Real Property.

In the first place, how are you to distinguish between
real and personal property? I have never seen a definition
of real property which conveys all the ideas necessary to
be conveyed. Sometimes they say it is immovable, and personal
property is not. But a man may have an estate in lands which
is not a real estate as an estate for years.

Again, it is said that property which goes to the heir is real
what to the Executor personal. But you must first determine
what goes to the heir, a life estate which is a fee simple does not go
to the heir Executor. Thus far it is true. I know of no definition
which comprehends all. We must find out what it is as we proceed.
This real property is divided into corporeal and incorporeal
hereditaments. The former is comprehended by the word
land. An incorporeal hereditament is a right which a man
has which can't be seen or touched. But it is a right which
husband, property and ordinarily issues out of some corporeal
hereditament. But what is land is not only every thing cal-
led so in common parlance, but it includes all water
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Upon the land and every thing growing upon it, adhering to it naturally, every thing when it is produced upon it by labour as hens, horses &c. there are all half by the tenant land. An incorpo-
real heredity differs from this.

When a man owns a right of way, this is real estate and is
transferrable. This is an interest but no interest in the soil
to a man may have a right of fishing in certain waters
this is transferrable and descendable also. That great estate in
Eng. of tythe is an incorpooreal heredity. There are cer-
tain offices in Eng. are a species of property.

I will now take more notice of the word heire. When a man
gives an estate to a man and his heire forever, what is meant
by heire? have they any interest in the estate? so he has no
heire till he dies. Nothing there is given to any body but if
he may do anything he chooses with it. What then does
the term heire mean? If it does not belong to it by will or
in his life time it will go to his heires. It is only used as a
description of the quantity of interest, or the estate given.
This is not an estate given for life or for years, but it is a
free. And if you add of the body, it only shews that no other
heire but those of his body can have it.

It may be matter of curiosity to enquire what we call
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There is no reason to suppose that a fee was conveyed,

Why can't it be considered a fee without this word, there

is now no reason for it.

Lands were formerly conveyed out to soldiers as estates at

will, afterwards the Lords let them have it for a number

of years, at length an estate for life was given and for a

long time every body supposed that lands were not convey-

able for a longer term than for life. The peculiar situation

of the feudal establishments, and the almost universal con-

siderations contributed at length to voluntary aliena-

tions of estates in fee simple. The word heirs has been used

almost from time immemorial as descriptive of the intention

of the grantor.

Upon the introduction of the feudal system under 13th C. lands be-

came not to be devisable universally except in a few villages

where they were permitted to devise in contradiction to the

common law, long before the Statute 14 Geo. III. ingeniously found out

a way to devise lands. The plan was invented by the clergy

for a particular purpose, and afterwards made subservient

to other purposes.

As to the extent of the word heirs under the feudal system

it extended no further than his issue, persons lineally decen-

ded from his body. The rule was then introduced that it
Real property might go to any person whatsoever, when it had passed one descent, who was descended from the first grantees. Consequently, any person who descended from the first purchaser might inherit it. This is not the law now, for by a fiction, they have let in all collateral in their order. Nor in England, in which a man's purchaser shall be considered as a prudent antiquus.

It was an old idea that an estate conveyed by the word heirs, if the heir of the body was a feoffed and if he had none was an estate for life only, so if they had children they could devise it. This construction was satisfactory to the nobility and they endeavored to get a law half to regulate it. Lord Justice Pawson came into the views of the nobility, and extended aid by shaping the Stat. 3 Geo. 3, which declared that lands were unalienable and must descend from generation to generation. This was found a great bane, and all lands were becoming estates tail. This law they disposed with by entailments. This was a new figure, but it prevented effectually estates tail.

