a collection of beasts and killing one. 4 Bl. 149. 202. 2 Mc. Mally 354. Ed. Ray 143. 1 Tulk 113. 1 Tulk 476. 5 Bry 57. Tolet 261. 2. Here y intend.
emancipate, ye act of killing, ye must be, to kill any one, if but might strife.

If one kills an officer in a struggle to escape, from arrest, or murder by malice implied, design was formed, to escape. 1. Ex. 19. 124. 1 Kl. 86. 128. 1. Hal. 169. Tost 20. 135. 305. not to injure the officer.

In the last case, to no excuse that the forces were erroneous, not void by being so.

Same Rule tho' officer did not inform, for what cause he was about to arrest. Co. 93d. 9th, if he was a public one, didn't show his warrant, before hand.


All homicide is presumed to be malicious. Thus forbids 1st. on the accusation. 1. Bo. 294. 1 Co. 23. 3. Tost 255. 1 How. 124.

1. Kl. 27. 112. 2. Me. Mal. 346.

Therefore all homicide is Murder of course, viz. 1st. intended, by command or permission of law.
2d. Exposed on the ground of Misadventure or Self Defence, or 3d. Altered into Manslaughter, by being either voluntary consequences of some unlawful act.
   not amounting to felony or accomplished by some sudden and violent provocation. 4. Bo. 294.

If several are engaged in a preconcerted, unlawful act, and one of them in each of the General Design, kills a 3d person, they are all guilty of Murder. Except if killing is not in law of a General Design, and the others don't aid or consent to it, those the Slayeronly is guilty. 1. Kl. 113. Tost 357. So if the unlawful act is not preconcerted, as in a sudden affray. 1. Kl. 118.
Punishment of murder to death, originally eligible to that unlearned offenders only were civilly punished. 4 Bl. 204. 1 Sed. 465.

Now by 3. Eng. El. 23 Hen. 8 & 1. Eliz. 615 and 4 and 5. Ph. Mary. The clergy is taken away from murderers, their abettors, accessory and counsellors. 4 Bl. 204. 2 Hawk. 485. 9. 3 & 4. 53. 2 Hals. 396. These 1st, don't seem to accessory, after the fact.

In Court to, death by 1. El. 320. 21. But no, he be hanged by the neck like he is dead.
2. Hawkins 63. 2 Hals. 396. 3 Blom. 72. 211. 4. 8 Bl. 463.

A woman condemned during gestation (quand with child) but is reprieved till her delivery. But this is no excuse for not pleading or for pending, being delayed. 2 Hawkins 63. 2 Hals. 413. 4 B. 335. 4. But reprieve for this cause can be had but once.

Could not complete like of convicts be dead. On removal he must be hanged again. Some hanging being no Cause. 4 B. 406. 2 Hals. 412. 2. 2 Hawk. 65. Finch. 2. 467.

Note when murder an officer, endeavoring to arrest him, the prosecutor ant is bound to show, that the deceased was an officer. Memor in Main by proving he acted as such. 4 Ta. 366. 2 Mc. H. 488.

Here may not the prosecutor prove that the deceased wasn't an officer. But if he may. The rule relates only to the jury necessary to be added by the Prosecutor.
Petit Treason.

There are certain instances, in which murder, not being more than ordinarily heinous, is denominated Petit
Treason. In indeed no other than Murder, in its most odious form and degree, 4 B. C. 264. 4. Tit. 147
324. 36.

At law many offences were called Petit Treason,
now almost none. As Piracy by a Subject, Grand
Jury s discovering the Kings counsell. Mere's attempting
to kill her husband. 1. Hawk. 131. 3. Co. 20. 21.
1. Cal. 37; 382. 5 B. Cae 140.

Now by 25. Edw. 3. no offence can be Petit Treason.
As the following instances. 1. Where Servant kills
his Master. 2. Where her husband. 3. In Eng an
ecclesiastic his Prelate, 5 B. Cae 141. 3. 4 B. C. 203.
1 Hawk. 131. 2. Mose. Halley 374. 5.

Called Treason by reason of the violation of private
allegiance, in addition to Murder. 4 B. C. 203. Tit. 107.
324. 36.

Killing of a husband be not Petit Treason, mi
mation such circumstances as to make y killing
of another person Murder, 5 B. C. 141. 1. Hawk. 131. 2. Co. 205.

If a woman divorced a Manor S. E. kill, her husband,
5 Treason, Clerics of a Convent. 4 B. C. 203. 1. Cal. 380.
381. 1 Hawk. 133. 6. 5 B. C. 141.

If, a wife procure a Stranger to murder her husband
being herself absent, at his time, she is accessory to
murder only. But if a Stranger procure the wife to
do it, he is accessory to Petit Treason. 5 B. C. 141.
3 Part 20, 15 A, 1 CaL 24, 97 1 Chuch. 132. 2 Cor. 128, 39, 2. 
In the nature of the accessory guilt follows that of the principal.

Murder of master, mistress or master's wife: Petit treason must not within the letter of 25 Edw. 3. 5 Boc. 142. 3 and 20. Plow. 88. 1 Chuch. 132.

So murder of one who has been master, upon malice conceived during his service, is Petit treason because no Ex. of a reasonable intention. 1 Chuch. 132. Plow. 266; L C S 29. 5 Boc. 142. 4 Boc. 211.
Murder of a father by a child, not held treason, nor latter, is by reasonable construction a servent to the father. 1 Chuch. 131. 2. 3 and 20. 1 Boc. 380.

Originally clerici et. clergy, taken away by 12 Hen. 7. from ariens. abetters and counselors by 23 Hen. 8. 4 and 5. Ph. Mar. 4. Boc. 204. 5 Boc. 141. 4 and 5. Ph. Mar. takes it from accessor, after the fact. 1 Chuch. 133.

Punishment in case of a male, to be drawn to the place and hanged. Female to be drawn and be burnt. 4 Boc. 204. 1 Boc. 382. 2 Boc. 380. 3 Boc. 311. 2 Haw. 63. 1 Chuch. 133. On an Indictment for Petit treason, a man may be convicted of murder. Seach 299.

Asson A N T E N

As the wilful and malicious burning of the house or out house of another. 4 Boc. 220. 1. Seach 388. 3 Boc. 56. 2. And 188. Seach 218.

Not only the bare dwelling house, but all out houses, that are a Part of it, is within the curtilage of homestead. as Bany stable. It may be the subject
Do a barn filled with corn. Is within its definition, this not burned. 4 Bk. 221. 1 Thaddeus 165. 3 Bk. 68. Burning a stack of corn, is not, anciently arson. 4 Bk. 221. 1 Thad. 165.

Burning the frame of a house is not arson, because not within the meaning of "burns." 1 Thad. 166. 1 Thad. 568. 3 Bk. 167. 1 Burn 259. Burning a house is arson. Being the house of a corporation, with own it teach. 67.

Arson may be committed by burning one's own house, (as is said) of another house, if burnt in consequence of it. But here the offence consists in burning a house. 4 Bk. 221. Cro Ch. 377. 1 Thad. 166. Rach. 207. 210.

For if one Lease or possess, for yrs, of a house standing at a distance from all others, burning it, not arson. 1 Thaddeus 166. Cro Ch. 377. 1 Bk. 304. Thad. 116.

And if one so Lease or possess in town, burns his own, with evident intent to burn another, but actually burns his own only. Not arson. 1 Thad. 166. 1 Thad. 569. 4 Bk. 221. Rel. 229. Thad. 116. 116. Cro Ch. 383. By much the stronger doctrine. Teach 217. 13. Rel. 229. So if he is in prof. 70, agrees, for a Lease for yrs. Teach 219. So if Tenant from year to year. Teach 237. 235.