The way was this. B had an estate tail he wishes to dispose of it. He goes to C and deems him to me heirs for it, and promises to make default. C brings the suit and there is a proceeding in court. B makes default. What is that to re-
recover the land. Then it gives Ba deed. Another method which
I will mention hereafter, is that now the Stat de demis is com-
pletely frustrated. The manner in which the several species of
estates have been created it is necessary to mention. When the
northern nations broke in before the Roman empire they had no
idea of lands as we now have. They all supposed the power of
acquiring land to the soldiers was vested in the chief man.
The manner was by distributing to his principal followers,
and they to their followers. They then had no idea that their
followers had any right to these lands except the right to
occupy them at the will of the Lord.
This land was the origin of the feudal oath of allegiance or fide
by which they promised to serve their. Faithfully in their wars
and to attend their barons in their courts to assist in settle-
ing controversies. It was then only an estate at will. Times
growing more peaceful they obtained leases for years which
were for a short time - by insensible degrees these lands
changed into estates for life, for the life of the grantor, or
this was the almost capacity which land was supposed
to have. Men now began to conceive, they had a propriety in
lands, and this was the reason why an estate given to a man
without other words was considered as an estate for life.
which remains to this day. The next step was to have their lands descendable to their children. This they were very desirous to obtain and it was necessary that some particular words should be used to express it and they introduced the word heirs and the estate here because descendable to their children. Heirs were very desirous to obtain, and it was necessary that some idea of heirable or transferable at this time. The word "heirs" legally includes all the heirs a man may have to the end of time. But this was not the idea attached to it at this time, it only meant his children. In process of time it became descendable to any heirs who were of the whole blood of the first purchaser i.e. who descended from him. It is at length settled that any purchased land shall be considered a kind of indeterminate antiquity, it can go to any relation under heaven and it can descend to any relation after in the lineal or collateral line provided they are of the blood of the first purchaser. But when it can be actually demonstrated that it did not come from the maternal line, those in the paternal only can take it and vice versa. But estates were not alienable or derivable at this time. The course of this business was gradual. An estate which a man had purchased himself, to himself and heirs because after a while alienable in fact, at first one quarter, afterwards one half.
and finally a man who had purchased an estate to himself.

Heir and espous could alien the whole. Presently it came to

haps that a man might alien one fourth of his described estate,

then one half and no more. Finally the Stat 18. Edw.1, that gain

employers gave a man full and complete authority to sell the

whole estate and there was no exception but this, the land

being held immediately from the owner could not be alien-

ed without purchasing a licence, and this was finally with-

held by Stat. Car. 2. The idea of lands being alienable by the

found was a new thing to the nobility. They saw their prospec-

ty going into the hands of the common people who was grow-

ing into consequence by it. The adherents of aristocracy

were very desirous of preventing this, and they made con-

veyances by which they supposed they could limit it to the

heirs of their bodies, and so that it could not be aliened.

They supposed the grantee could only have it for his own life

and that his heirs would certainly have it. This answered

the purpose for a considerable time, but finally the court said

they considered the estate a permissible conditional, so that

the moment the grantee had children born, he had perfe-

ced the condition and might alien it. They were then com-

pletely frustrated. The estate became fee simple, ever
which the grantor had absolute power when he had children
afterwards, the nobility invented the Statut de dones, by which
his construction was done away, and the whole estate became
again completely protected by the entailment. A method has
been devised to destroy those entailments which has succeeded
and which will be mentioned hereafter. All of the method
is not pursued the entailment goes on from generation
to generation.
Thus if an estate is given to A and his heirs it is a free
enjoyment; if to A and the heirs of his body it is a fee tail, if
to A merely his an estate for life, for a certain number of
years to an estate for years, if for a specific time, it is
an estate at will, and if the grantor had an after the es-
tate for years has terminated it is an estate of suspense.

These are the only kinds of real estate and no others can be
given.