But the unlawful firing of one's own house in a town, is a high misdemeanor, meaning fend. Imprisonment herein, and therefor for good behaviour during life. 4 Bk. 221. 1 Thad. 569. 1 Cro 166. Rel. 229. The dread. 
If a tenant or possessor burn his own house, whilst in peace of his tenure, it is arson. But if his term expires, tenant burns house. 4 B. 221. Torr 165. 1 Hals 165.

Arson in Court is substantially the same as at Q. B. law. That is, the burning of any barn house or outbuilding is arson. 2 T. & 4. 182. 1835.

The punishment here is different under certain circumstances from the same at Q. B. law. To extend to death and felons. The meaning is these are arson, but if not, they are arson. The punishment is the same. But an offence to burn would hardly be called arson.

"Burning" what? Neither a bare intent, nor an actual attempt. By applying fire, or a burning of any part, is it more than it be extinguished or go out itself. 1. Bow 167. 1. 3 Cal 370. 3. Jos. 66. 4 B. 223. 2. McBurny 665.

Burning must be "malicious." There is only a T. B. law, burning with negligence or accident. Not arson. 1 Bow 167. 1. 3 Cal 370. 4. B. 223. As if one is lighting, accidentally sets a house.

Yet if one intending maliciously to burn a house, accidentally burns. 3 B. 374. It is arson for the felonious intent. 1 Bow 167.

In a Q. B. law felony punishable with death. Burnt to death in the reign of Edw. 4 B. 222. 21. and not clergiable. 4 B. 374. But it seems to me to have been entitled to Clergy
by H. 25. Edw. 3. but was ousted of it first by
21. Hen. 3. not being resolicited by H. Edw. 6. it was
ousted again by H. 4. & Ph. Mar. 4. & C. 223. 3. 2 Hand 481
383.

Ours in also ir necessary. before it was by H. 4. &
Ph. Mar. 4. & C. 223. 2.

By our 25. this offence is committed by a person
of the age of 16. or more. is punished with. & & 182.
if prejudice or hazard happen to the life of any
Suppose a person under 16. commit y act punishable
for Misdemeanor?

By another 25. of ours. if any male of the
age of 16. or more. shall wilfully and feloniously
burn. or attempt to burn. by setting on fire any
state house. County house. Town house. School
Barge. and no prejudice or hazard.

Penalate at the direction of the Ct. not exceeding
7. years. & 183. 338.

For the second offence. confinement in Newgate,
for any limited period or for life. But hale.
By the general rule. the second must be committed
after a conviction for the first. & How 188. 1 1b. 23.
or. 324. 370. 635. 34. 323. 2 Build 349.

In the case of a female. confinement in the common
Warkhouse or common Goal. in the county in which the
offence. for the same period. as Miles in Negate
& 186. Must the be 16?
Do the words in this text, "attempt to burn by
setting on fire," mean such burning as falls within
a law definition? It seems that they do.
If so, it may be argued, yet this burning by the
first act, must be total and done? But
made at different times. Different steps,
burning has a determinate meaning, in law.

Does then the partially burning of a Ship or Vessel
come within the meaning of the 1st act I conceive it
does. The same act is contemplated in case of a
vessel, as in the case of a house.

Burglary.

Do i, the act of breaking and entering into the
Mansion house of another, in the night season,
with intent to commit a Trespass? 4 Bl. 1 Bl. 224.
3 ib 63. 1 Law 183. 1 Bae 335. 1 Hale 549.
2 H 137. The usual definition.

As to y place, seems not absolutely necessary
that the breaking should be of a Mansion house. Walls
of a town or church. 1 4 Bl. 224. 1 Hale 182.
1 Bae 335.

The security of the subject being a Mansion
house, obtaining in the case of a private building only
4 Bl. 225. 1 Hale 182. The definition ought to
include Churches and Walls of a town. 2 1 Hale 606.

The insertion of y word Mansion seems undesirable
in this definition, when the breaking is of a private
house. See 33 charter. 1 2 Hale 182. 1 Bae 335.
The term "manor house" includes all outbuildings not one parcel of ground, and within the curtilage and homestead. Being protected and safeguarded by the manor house, 4 Pt. 225. 4 Cal. 528.
1 Laws. 164. 3 Geo. 64. 5 Eliz. 52. 82. 1 Bae. 335. 
24 Geo. 42. 32. 10 Eliz. 320.

The curtilage seems to be that portion of ground which is enclosed with the house, by one common fence or connected with it directly, by a fence. Therefore an outbuilding or that distant, separated by any open passage, is not within nor connected by any fence, including both - adjudged not within y curtilage: 1 Hawk. 13. n. 12 Eliz. 4. 4 Cal. 328.

Room or lodging in a private house (if the owner don't lodge in it or if he enters by a different outward door) is like a manor house of a lodger. Laws of the owner lodges in it and enters by the same outward door. There is only one manor house, Matt. of the owner.

4 Pt. 225. 3 Geo. 74. 434. 1 Hawk. 326. 1 Bae. 163. 4.
24 Geo. 532. 1 Hawk. 184. 1 Hawk. 168. Con.
52 Geo. 290. 364. 278.

An unoccupied house cannot be the subject of burglary.

1 Laws. 164. 1 Hawk. 164. 1 Hawk. 33. 1 Bae. 335.
24 Geo. 52. 1 Hawk. 64. 1 Eliz. 225. 226.
1 Hawk. 326. 1 Hawk. 164. 1 Hawk. 33. 1 Bae. 335.
24 Geo. 52. 1 Hawk. 64. 1 Eliz. 225. 226.

Laws of the owner lodges in it: 1 Hawk. 64. In or if it were not leased by the owner.
A house in which one sometimes resides, for a short season, "amicae reverenter," is a "Mansion House." Who are one is in it at a time, 4 Pbe 225. 1 Pbe 566. 1 Port 177. 1 Slov 162. Mo 660. Hal 32, 617. 46, 4 Co. 40. Bokk, 40.

To a house wh. one has hired to reside in, and by part of his goods into, did not lodge in. Hal 46, 1 Port 177. Ray 278. 1 Slew 162. The house of a corporation is within the definition of its officers living in it - Mansion house of a Corporation. 4 Pbe 225. Leach 99, 1 Talent 33. 4 Bae 333. Not committed in a time or both. - temporary. 1 Bae 335. 4 Pbe 226. 1 Slov 164. It is a tabernacle.

Under our St. Burglary I may be, not only as at C Law, but by breaking into a shop in wh. the goods were and merchandise, nor at a distance of ye and not lodged in.

Decided in Count that an article of a vessel containing goods, may be the subject of Burglary. Port 63. Droit Remain.
Tis said that if there be so much daylight or twilight yet one's countenance can be clearly discerned, "not night seen" within the definition. But it must be daylight or twilight - not Moonlight. 4 Pet 2:22. 1 Thess 5:6. 7 E. 6 a.b.
1 Pet 3:24. 2 The Hall, 607. 601.

As to y manner, both breaking and entering necessary, need not be at y same time. Breaking and one night - and entering on another, suspicious.
4 Pet 2:22. 1. 1 Thess 5:24. 1 Thel 67 85. 1 Thess 3:42.

Breaking may be, not only, by thrusting open a door, but by breaking or taking out a pane of glass, picking a lock, opening it with a key, lifting a chest or loosening any fastening.
2 The Hall, 601. 2. 4 Pet 2:22. 1 Thess 150.
1 Thel 515. 527. 387. 2.

So coming down chimney, for tis as much closed as the nature of y thing will admit.
Breaking, house, in the house, as chest. Chest. We not within. The definition it seems.
Tert 108. 2. 1 Thel 327. 2 The Hall, 601.

Entering by an open door, not breaking within. y definition. Seems if having entered, he break an inner door, not Exp 4 Pet 2:22. 1 Thel 353.
1 Thel 160. 4 Pet 67. 2 The Hall, 601. 2. This last is breaking the house, breaking a chest.
8 imot.
Whether breaking out, y party having entered with intent to commit breaking or being in by the owner's permission, is a breaking within the definition at law, assuming contrary, 4 Bl. 227. 1 Shaw 161. Here the Entry is before the breaking. As Telling lodges within intent se. As if being in the house. If se. within a previous intent se he commits a felony and breaks out. Then, in both cases if he goes without breaking. 1. Shaw 161.

Entry procured by fraud (with intent se. not. Giff.) is burglariously. As being let in, under pretence of business and then stealing, or procuring an officer to enter under pretence of searching for traitors, & stealing at se. There is a breaking opening being occasioned, not Giff. 4 Bl. 226. 1 Shaw 161. 2 Bl. 52. 44. 63. 82. 1 Shaw 162. 34. 3. 64. 1 Bae 333. Law not thus to be evaded.

If a servant open and enter the master chamber, door (with intent se.) or a lodger in a private house or Inn, open and enters another door (with intent) is burglariously. Breaking and entry, of this mansion house of the Proctor, 4 Bl. 227. 1 Shaw 161. 2 Mc Hale 69.

So is a servant in the house commits with a potter and let him by night, that he may not. Both are guilty of Burglary, 4 Bl. 227. 3 Bl. 881. 1. Shaw 162. 3 Bl. 184. 2 Mc Hale 64.

Entry. The least Entry within this party or heart of the body or wherever in an instrument or weapon.
as a vessel, he discharged a gun. 4 Sea 227, 1 Hez 663. Burglaries Entry. Fort 161. 2 Pleading 334. 2 Nairally 664.

But it seems the instrument must be introduced for the purpose of committing the felony, not as a hook, to draw the goods, or house, from demand, ready money, decided the Bailing 168. That being a hole and the door, as that there were, chocks on the outside, wanting a complete entry, not being introduced to take property. 1 Trial 162. n. Sack 342. o to kill or intimidate for a purpose of robbery.

Said these arg to y case but of turning the key of a door, locked on the inside. 1 Trial 162. 1 Bac 334. Sack 342.

On an indictment for breaking and stealing, def may be acquitted of the breaking and found guilty of the stealing. Sack 391.

If several join to commit a breaking, some of whom stand at a distance and watch, while others break in, all are guilty of the breaking. 1 Bac 334. 1 Hez 80. 1429. 335. 1 Trial 162. Tortor 387. Feb. 111. 2 Nairally 664.

"With Intent," to constitute Burglary, there must be a felonious intent. See for the breaking are a mere trespass. 4 Sea 227. 1 Trial 164. Pleading 334. 1 Feb. 360. 1 Hez 302, de deemed ease. A servant having run away, returned to take his own money. 1 Trial 164. See for it been to rob, murder, steal. 1 Bac 336.
Burglary is a Felony at Law, but eligible. 

Punishment.
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Burglary is a Felony at Law, but eligible. 

Punishment.
"Vandal Intention" 18. against any person or any one who shallsbob the same deed ashe. decided in Court. That baulding being an offence exceeding at Law: may be prosecuted as such, and to the It only declares the Punishment. Post 59.

Females confined in a Common Workhouse or Common Pris. in Apb. 13. for the first offences not exceeding 3. yrs. Ve.

Sarceeny)

of Sarceeny or Theft: 2. kinds 1. Simple, 2d Mixed. Simple is Plain Theft, unaccompanied with any aggravation. Mixed or compound includes all, y aggravation of Taking from one house a person.

4 Bk. 222. 1. Law. 104.

1. Simple is the felonious taking and carrying away the personal goods of another 4 Bk. 222. If y goods are above the value of 12. hence y offence is grand.

Sarceeny: If that value only is under it or it is Petit Sarceeny 1. Stal 643. 4. Tent 121. 4 Bk. 222

2. Bae. 474. 1. Law 134. 1486.

If goods above the value of 12. hence are stolen by Seivers, each is guilty of grand Sarceeny. 1 Stal 140.

Stealing under the value of 12. hence at several times, from y same person, not grand Sarceeny.


1. Stal 331. 2. Bk 1740.

The difference between grand and Petit is in the value of the goods. Hence the rules laid down with regard to the nature of Simple Sarceeny, in general, apply to both Grand and Petit 4 Bk. 222.

1 Law 146 Tent 73. In some extent may differ essentially. Post.
"Taking a General Rule that every felony includes a Treachery. Hence, if a Party is guilty of no Treachery, in taking: he cannot, according to the Rule, be guilty of felony, viz. carrying away.

The Rule. 1. Bacon 472. 2. 2.1. 1. Law. 134.
3. 24. 4. (Bacon 231. 5. Law 4 at ye Time? Next

The Goods must therefore, be taken from a Person of the owner, actual or constructive.


Hence it one finds Goods, and converts them animo furandi: Not Larceny. No Treachery. The taking is per se lawful. So generally, one possesses under a delivery by the owner, i.e., not guilty of Larceny in said: by afterwards embezzling. 2. (Bacon 472. 3.
4. 231. 4. 1. 480. 4. Bract 489. 7. ibid.

As a Carr. of goods. Who converts Ge. A Tailor of Cloth.

There are as to its cases Supra, of delivery to a Tailor.

In case, held as a general Rule ol when the delivery is for a certain Special purpose, not having a right to countermand or Delivery.

Bacon 142. The goods are in the owner. Ego embezzling "animus furandi" is a Felonious taking as a weedmaker embezzling "animus furandi" a wash deliverance to clean. 1. B. 1779. Cloths delivered to be washed. 2. B. 1775. Garments delivered to be changed. 3. B. 1775. Garments delivered to be cleaned. 4. B. 1778. In these cases a person's intent to steal serves not be supposed. But fos is being on the owner, taking or using felonious intent, is a felony, taking from the owner. 1. Law. 138.

36. (The taking mi these cases, not to be Treachery.)
To do goods delivered for safe custody 1 B. 1749.
11 Hen. 3. T. 41. 2. 40. 39. 40. Note age as to
2. 350 Eliz. 559.

If one obtains a delivery, with intent to steal
and carry away or emballeth, to lurking, So by
The ancient rule, as planning a Bill of Exchange,
under pretence of discounting but with intent to
steal and then converting it 3 C. 1. Laws 159. a.
159. 1. Leach 266. 213. 2. 81. 32. 1. 1. How. 297. 37.
2. Leach 357. 6. 15: 231. 91. 2. Bac. 473. 3. How. 126.
3. 1. Sect. 254. 2. The Hale, 559. In fraudem
Legit. if what he can take, no advantage, popos
remains in the owner, in Law. (For to, voids the
Telenorius intent, extinguishing a contract, or bargain)
So the owner retains popos in Law. 3 C. 1. How. 159. a.
For the Taker shows his original intent to have
been, not to take on the contract, but to steal
Ray 270. 76. 1. Sect. 211. "What need is there of extinguishing
y contract as extinguished, where there is no
right to countermand?

See of the lexenres were to buy and the property
was sold and delivered. Hence y contractive popos is
bastaed with Sect. 401. 2. 59. 308. Vendor rights
of popos transfered by the term of the contract.
Hith, in the above case of Dalmant.