Before I proceed to consider these estates I will make a few
observations on alienation by will. They never became devi-
able as such till 39 Geo. III. It is true they were deviable
under the Saxon Kings but the feudal system was not then
in its rigor, long before the Statute of the Injuries elec-
gymen invented the method of devising lands which produ-
ced the devised effect. Indirect devise through the medium

of a coxmnyoue trust. Then on their death beds were willing that their lands should go to religious houses. This they could not do, but they could devise the use and account of it, and compel the performance of the use. To prevent the evils arising from this, a Statute was made declaring all gifts of this kind to corporations of any kind to be void. But the practice was never used for a different purpose. During the contention between the houses of York and Lancaster, men who were about to take oaths being willing to provide for their families, would convey their lands to some persons for the use of their families so that they might save them from forfeiture. In a way was not permitted to husbands, so they would often convey it to themselves for the use of their families. It is said almost all the lands in England were in the situation at this time, the legal proprietors being merely nominal and the use belonging to another or others. This introduced difficulties and the Statute of 2 Henry 7th was made declaring that the coxmnyoue use should be the legal owner of the land. The Statute has saved the legal title to heirs i.e. it gave heirs a legal title, bested to a see simple in heirship. From this it followed they could not provide for their families. The spirit of the nation would not bear this. 15 years afterwards the 32 Hen. 8 a Statute was enacted making lands devidable and the 94 regulated and explained the former.

Before this certain, technical rules had obtained with respect
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To the construction of terms made use of in conveyances by deed, which technical rules were always to be adhered to, let the intuition of the grantor be what it would. Upon the establishment of wills these rules were departed from and a new rule was introduced which is the rule stare to guidelines. That the intuition of the Testator is to govern. For different construction is given to the same words when used in a deed and when used in a will. In the case of deeds, the intuition guides to the technical terms. In case of wills, the technical terms guide to the intuition, and the rule has no qualification to it, viz. that the intuition of the Testator to govern must be consistent with the rules of law. This ought to be thoroughly understood; for if as some have supposed it was to extend to the words that are used there never could be any difference. The truth is that restrictive clauses only apply to the nature of the estate and not to the words used of. A man may make use of any words to convey an estate by will if his intention is clear, provided he does not by those words convey an estate which by the rules of law he cannot. As he can't give an estate tail in personal property, or a life estate without power of alienation. But suppose he give an estate to J. D. and his son is male, is this a good devise? What is his intention? To give it to J. D.
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and the heirs male in exclusion of females, the he can't do and his intention is not to be gratified. Hence it is that any words that show an intention in the deviser to give an absolute right over an estate is a fee simple in a will but as has been stated is not so in a wrote deed.

From hence it follows that if a man says I give in fee simple, or all I am worth, or all I am worth my estate, it is a conveyance of all his interest. So the truth is if the estate is such an one that it can be given, any words which show the intention are sufficient. So if A gives to B, and this before it is an estate in the will. The word heirs don't mean a description of persons, it is only a description of the quantity of estate, and it means any person who may be heir to the heir by the law of the land at the death of the grantee or devisee and you may use heir as well as heirs. So when lands are held in gallery and it means all the sons. In the United States it means all the children male and female.

I will consider 1st how this estate is vested. 2dly, by it quantities and incidents and 3dly what will become of it provided he has no heirs

A fee simple can never be created by deed without using the word 'heirs' and the ancient idea was that
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words of perpetuity as well as inheritance forever should be used. Coditio-
The modern rule explodes this idea, "to him and his heirs" con-
vey it forever. This estate may also be created by will by
making use of any terms whatever that are clearly indica-
tive of an intention to create a fee simple, as an estate to a
man forever &c

The qualities of this Estate.

It is descendant to the heirs general i.e. if the proprietor
exercises no power over it in his life time, except the use of it,
and then dies, it goes to his heirs general i.e. to any person
that is related to him, unless restricted by the laws of the land.
It is descendant to his issue and if he has none to his nearest
collateral relations, and there are certain rules which govern
on this subject which will be noted hereafter.

Poly. This estate is alienable by the holder at his pleasure, nothing
of the free is invaded, for heirs is not descrip-tive personal.
3. It is alienable at pleasure, he may cut off all his heirs
if he will give it to a stranger. Now it is illegible to carry
the intention of the testator into execution if he endeavors
to create a fee simple, and attempts to deprive it of any
of their qualities, as if he gives an estate to his heirs on
his mother side—this will in good but the heirs who are
so by the laws of the land will take for the words on the
mother side" are void to all intents and purposes - it is cre-
ating a fee simple, and depriving it of one of its qualities.
For a man cannot give an estate to his heir male without
losing words of the body and then it makes another estate, which
is not a fee simple. We see then the power a man has over
this estate.

3. But what becomes of this estate, if he does not alien it,
and devise it leaving no heirs? By the English law it vests, it
goes back to the original grantor, it goes back to the heir of
the grantor i.e. heirs of the lord of the manor. This the law has
done to prevent it from becoming an estate by occupancy.
In this country we have no escheat, because the feudal idea does
not exist here. It becomes the duty of a public officer to look
into it, and if he finds the heirs to sell it, and put the amount
in the public treasury. The proceedings here are strictly adulatory,
there is no authority over them by the grantor when sold,
surely specially reserved, as was done by Penn in Pennsylvania
and Fairfax in Virginia, and where there are no officers
to sell it, it is open to the first occupant.

The incidents to this estate are subject to the coeis dower
which cannot be taken away from her in any manner upon
the principles of the common law. If a devise or grantee have
it, he has it with this incumbrance. True they have adopted a mode of proceeding there by which the consent is obtained and the down is set off. But the right of down is paramount to all other rights.

This estate is liable to the curtesy of the husband when he uses it - it is a life estate which he may have unless certain circumstances to be mentioned hereafter. This fee simple estate may not only be lands (as such) but also any incorporeal hereditary and also other real property exclusive of the soil may be given in fee simple because it goes to heirs. As if J. conveys to J. all his wood and timber growing on his farm, black ace retaining the soil to himself. This is a real estate and goes to the heirs of J., not to Executor. 

It will now mention some exceptions to the rule when in case of heirs, etc. when an estate may be granted by deed without having the words.

An estate to corporations will fail by using the word "successors." But the word is not of the same signification in this grant as heirs generally is, for it is given to a corporation forever, with successors it fails a fee.

2d. A conveys to B and his heirs forever, B conveys back again in these terms, "as fully as it conveyed to B" without using heirs, this fails the estate, but I don't think it is an exception. But had B conveyed to C in this manner it would have answered.

3d. Concessions on joint tenants may release to each other.
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Their right without using the terms heirs. These are all the exceptions I know of. A deed.

I will now consider an estate tail—how it is created—what its quantities are—what its destiny must be, and its incidents.

An estate tail is created by deed only one way, by grant to it and the heirs of his body, the it may be restrained to particular heirs of his body. But no restriction can be laid in an estate which is to go to the heirs general. But the law admits an estate tail to be created, and this by force of the old Stat. de Denis. Cod. II. 4. In the State of New York they have abolished all estates tail altogether. But the estate may be created by will and here the intention is to govern. Any words may be used which shows an intention to convey an estate tail as to J. I. and the issue, or his issue, to J. I. and it is to be deemed an estate tail from generation to generation.

The quantities are, he can never alienate devise it. Indeed he may sell his own right by operation of law, but can't have the issue. It is descendable not to his heirs generally, must be to heirs of his body, not indeed to heirs generally of his body, the it may be paid there it is an estate tail general. But it may be to A and heirs male of his body, and then no others can take it. Here to an estate male tail, if it may be an estate tail female.

If given to 4 and heirs of his body by his present.
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wife to an estate tail special, if to given to him and his male
of his present wife - to male tail special - and no female.
Here it must be observed that the conveyance in order to be good
must be conducted wholly through the channel of the gift. Coit 25.
If it doth not in case there are no heirs who can take it.
In this case it goes back to the Grantor, for the fee tail was car-
red out of a fee simple - the fee remaining in the Grantor which
descends to heirs of the Grantor, who shall take it.
If the incidents of the estate.
The tenant has a right to do with it as he pleases - respecting
improvements - may commit waste with impunity. Is liable to
decree of the wife and the heirs take it liable to this condition:
Is liable to Custom. It may be barred and turned into a fee
simple by fine and recovery.