To taking goods from an officer with intent,
to steal under a Pleblan or by verified of an Act
on a Judgments obtained by fraud on the Et Sc.
i a Telenorius, Taking 2. Bac. 473. 3. How. 126.
Sect. 43. Ray 270. 1. How. 236. For the Pleblanis
and Judgments are void.
Seems clear, 40 if a carrier, having carried goods to the place, takes upon "animo sarandi" or taking in felonious. He, no felonious intent originally for the balance is determined, e.g. he is a stranger.
R. 53. 4. BC. 230.

So if he takes them to a different place from the destination and then enters with "animo sarandi" (R. 512. 1. Hal. 304. B. C. vii. The case of knowing, Teach. 357).

So if a carrier opens a bale of goods and takes away part or takes a bale, it is felonious taking, because as some say, he had no property in the goods there, and he had in the thing containing. 2. B. C. 473. B. C. says because the animus of saranas and (R. 230. Teach. says because part of the whole is taken)
by seizing. 1. Teach. 130. 2. B. C. v. 387.
The true reason seems to be that the whole in law is all y times in the Bailor or owner.
R. 53. Teach. 242. There is always a right to countermand.

If one sells a horse to another, and the vendor on delivery immediately rides away with him without paying, 40. 2. Bac. 401. 2. Br. 147. 3. B. C. 473. Vendor has parted with his right of repos (it only a

If A lets B a horse and B wither intent to convert to order away without him - not Sarandi. 4. BC. 530. 1. Hal. 304. Here, no known, hence must be bona
feats, and his intent to steal, subsequent. Reach 358.
Reach in Sareny. Reach 213. 358. ante.

The base reason in the first case seems to me to be, et i.

...constitutio post: si not in Bailor.

The having no rights to countermand, no Constitution.
post: 7. 358. 401. 2. 358. 802.

Suppose that after 3 times for which hiring was

..._Sareny._ Reach 358. J. Quev.

When bailor, the terms of the Bailment, Bailor

has no right to countermand at a time of conversion.

...conversion cannot be Sareny, mi that delivery

was obtained with intent to steal. A house

hired bona fide for a month. converted in a

week. Reach 358. 2. 358. 2. 358. 358. 801.

...Bailor, according to

terms ye. had a right to countermand. continue.

post: in last case not in this first 3rd. of

bailment was obtained with intent to steal. It is

always Sareny.

The bare non delivery of goods by the Bailor

to Bailor, is not of course Est of felonius intent

even in these cases mi not converting “animis

furandi” in Sareny. for it may happen from various

other causes. 4 Pl. 236.

At a law if a Servant run away with goods

committed to his custody and post: not a Felonius

Taking. mere civil action. breach of Trust. Now.

by 358. 39. 8th. it is Sareny, if goods are of

a value of 40 s. mi in apprentices, and servants,
here why don't ye first come within y-er of y shoemaker? Sc? (last p.) Does sure as to y Rules of Cy Law. I cannot the Law undergone a change in Modem times?

But at Cy Law, if ye Servant hadn't the befor but merely the care and oversight Sc. running away, prying or embezzening, in a felonious taking 4 Bot. 231 i. Hale 305 & 1 Raw. 136. I Mr. 246. Pop. 24. As a Thesbored or Burnt before in y Master. 1 Kel. 35.

If goods are stolen from y Nom Thief, ye second later is guilty of a felonious taking from y owner for y property and hospit in y Law are in him 1. Raw. 136. 7 & Bae. 473. 2. Pre Mally. 88.9

If one deals goods in y County of A. and gains, then into y County of B, he is guilty of felonious taking in B and may be those proctorates. For every moment continuance of y offence of taking is a repetition of it. 1. Raw. 136. 5. Bot. 87 & Bae. 473. If eather however he possessed in A. Law, if original taking in a foreign state. 1. Raw. 137. 9. Paltor. 2. John Ro. 477. 79. Cont. R. in Cont. and Map 1. Make 116.

It is not larceny to steal goods, clandestinely from y wife of the owner, teaek th. Because her taking is not felonious. She cannot be guilty of principal. Ergo (No Accession.
"Crying Away." The best manner from a place of a crying away. (And he afterwards leave him, or is delivered) he leaving a horse out of his cloke, he is apprehended. To crying goods down stairs only. To taking goods out of a trunk, and laying them in a closet. 4 Oct. 231. 3 Bae. 100. 1. Nave 140. 2. Bent 265. 1. Hal. 500. 2. Bae 31. 2. Bae 44. 4. Bent 10. 2. Nove Hall 312.

Crying a bale of goods, on its end, not a crying away - not removal from the place, but removing from one end, to the other of a waggon - sufficient. 1. Nave 140. 1. Bae 228. 1. Bae 1734. Case of Diamonds Crying. And Bae 264.

Felonious. The taking and crying away must be felonious, 36. amove furandli (Hence those wanting understandings are excused.) So are mere trespassers. As a servant privately takes his master's horse, to ride and relaying him. So taking over a plough. I make my team and using it, and returning. 4 Oct. 231. 1. Hal. 144. Intent to be discovered to them. 4 Oct. 232.

Whenever one takes personal goods from a house, or of another or his stile, his law presumes felonious intent. While contrary appears. Bae 228.

"Personal goods of another." Things Real or favoures of the Equity, are not the subject of taking, land cannot in its nature be taking.

And corn, grass, ables ye, growing or before. Trespass are not within the law, as they adhere to the folk. 4 Oct. 232. 1. Bae 208. 2. Bae 170. 1. Bent 187. 1. Bae 141. 1. Map 80. 1. Hal. 342. 312. 15. if they are severed and
earned away by one continued act, for then they
never were as moveables, in the hand of y owner.
actual or constructive. Made Larceny. in many cases
by 4 Geo 2. 4 Bc. 233. 2 Bae 470. 1 Serm 142.

Secs if several at one time and taken away
at another, an sever'd by the thief or y owner.
or any person. There, when taken, they are Personals
in the owners hand. 4 Bc. 233. 3 Serm 149. 1 Serm 570. 1 Serm
141. 2 Bae 470. 1 Bent 187.

Taking wood from a living stock or milk from a
cow, annoe Junadi. is Larceny. Serm. 181. 2 Mc. 370
393.

Reason for the distinction between Personal Chattels,
and Things fixed to the Freehold, may be, yt as
y later are not so easily taken and removed, not
 liable to be stolen. Ego. yt severe laws not necessary
as to ym. 1 Serm 142. 4 Bc. 233. 3 Bc. 470.
Different reason. generally, not so valuable.

Taking charter of land, cannot be Larceny. it
is said, because they relate to the Realty, are
monuments of the Freehold, and descend to y heir.
2 Bae 470. 3 Serm. 129. 1 Serm 570. 4 Bc. 234.
St. 1137. Serm. 13. Yet ymme will lie for them.

The goods must be of some value in themselves,
and some one must have some title to them.
Hence, no taking of choses in action cannot at Law
be Larceny, of no value intrinsically, but merely by
relation to something else. yt like rights if not they
are. the Evi and their rights in not bno sity in Bc.
4 Bc. 234. 8 Co 33. 1. Serm. 142. 2 Bae 470. 1 Serm 65.
Co. 2 Bae. 470. because they might answer the
purpose of money, at y Camb. Made Larceny.
Taking animals, fowl, nature, and not tamed or confined, cannot be larceny, at Law. Some of intrinsic value, as deer in a forest, fish in an open river. Wild fowl in Meni natural state.

4 B.C. 235. 10, 136. 1. 1 Chron. 311. 3. 2 B.C. 471.
1. 1 Sam. 143. 4.

Seems if reclaimed or confined, and may serve for food. As deer in a park, fish in a Frunk.