Estates in Connecticut.
The object is to prevent the immediate issue from spending
the estate of course it can't be barred. As if it gives to B and
heir of his body to an entailment - B holds it as an entailment
But the moment the grantee dies it descends to his heirs a fee
simple.
Some say the estate in B is only an estate for life, and is not
subject to decree or curtesy. But I answer the first by using the
word entailment - take it in the sense of that term in the Eng-
lish books. It is an unaltered estate. Besides if there are not an
entailed estate, it would not follow the form of the gift but would go to being general in all instances. But this is not a fact where the estate is for life. Both these estates are called estates of in
stance because they depend

of estates for life.

There are conventional, or those created by construction or operation of law. Conventional are sometimes for the life of the grantee and sometimes for the life of another person. If given for life not mentioning whose is considered as for life of grantee, it being taken

How conventional estates are created e. i. by what words, its

qualities, incidents, and duration.

As to the words to be used, I observe first of all life of grantee, he is to use "life" only. It wills the intention is to govern, yet a man gives his house, i.e., a thing for life, it passes only an estate for life, and he says, my house. If an estate is given which may last for life is considered as an estate for life.

If it be woman during her widowhood to an estate for life, or no considered because the way he never awarded.

When an estate is given to another, in the life of another of the grantee dies before the cestuy for vie, what becomes of it? For the grantee shan't have it, for he has failed with the whole of his interest in it during the life of cestuy given vie. Shan't go
Real Property: Downer

To the Executor because the real property - last estate because
he is married - well it is hedged in faces open to the first re-
cipient, while the estate goes on lives. Now a test is made in England which gives it to the Court to sell and pay debts. There is no test that in Connecticut, Section 41.

Of life estate by operation of law.

By the court act, this is a life estate for it may last during life. If he alienates it, it cannot remain more than during the estate. So if addors take it, let if leased for 100 years, it is good only during the cohabitation if he dies first, but if she

dies it is good during his life.

This is an estate of life property, to which the wife is entitled on the decease of her husband. I will first mention the law of this country, that in the United States, the law on this subject is quite uniform.

The wife has a right to one third of all the real property - inheritance which the husband was at any time seized of, during cohabitation, to hold to her for her natural life, provided she could have had issue, and that issue could have inherited by law, not necessary that she should have had issue.

The right to this estate can never be disposed of by the husband either by deed or will. nor indeed is it in the possession of the hus-
bond to atter her right and give her any thing in lieu of it
only by her consent. Her title is paramount to all others. Again, it can't be taken by her creditors. He can't deprive her of it by any agreement during coverture. She is not bound by any judgment after marriage, but if she accepts of one his have to do with the

She has no right to her personal property if he chooses to deprive her of it. His creditors or devisees can take it before her, but if he don't alien it 1/3 of it is completely at his disposal, but the has real estate only for life. Dowry is a right that lasts only during her life, if he alien his under that in reversion. It can't be taken by one citizen. When a man married a woman above 40, the court said there was not certain she could not have your. Where an estate is given to c and the heirs of his body on his new wife. There to be forgotten, if any dies and he marries another, she can't be included of that estate for her children could not inherit. The estate must be a fee or entail in order to be being included of it. He must have been seized during the coverture, either in deed or in lease. Deeds in law is insufficient for her to recover her dowry.

The reason must not be instantaneous, as if of coverture to B on purpose that he should convey to C. Here the wife of B is not be endorsed, for he is a mere trustee for another person. On this account the wives of creditors are not to be endoed, the formerly it was otherwise.
To be entitled to divorce the wife must be 9 years old. A divorce made at these does not cut off her deceased wife. There is a ground for divorce, a vinculum matrimonii, yet unless this takes place before his death, she can be remarried.

In case of a 2 marriage, the first wife living, that is void, not merely voidable, as to the other, and of course the 2 wife cannot be remarried.

Formerly, beacon or felling in the husband destroyed the rights of defense at law at the hands and by another that his wife was as to beacon. But by a statute the wife of a feller can be exchanged.

The wife of an alien cannot be exchanged, nor an alien cannot hold lands. The judge queries whether she can if the inquiry is not made as to the alienage before his death. And after his death, there is no danger of the marriage being voided. If also an alien woman cannot be exchanged, nor can hold lands except Queen consort.

The wife of a divorce shall be exchanged, the title is liable to be defended, for the husband died seized. The wife of joint-tenant shall be exchanged for the whole right survives to the survivor.

This devise is to be set out by the heir with estates and rewards; if she don't like her proceedings, she is to bring a suit of slander and then to determine.

If the thing is incapable of partition as a mill, then the court take one third of the toll or the like.
The wife of a castu que trust must be endowed. This is wrong.

To the wife of the true tenant can't be endowed.

Of drowned in Connecticut.

The wife has a right of dower of all the land of which the hus-
band died seized, and not that of which he had been seized during
coverture. This is the case of some of the Eastern states. New York
law is the same as English except that by joining in a convey-
ance, she can bar her dower.

Where a man in Connecticut in order to cut his wife off from do-
wer conveyed his lands to his children just at the time of his
death, the court considered it as a testamentary disposi-
tion which would not cut off dower. If he were if he chose to
leave his estate into money and then devise it from her, he can
not cut her off.

A divorce in Connecticut makes marital union don't of course
prevent dower for it may be for negligence cause.

I presume no conviction or treason would bar dower in Connect-
in it don't corrupt the blood. In Connect. by usage there
are no joint tenants, they are just like tenants in common.

In New York there can be no joint tenancy unless it is man-
fully declared.

And court of Stipate appoint two or 3judicious men who set
out her dower. Here a wife shall be endowed of a trust estate.


How land. The most common mode is by jointure settled upon
her before marriage, while she was sui generis. The jointure
Once

In order to be considered as a true marriage settlement,

it must be expressed to be in lieu of dower, otherwise it

shall be considered as a mere marriage settlement.

In the event of a good jointure,

it must be of real property, e.g., the simple, land, or for life of

the wife, not personal property, same in Connecticut. Hence a

lease of 999 is considered real or real property but of any long

lease. It must be for the life of the wife at least. If land has

jointure was in one like that, unless instead, it was no anti-

cumulative. It must commence in proportion to profit by rent

immediately after the death of the husband.

It must be a competent livelihood. It is very proper

that the law should thus take care of her interest, for per-

nibly she married young so it must be in proportion to

her circumstances in life. May the at the time of the

contract the jointure was sufficient yet if he had grown

rich, this must be increased accordingly.

It must be conveyed to her and not to trustees for her.

Jointure settled after marriage is not binding if she

chooses to avoid it. A devise of land to wife don't bar

dower who accepted, unless stated to be in lieu of dower.

But in Connecticut I suppose a devise of 1/3 of all my real

estate for the life of my wife, would be construed to mean

be meant in lieu of dower, and to have been given through

the ignorance of the devisee who supposed she could not
Dower.

Dower may be taken by espousal with an adverse heir, and also if she goes away alone and lives with an admirer. Codit. 98.

She has been dower if her husband becomes reconciled to her afterwards.

If the wife dies in a bar, the in bar, her joining is sufficient in all the States. So, if she goes into court doesn't make any difference. Roll 683, Pleadon 575.

If she goes in conveying lands which were given in jointure after marriage, it don't bar her of dower at all, for she was not obliged to accept it.

Of Curtesy.