4 B.C. 235. 6. 1. 1 Chron. 314. 2. 3 B.C. 333.

Yet such animals, fowl, nature, as will not serve for food, are generally of no value, in the Law, or hence. Boys (as reclaimed or confined) taking Meni, cannot be larceny at Law. As fox, monkey, bear, wolf, &c. 1. 1 Sam. 143. 2. B.C. 471.
3 B.C. 149. 1. 1 Chron. 312. 2. B.C. 393. 4. B.C. 235.

Yet even in these cases a civil action will lie for the taking. 4 B.C. 235.

Yet the taking of a hawk tamed, may be larceny, it is void at Law, as well as by B.C. 37. 1 Sam. 3.
2 B.C. 471. 1. 2 Sam. 143. 3 B.C. 149. There at Law.
4 B.C. 235.

But domestic animals, may be valuable, and not serving for food, as horses, mules, and therefore are subjects of larceny. To these put no value for food. as meat, Calves, Sheeps, Lamb, Poutry.
4 B.C. 236.
Some domestic animals not deemed valuable in the Law on this subject. As Saga, Cats, Etc., taking not Larceny, at C Law. But it may be a Civil Treasure. 1 Bl. 230. 2 H. 233. 2 Race 471. 1 Plowk. 43.

Under a certain Eng. Set, excluding Claygo in certain cases of goods, wares, merchandise, unless money is hidden. Not to fall within y description. Leach. 48. 36. 234. 403.

"If another" Goods of wh. no one is the owner, at a time of taking, not subject of Larceny. At Greater for. Claygo, etc., and before they are seized by the person having a rightful. 1 Tew. 144. 1 H. 312. 1 Race 295.

This at a time, y property is ni Public, or neither ni any one. It may become the thing, or in certain events, be restored to the former owner.

But this yre must be a property in some person at a time, yet in vacuo, the owner need not be known. 2 Met. Andelstine here for stealing the goods of a person unknown. 4 Bl. 233. 1 H. 312. 44. Lyer 80. 1 Plowk 52.

But in vacuo 2 H. 320. 5. Nor 249. But y thing
ni y property is known to be ni a Stranger, it
shall be presumed ni the Prisoner. 2 H. 320.
2 Nor. 328. Haw. 140. 1 H. 312. m. Titia 80.
1780. 352.

Stealing the goods of a Parish church, is Larceny.
The goods of y Parishioners. 1 Haw. 140. To stealing
a Horse from a dead Body - it is y property of
A person may commit larceny by taking his own goods in certain cases. As one steals goods to a carrier, tailor, and afterwards secretly and tranquilly takes them away, with intent to make the Bailey liable. 1. Kaw. 140. 3 Bom. 110. 4 Bk. 330. 60 if he rob. his own messenger, with intent to charge the Hundred. 4 Bk. 231.

If his goods are taken to B. it seems that a person dealing them may be indicted generally, as for taking B's goods. 1. Kaw. 140. 1 Bk. 1785. Kel 39

An an Indictment for larceny, if a felony taking is not found, or if cannot be on a Special Indictment, give Indictment to see Def. for a trespass. Kel 29. Leav. 17. The 2 Offences are generally different.

Punishment. Simple Larceny, an Grand or Petit


Grand is a Capital Trespass at Law. but within a benefit of Clergy. and however in many cases is taken away by B. as in house Trespass. 86.

4 Bk. 374. 1. Kel 12. 3 Bk. 83. 2 Hawk. 487. Money

Petit larceny with Forfeiture of goods and chattels.
and whistling on other corporal prohibitions. 1 Nau. 140, 3 Nau. 215. 1 Hal. 70. 330. 2 Nau. 475.) not forfeiture of lands. not being a capital felony.

By s. 4, not exceeding 17. Scl., and if the value of goods amounted to 3. £. 34. Whipped not exceeding 1. timber. if of the value of 5. £. more, and under 3. £. 34. as whipping, treble damages to the owner. See 1st Count 413.

II. Mased Larceny. This has all the properties of theft. The Rules laid down as to theft will apply to this, but it is also accompanied with the aggravation of taking from one house or person or both. 4 H. 839.

I Larceny from the house. This is more aggravated. Nau. 120. It is not distinguished from it at law, either in its general nature or form under 1. 1st. 151. 4 H. 232 240.

If maced it is accompanied with a breaking of a house; in the most serious, it differs most essentially, but it then falls under a different description, not larceny burglary, ante. 94. 3 N. 240.

In Act not distinguished at all from Simple
Larceny.

2d Larceny, from the Person. This is either by stealing
privately, or by open and violent assault, y where
offense is called Robbery. 4 BC 241. 1 Scow. 147.
The offense of privately stealing from the person.
("as by pocket picking") is a felony at C. Law, and
is of above the value of 12 p. capital, but eligibility
at C. Law. Clergy however is taken away by C,
C. Law. 4 BC 241. 1 Scow. 147. 1 Scow. 321. Leach. 233.
2 Me Hale. 399.

If of $ value of 12 p. only, or under, not capital,
at C. Law. 4 BC 241. Tort 73 2 Scow. 301. 1 Scow. 137.

Difference between Simple and
Openly stealing from the Person. is, if in a later
case, clergy is taken away, if above the value of
12 p. alter as the former.

Open and violent larceny, from a person or Robbery,
is the felonious and forcible taking from a person
either of goods or money of any value, by
violence or putting him in fear. 4 BC 242.
4 How. 147. 1 value in material.

Taking from the Person. There must be actual
taking, or an attempt to rob, not felony, nor at
C. Law. 1 Scow. 147. 8 1 Scow. 332. 3 How. 65. 4 BC 242.
This formerly held to be as. 4 BC 242. It is a
high misdemeanor incuring fine & imprisonment.
1 Scow. 148. 4 BC 242.
Such attempts make Telling by S. Geo. 
Exod. 22:25.

If one takes of goods of another, in his presence
by violence, he shall give it again. This not literally
from his person; it is within the definition as
as first putting it fear. And then taking away
and hope, standing by him, or taking away his

So if having but one in fear, he take goods from any servant, and in my presence it a
foregone taking from my person. 1. Num. 14:8.

He who receives my money by any dealing
while I'm under terror, from his adultery is guilty
of a foregone taking from my person. So if by
putting it fear, he doth, or take it from me.
that I will deliver it and do it in remembrance
of the oath. 1. Exod. 14:7. 3. 1 Mc. 15:9. 2. 1 Mc 104.

But a taking not is not either directly from
my person, or in his presence, if not within a
Ex 10:18.

If several born to not be and missing him,
one of you goes from the priest and without their
knowledge and out of their sight into 13.
and then return to them, all are guilty.
because I intended to not, and to afflict each
these not they collected for the 'burden of nobody
any person... who might fall in their way.
Redelivery, after the taking is complete, don't purge the offence of taking — this still robbery. 4 Bl. 242. 1 How. 147. 3 Inst. 50. 62. for the definition don't require a continuance of goods in one pocket. 1 St. 2. 23. 2 Mc. Hale 584. 5. 53.

"By Violence or putting in Fear" The opinion which distinguishes robbery from other larceny.

Secu. There can be no robbery 4 Bl. 242. 1 How. 148. 1 St. 28. 2 Mc. Hale 61. 70. 2 How. 291.

"Violence" in this case denotes more than is implied in the mere act of taking, that is, violence in Action of Law — it is there a violence in Pocket-Picking.

But robbery requires more.

It denotes violence of some kind to the person; but it ought to be such as is calculated to excite fear. 1 How. 148. n. 4 Bl. 243. 2 Mc. Hale 128.