If a man marries a woman seized of an estate in fee or tail, and then by her issue born alive and capable of inheriting the estate he has a right to such estate during his life after her death. The issue must be in fact and not in law, for the husband can compel a report in fact, whereas the wife can't, as to her dower lands. The issue must be born alive, yet not be heard to cry—other evidence is just as good. In case of dower there need be no birth of issue, provided that if issue were born, it would be capable of inheriting it. Curtesy may be had as to
Our text:

the whole estate, but dowere is only 14 part. Husband may be

tenant by, or if the, by, a joint estate, the the wife can have Dowere

in it. No reason for this difference in point of principle.

3 D. 40. M. 29. to ef wife's mortgage, premises, 10th. 608.

The question might have been made in Connect, the now to late.

the lands held under the charter of Charles 20 are held in Gavel

Kind tenure and in Kent the husband might have cantsy for

he had no issue. But in Connect by usage we have adopted

the common law rule as to canty.

During in adultery with another woman is no bar of cantsy to

dowere. It also in case he goes off with another woman

is no bar. 3 D. 40. M. 29.

But he has no right to cantsy or power over an estate when

given to her sole and separate use, 10thh. 607. 2 Dtt. 49. 18a. 298.

Incidents to an Estate for life.

All these estates for life, whether by operation of law or other

wise i.e. conventional, are governed by the same general prin-

ciples.

Grants for life is liable to waste i.e. he is liable to lose

the thing wasted in his estate therein go to the reversioneer with

damages. If waste is committed only in fact, he is liable to prelau-

to. If waste is committed by passion, the whole goes, because no

distinction can be made.

If tenant for life attempts to create a
Incidents to estate for life.

greater estate than he has, he profits his right, for it tends to injure the life. But in this country as there is no danger of injuring the title of the life, I think the reason does not apply.

Tenant for life has a right to enter, to fire, tobote, hay bote, and the like as much as is necessary for the purposes of husbandry. He has a right to timber to repair at times, it depends on contract however. If no agreement is made about it, it belongs to the life, and then he has a right to take timber for that purpose. He must apply the timber on the farm, he must not call on anyone else, it is better to apply.

These estates are freehold and any estates less than for life are less than freehold.

Emblemata.

Emblemata are those things produced annually by labour not that which is succeeded by labour, as grapes and trees. Grain and the like are emblemata. There are sometimes real and sometimes personal.

When a man conveys land having crops upon it, the crops pass with it as real property not specially reserved, and this is to be done by deed or if land to within the flat of house. Ignorance of this rule has caused frequent injustice. If land on which are emblemata at the time of the devise is devised, they pass as real property to the devisee, for the devise intended the land should go. If emblemata are taken away brands, to only...
Maxims

1. The estate of reversion shall not be created to commence in future, i.e., it must vest co-extensively with its creation or not at all. A reversion passed by corporeal tradition in presence of witnesses, and the evidence of which was refused in their minds. Now as it would be difficult for them to remember how many months forward the estate was to commence, it was determined it should commence at once, or not at all.

By the maxim is meant not that the grantee must take the right of enjoyment immediately, but that the grantee must then part with his interest. It may grant to B an estate for life in years and the remainder to C in fee. If the reversion is transferred to the remainderman in possession, the right of enjoyment is postponed. But this maxim is sometimes dispensed with. In a devise an estate may be created to commence in future, yet not so as to create a perpetuity. It must be given to rest in the life of a person who is not living and in the meantime it descends to the heirs. It may also extend 21 years after the death of a person now in being, or it may be to 3 his heirs who may be born at his death. Any it may go 9 months further.

I think one that by implication destroys this maxim, it says all estates by deed or will given to any person in being, or any immediate descendants of heirs in good, and no other is good. If it may be the youngest child in town, or his name-
Mariner.

Since descendant, youngest, or eldest.

1. A further peculiar is, a freehold must not be in abeyance, i.e., the freehold must be vested somehow in somebody. Thus if A gives an estate for life to B, the freehold is still in A. But if he limits over a remainder to C the freehold is in C.