But actual violence not necessarily putting in fear sufficient. In cases of same extorted. 2 How. 148. n. 2 Mc. Hale 128. 2 Mc. Hale 203. 4. 207.

The violence or putting in fear must be previous to taking, at least must not be subsequent. As if one steal privately from the person, and put before it, by putting in fear, it is no robbery. 1 How. 148. n. 2 Mc. Hale 154. 1 K. L. C. 134. 5. Taking De by violence.

The violence must be purposely for a purpose of obtaining the money, he taken. So where several finding one asleep, and under houses, or ending him home, drag him along, kick him, and corporately take his money — this Robbery. 2 Mc. Hale. 587. 1 How. 148. m. 33. 3 Bl. 178. 2. 123.iland seizing a person to betray money from him, and then
actually effecting it. 4 Petti. Leach 180. 2 Mc Nally 597.

As to putting in Fear. vitiating that so much force or threatening, by word or gesture, is used, as might naturally create an apprehension of danger. 4 Bl 248. 1 Law 149. 4 Leach 204.

s. such threatening, as is likely, according to common experience, to excite an apprehension of danger to any character or good name. 4 Call 140. 10 Writt. to accuse me of an unnatural crime. 1 B. 118. C. 206. 1786. p. 512. 2 Mc Nally 597. 3. By all the Judges of Eng. to hold. 4 Leach 204. 2 Mc Nally 597. Fear of personal violence not necessary.

Begging with a drawn sword is vitiating for putting in fear. to forcibly exalting money from another under pretense of a sale. 4 Bl 248. 1 Law 148. 1 Call 583. 4 Leach 204. 2 Mc Nally 597.

Whether compelling a Market woman, or any haggler, by violence, to sell his goods for the full value, is robbery. 2 Dib. 10th. mon. no Voluntary intent. 1 Law 148. 4 Bl 248.

See Tarr case 2 Leb. 43. that taking goods under legal process, with colour of right and with intent to rob, is robbery in fraudum legis. 6d there. Where is the fear? or vitiating cause.

"putting in fear" not necessary in the fraudum. "By violence" sufficient. 4 Bl 248. 1 Law 148. 2 Leb 70. Leach 204.
When the offence is said to have been committed "by putting in fear" not necessary to prove actual fear. Such circumstances of violence or such threats as are calculated and are likely to excite it sufficient. As are known another hour without warning, and strikes him while unconscious. Robbery and the no actual fear. 4 St. 243. 1 Blk. 335. 1 Law. 147. 21st 128. Leach 204. 6. 2 Mr. Nally 595.

A claim of property in the goods taken, without any colour of right, is no defence. 1 Blk. 443. 1. Nally 148. an openly taking goods from the Person. without violence, in putting in fear. is Selony of my kind. is doubles a late Hunt. it is not.

1. Nally 157. v. Dr. 8th n. et 148. n. At smacking a hat from one head, and running away with it. Clay 275. 5, Doer 224. At don't until fall under either of the demands. 2. Nally 157. 2. Blk. 143. 43. 70. 1. Ted 251. Leach 264.

An Indictment for robbing on the highway is not supported by C. of a robbing in a dwelling house. "Highway" in this case is part of a description of the offence. Leach 33. 2 Hask. 248. 2. Nally 393.


St. 8 there is some opinion in the last rule, wh the reader good sense must enable.

Forgery

Forgery or the crime stated at C. Law is the fraudulent making or altering of a writing to the

forgery of another's right. 2 80. 247. 1 Hask. 338. 201. 12. 2. 20

555.
Records; other authentic writings of a Public nature.

as Parish Registers, &c. Deeds and it seems, Bills of
are subjects of Forging at Law. 1 Thaw 338. 5. 2.
Bae 368. 1. Role 66. 5. 76. 3 Mass. 65. 68. 69. 1. Role
68. Ray 81. 7. Mea. 760.
No decision at Law as to a price. But two,
now Forging at any rate, by St. 2. Geo. 2. 1 Thawk.
210.

But according to a great number of decisions,
making or attaining of any private writing of a
nature inferior to Deeds. Bills, &c. is not Forging
at Law. As note Orders, Bills of Exchange,
most Specialties, and according to some there is
no luhnishment in the cases - not even for a Chet.
1 Thawk. 338. 1. Role 68. Cro Cur. 503. 3 Role. 503.
at 110.

But it has been held since Hawkes time,
and Forging making &c. of any Writing, by
without notice may be recognized in Forging at
737. Forging making &c. of a bill of Exchange.
Cases cited; Leach. 346. 2 Mc Hale. 480. 5. 2 St.
90.

By a variety of Eng. Law, almost every Species
of Writing is made the subject of Forging. 4 Bk. 247.
1 Thawk. 338. Cont. 60. Includes all writings.
St. 184.

If one makes a False will in the name of
another, &c. Forging is complete. No &c. supposed
testator is living. Leach 103. 381. 2 Mc Hale, 481.
Not only actually making a false instrument and
outsetting another name, to it, or fraudulently
altering one already made, in forgery, but many
other acts are so. 1. 1 Thaw 336. As one employed to
write a will, for a sick person falsely insists
legacies not directed to be intestate. Here y name
is not forged, nor is the writing altered, after being
executed. 1. 1 Thaw 336. 2 Bae 357. 8 Mod 768.
So writing an obligation, release ye. over one's
name, found at the bottom of a letter. ye. 1 Thaw.
336. 3 1 Nep 3. 39. 2 Bae 467. Here y name is not
forged, but the instrument is.

So making a mark in y name of another, is forged.
1 Thaw 336.
So if one inserts in an instrument y name of one,
no whom it was not found, ys is an alteration.
1 Thaw 336. 3 Mod 65. 2 Bae 567. 8 Mod 182. 12
Mod 453.

Secondly altering a deed in a material
part, is forgery. 1 Thaw 336. 2 Bae 567. 8 Mod 65.
2 1556. for 100 L. 3 1 Nep 160. Contrary because not
in the name of another. But this signer, and no
other hand (nor seal counterfeited) But this
directly within the definition. Scene is the part
is immaterial.

If one having found a Bill of Exchange, alters
or forgies an instrument to get it digerated,
it is forgery. 1 Thaw 21. 8 at 8 Bae 8. 2 Ed Byno.
246. 2.

The may be guilty of forgery by making a deed
himself, in his own name. As one having a deed
of Bae 100, to A. 500 grants the same to B.
and annexes the deed. This is fraudulent and
and to the prejudice of A. 1. Hawk. 337. Mod. 76 a. 2. Bae. 556. Ex. 125. 2. Cor. 38.

But he who honestly writes an instrument in another name and signs and seals it for the latter, in his presence, and by his direction, is not guilty of forgery. It is the act of the latter in law.

1. Hawk. 337.

But the making of a must be fraudulent. Ergo.

If the obligee changes the words bound into Pences, it is general forgery—it is injurious to himself.


1. Hawk. 337. Yet to void even this alteration I made with a view of gaining an advantage to himself or to prejudice a 3rd person would be forgery. 1. Hawk. 337. 2. Bae. 556. At obligee bound to alter his obligee to a Bona Fide creditor of his own. makes this alteration to D. by void, the creditor by rendering y dead void.

Regardly a Non-Fraudence cannot void the forgery, his y intent be fraudulent. As omitting a Legacy or a Will; forgery being substantive—

But is said that if the one prior to be conveyed mutuall y alter y limitation of another, it may be forgery, as cutting an Estate for life to one, whereby the devise of an intended remainder to another is made to take effect "in present" for here the prior operation in favour of the latter as a positive devise for the life of the former.


It is not necessary at one that be actually prejudice. 1. La. Ray. 1406. 2. Co. C7. 3d. Bard. 11. 2d. Ray. 75. as where the obligation is never-forced. Suffiscit to atfer a general intent.
to defraud, witn pointing out the particular mode, 
A' with intent to defraud A's, Leach 70.

It is not necessary to forgery that the writing 
should be published. 2 Ed Ray. 104. 5 Cor. 747.
It is pronounced, the party keeping it up his 
on desk, my intent being clear: signing. The 
name of a fictitious person may be forgery, Leach 
83. 182. 216.

I suppose an alteration by a part intemperate 
me made by the forgery, it is regularly injurious 
to himself only. If by a stranger or stranger of no 
effect. 11. 1st 99. i2t 1st by altered it might 
in some cases prejudice another, to another might 
have the benefit of it, and it be a forgery 
by intent, was fraudulent. The least 
variance between the writing erected and that 
of person in. 1st. 1st Talat Leach 389. as a 
General Rule.

In a prosecution for forgery, a writing "burntup" 
by such an instrument it cannot be convicted, 
even if it does not in fact burnt up to be such 
Instrument described. Song. 287. 312. 1 Cart. 182. n. 
Leach 209. Case to y effects of y words. "Tenor 
following" as follows, what is to say "yrc.
C6l. 231. 7. 782. Sec. 660. 3 Burn 107. Song 28. 183

On The Peremptory The Forged Instrument must 
be set out in words and figured. 1 Cart. 180. n. 
Song 287. 302. Leach 209.

It is punished at C Law by (time) imprisonment. 
It selling, By a variety of Big it is more severely 
punished, in most cases with death. 
4 Bcl. 247. 50. 1st. 11b. An The person in whose
**Perjury**

In the sense of "swearing willfully, absolutely and falsely" in a matter material to the suit in question under a lawful oath, administered in some judicial proceeding. 4 B.C. 137. 3 Swin. 164. 1 Hawk 318. 3 Bae 814.

It must be a willful and false swearing to some degree of deliberation and this ought to appear clearly— it is not perjury if this mistake or inadvertency. 1 Hawk 318. 3 Bae 814. 5 Modd. 344. 10 Rolle 135. 3 Birk. 138. 3 Bntt 163. 4 B.C. 137. 2 Mac Hally 635.

"The oath must be taken in some judicial proceeding." 15 vi. vi. 15 vi. and before some officer having authority to administer an oath and in some proceeding relative to a civil suit or criminal prosecution. 1 Hawk 318. 4 B.C. 137. Co. C. 168. or 188. May 128. 2 Rolle 255. 1 B. 62. 3 Bae. 184. 814.

In material aspect of record or not. 2 Mac Hally 479. Leach 383. 2 Barr. 1169. As Chancery or ecclesiastical or in Eng. or any other lawful Court. 1 Hawk 318. Co. C. 387. 185. 604. 5 Modd. 344. 1 Rolle 21. 2 So. 257. 12 Co. 117. 3 Bntt. 163. 4 B.C. 137 814.

Any voluntary or extrajudicial oath is not within the law. 4 B.C. 137. 1 Hawk 324. As an oath before a Magistrate, in making a Bargain, at your own request, or by another's request. 4 B.C. 175. 369. 10. 2 Rolle 257. Gelys. 72. 3 Bntt. 163.
But perjury may be ascribed to an affidavit or deposition, and an affidavit so is not as well made, by the party taking it. 1 Nuc. 315.

Perjury is confined to such public oaths, as affirm or deny some matter of fact, not foreseeable of being sworn to, as oaths of office.

1 Hawk. 326. 2 Role 237. 3 Ind. 136. 3 Bae 814.

But the violation is a misdemeanor. As oath of a juror or a judge. 1 Hawk. 321. 4 Com. 147.

But perjury is predicate of any false oath, materials to a point in question in Judicial proceedings. And not affecting the principal judgment, as respecting the ability of the officer as Bail etc. So upon any interrogatory question.

1 Hawk. 322. 1 Role 40. 3 Bae 816. 4 Com. 146. 7.

If a def. in Chy having given a false statement, explains it. (When exceptions taken) in his second answer, consistently with the truth of facts, he is not guilty, mistaken presumed. 1 Pid. 418. 2 T.K. 648.

1 Mac. Hayley 474.

But a sworn who violates his oath, in his finding, is not guilty of perjury, for he is not sworn to testify the truth. His oath is but promising. 155a.

Do it could not to be material, can the creator swear to be true, or not in fact. If a witness should know it is to be true, he is required, for he is to swear to those facts only which are within his knowledge.

1 Hawk. 322. 2 Role 777. 3 Inf. 166. 3 Mod. 322. 5 T.K. 629. 4 Com. 147.

Suppose he swears absolutely to what is not true, but believing it true. Guilty of Perjury? I think not.
The meaning must be absolute and direct, meaning under such qualification, do & think or believe, or according to my recollection cannot it is said to be perjury. 1. Clark 32. 3 Inst. 166. 3 Bae 871. 4 Com. 147. There if the witness does not think so, Corp. 229. in it has the weight of common testimony, may not law be thus loaded. 1. Mc Hale 301. 2 BC 885. 1. Mc Hale 362. 3.

The meaning must be to a material point. Impartial and idle testimony cannot be perjury. 1. Clark 323. 4. 3 Bae 875. 1 Fed. 274. 4 Com. 147. Corp. 33. 3d. 14. 1st Ed. 37. 1 Bate 75. 142. 1st Ray. 288. 11 Procd 348. 45. Corp. in daily experience, question was an A man disposed (mental) or not. The witness gives the history of a Journey to be A. and, misrepresentation, some of the incidents of the Journey.

But if the False Sri. The circumstances are not directly attending to the Issue, than to aggravate or extenuate some damages, it may be perjury. 1. Clark 323. 3rd 312. 12. Co. 101. 3 Leon. 178. 3 Bae 815. It goes to one point in question, and is material to that point. Some of damages.

So it is used of the immaterial and false facts. The Sri is likely to induce a Party to give a more ready credit to the substantial fact. 1. Clark 323.
Eld. May 26th. 2d. 1. Cor. 3d. 2d. & 1st. 3d. The points hereina are not well settled. 1. 1. 1.

2d. 2d. & 1st. 3d. As readily

3d. meaning it certain artificial or natural marks

2d. about stolen property - faulse professioun of good

1st. will be a hardy 1st. whom he swear. 8e.

3d. meaning that one beats another with his sword

2d. when no truth. it was his stab. it is not

1st. vate, material to constitute poyning. 1. 3d. 2d. 1.

1st. & 2d. The beating only is material there may

2d. not the kind of instroma tend to aggravate 8e.

1st. It's need not appear in what degree a false

2d. Evi was material - vate, if it be circumstanceall

1st. so, much less necessary that the Evi be decerned.

2d. of the case. 1. 3d. 2d. 3d. & 1st. 2d. 1.

2d. for it may be yen material and yet not vastly

1st. to govern the finder.

2d. It is always incumbent on the Prosecutor to

1st. prove the Evi material. 1. 3d. 2d. 3d. & 1st.

2d. 1. 3d. 2d. & 1st. 5.

The Portio of a former Issue is good Evi. ye

1st. a trial was had so as to introduces Evi of what

2d. ever sworn. 2. 3d. 2d. 3d. & 1st.

1st. And the cause in not the ven. was committed,

2d. must be set forth. 1. 2d. 3d. & 1st. 2d. 1.

1st. It is not necessary that the False Evi shal

2d. have been created by the Dury nor of course.

1st. That any person so have been actually injured.

2d. ye ans. don't consent in a damage done to an

1st. financial but not abusing publique justice

2d. 1. 3d. 2d. 2d. 3d. & 1st. 3d. 2d. 3d. & 1st.

2d. The words "Milde 8e. not necessary in the

1st. portio of the 8. Law, 8e. must make. 8e. not.

1st. 8. 8.
Sent St. Comit 33, "falsely, maliciously" said. Leach, 591.

To convict of perjury, 2 witnesses at least are necessary. Leach there will be but one oath 2 Hauke, 325 n. 10. Mod. 186 0 B. 1754, 681. 1. Mc Nally 57, 2 Id. 635.

Saw for circumstantial Ovi of a fact of Def's having given Cli, is good. Clark 2 Mc Nally 47. 4. Gordon v. Eng. Made a person injured by the injury, can't testify as the offender or public prosecution, 1 Hauke 325, 2d. Ray 330. Banfield v. Beach. Ct. of Drums. 1804. Id. 1043 1104 1229. 1. TV 228. 1 Vent. 49, 3 Vo. R. 74 388. 7. To 60. 4 St. 29. 593 4 Barr. 325. decision contradictory.

"Interest in the question" Pea Cli 35. 46. 1 Mc Nally 60. 185. 11. 38. 41. 4. To deemed be in more

Two persons cannot be joined in a prosecution for perjury. An offence not being the Co 623 570 521

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Utteration of perjury is the offence of knowing and then to commit perjury. But perjury must be actually committed. Pea no. Utteration 1. Hauke 325. 4 3 E. 178. 8. 1st 41. 57 79 76. Id. 72. 3 Mod. 122. Co 1 18. 2 Mc Nally 687.

Perjury and utteration of perjury is punished at 8 Law. Namely, unless with death. afterwards

Perjury and utteration of perjury is punished at 8 Law. Namely, unless with death. afterwards
to give Evidence + 132 133. 3 Inst. 138. Then
Punishment Subordinated, by Sir. 5 Clive and 2 Geo.
2d.

Bringing one to commit Beggary, it not being
actually committed, it punished at 3 Laws, by
fine and Insane or Corporal Punishment.
1. Hawk. 320. 5. It is a Misdemeanor.

It is a consequence of a conviction of Beggary at
3 Laws. That the offender can never be a Boror.

A variance of the Indictment by y omission
or y addition of a letter, or mot mateire, or it
make another word, as understood, for
understood" See wa if it does as air for her.
Cor. 229. 1. 329. 231. Bell 660. 3 Hawkes 230. Doug.
13. n. 784. Leach 137. 46. when assigned on an
Affidavit. 2 Mc Hale. 371. 13.

Under the Non Law Beggary and submation
of Beggary are punished by Indictment of 367.
Annoys to ni New Gate. 6. Wheth is a Male.
by a common work house or Bails is a Female
Disqualified to take an oath in any act of stand.
and ni case of inability to pay the Indictment.
In set in ni Pi llory one hour, with both ears
of Quakers. Punishments like a Table oath.
Sc. 339.

For the criminal Indictation of Comt Ct and
the practices (retaining see Comt Ct. 120. 1. 36.
133. 3. 36. 313. 14. 356. 171. 142. 285. 370. 158. 1 Swift. 44.
36. 423. 268.
Of Bail in Criminal Cases.

Where one is arrested for a crime and not before a Magistrate (on charge of a crime not cognizable by him) y latter is to enquire into y facts charged, to discover an he ought to be held to trial or inst. 4 Co. 206.

But he has no right to examine the prisoner at C. Law. On Eng. in authority by St. 2 and 3. Ph. Mary. 4 Pe. 287. 96. 2 Tav. 390.

If en enquiry it appears clearly yt y offence charged has not been committed or yt y charge so y prisoner is wholly groundless, he is to be discharged 4 Pe. 226. 3 Tav. 392.

Seems he must be committed to know if he is to be kept for further, or if y offence is bailable give bail for his appearance & furnish security for his appearance. 4 Pe. 206. St. Comt. 142. 2 Shortt 390.

Bailing or the delivering one to his Sureties, on y surety Security.

1st. regularly for all offence below Taving (on by C. Law or Cc. y offender ought to be bailed. 4 Pe. 207. 9. 1 Tav. 127. mti it be prohibited by Cc.

2nd. At C. Law. (according to Pe.) all felonies were bailable, even treason or Murder, according to then all offence, no homicides) 3st y accused was admitted to Bail in almost every case 4 Pe. 206. 2 Bonit. 103. 9 Tav. 465. 1 Hau 6. 1 Pe. 220.

3rd. But the 1st Weslin 1. 3 Law. 1st demise, bail in treason, and many felonies; but further brochure
are made on the subject by Cl. 3d. Henr. 6. 12 Edw. 3d. 4 Ch. 2d. 227.

As in any case of felony where any party has confessed or is notoriously guilty, if in murder, he accused not nowailable in England.

But the Hoy for taking away y power of bailing in certain cases don't extend to 3d Edw. in England. This Co or any one of the Judges if it be in vacation may now bail for any crime, even Murder or Treason. Cl. 3d. 2 Ch. 2d. 227. 1 B. & C. 216. 223. 3 B. & C. 182. 4 B. & C. 180. 5 Cl. 3d. 214. 6 Cl. 3d. 333. 7 Burn. 2172.

But the Co of 3d Edw. will not admit to Baily in more cases as it will bailable is forbidden by the in under special circumstances in y party's favor, as where the Procecto has unreasonably delayed y trial, where the Coi appears very weak, where y known life is in danger from confinement.

2 Leach. 12. 2 Hawk. 1d. 157. 5 B. & C. 407.

Cl. 3d. But in case of death it must arise from confinement. 1 B. & C. 223. 4 Camp. 233.

In prosecution for offenses amounting to Misdemeanor at Cl. Law. the Def may appear by Attty. 11 Hen. 3d.

55. 4 Ch. 375.

After verdict as the Def he can't admitted to Baily without the consent. 1 B. & C. 157.

This rule has often been dispensed with in Comt. 4 Hen. 3d. 59.

For Comt Law on this subject see to Comt. 22. 420. It is a General Rule that he who is ensnagg of the offense may bail the accused for offenses at C. Law. 2 14 Bl. 420. 2 Hawk. 23.
By 9 Com Law. if a magistrate takes insufficient bail and y Principal don't appear, y Magistrate is finally 2. 36 297. 1 Bae. 227. 2. 36. H 142.

Eng four induings are required generally in case of Tegony - 2 for inferior offences 2 H 141 n. 1 Com. 273. 2 Hall 125. 15 Co. 101.

Refusing bail where it ought to be granted is a misdemeanor in the Chief or Justice at Q Law and as such is punishable by fine or amercement. The party injured has also by action. 1 Com. 473. 1 H 142. 1 Bae. 128. 16 Mea 179.

Granting bail when not grantable is punishable at Q Law as a Negligent Breach of fine - it is also punishable by several Eng Kg. 1 H 142. 206. 1 Hall 506. 1 Com. 473. 4 Just. 470. 179.

It has been decided in Com. on a prosecution for Tegony. (One Def being out on Bail) yet y verdict can't be received, ni he be i present ni Court. 1 P 99. Queere has nit the practice been often different. 1. M. H. 273. 4 B 357. 1 Bae. 183. 1 Bae. for prerequisite necessary ni on Indictment for Tegony.

If a person prosecuted for a given offence is acquitted but proves in the trial to be guilty of another y 2 may detain him to be prosecuted for 2nd lat. 363. 350.

For Com. in criminal cases in Com't. see Com't St. 143. 4792.
In Eng. no costs are paid on either side when 
y crown prosecutes, ni in particular cases by 
Special provision of the Regulation. 

Praise and praued be God