Suppose an estate given to B for life, remainder over to his eldest son, he having no son yet. This is a good contingent remainder for if he has a son it is his.

But to support a contingent remainder the particular in whose estate must be a freehold, for as the freehold, paper out of the Grantor, it must vest in the particular tenant, otherwise it would be in abeyance, a looking out in some person in colonic to vest, and this the law abhors as the ancients did a vacuum.

An estate to A for years, remainder to the son of B unless is bad.

5. Another maxim was, a fee simple is not to be limited on or after a fee simple. As to A and his heirs and for the want thereof to B and his heirs, this is bad, for he gives the whole to A by his heirs, and so her nothing to vest over. This is now the rule in deeds (Reg. 269, 269 litt. 16).

But in wills this rule is dispensed with. So an estate may be limited to vest on a contingency, i.e., to happen in a life or lives in being, to A and heirs also provided he die without heirs, in the life in the life of B, then to B and his heirs—this is good. This estate
Maxims.

is not alienable. It is not a fee simple, but a new kind of estate created under wills. 3 S. 571. 1 Doug. 270.

But what is meant by a man's dying without issue? It means any indefinite failure of issue at any time, so if to A and heirs (and provided he die without issue to B in fee) some say it means if his issue ever fail at any indefinite extent after his death. Now to said this contingency is too remote, but this doctrine is absurd be according to this a man might be said to have died with issue, and then again to have died without issue.

At 800 years after his death he might be said to have died with issue. Courts accordingly when they can lay hold of any circumstances that show that dying without children was meant, they will do it to give effect to the devise, but if it merely to C and his issue, it goes on indefinitely.

If an estate is given to A for life, remainder to his heirs this shall be a fee simple estate in A, the estate for life being void, the word "heirs" makes it a fee simple. Now it has been contended strongly that if any other words are used to express an estate for life, besides "estate for life," then he shall take an estate for life, others say that the word "heirs" always means a fee.

Ordinarily the word heirs is not a word of description, but expresses the quantity of estate given. Page 353. So if it is A for life and on his death to B and his heirs, now if B die before A, B's heirs can't take, 1693. 4 Burr. last case.
In a will I don't see that giving an estate for life can mean any greater estate than that. 1666.

Estate for Years.
This is personal property and goes to the Executor, and may be sold like any other personal property; however long the term, yet it is not a real estate. In Connecticut long terms are considered as real estate. This estate must be created by an instrument in writing. This taken from the Statute Book, which we have adopted. In England a lease for three years is excepted. We allow such exception. Formerly by common law a lease might be by hand.

Lease 26. 49.
It must be for a certain time, or by reference to something that will render it certain. It must have a certain beginning and a certain end, depending on no contingency, and such as may not happen for life - li a life estate. If the contingency is of a different nature from this, the lease creates no estate at all.

If given as long as time shall last, it's a fee simple in a will. But such an occupation in a deed could not create convey a fee.

An estate for 3 months is an estate for years, for it has a certain beginning and end. It may be created to commence in future, for no feehold is conveyed. The usual words are "lease and demise."

No technical words necessary, so a covenant that the tenant shall enjoy it is sufficient. 45 Alice 46 266. Holt 35 92 92 208.

If the lease fixes no time for the commencement, the date of the execution of it is the time, or if delivery is afterwards made.
that determines the date.—

Tenant in fee can lease for any length of time. Tenant in tail can lease only for his own life. If the lease for 20 years, his death terminates that time; would destroy the estate. So it may last for life, yet it is an estate for years, for there is a time beyond which it cannot last.

By a lease for life, an estate for 8 lives or 21 years may be created by tenant in tail. Tenant for life may lease just as tenant in tail. Tenant for years may make a sublease, or assign his lease, but to in the same predicament—see supra. Now 137, 413.

If a lease is made to A for 3 years and afterwards to B for a certain time, none of A forfeits his estate before 3 years have elapsed. B's estate commences immediately on the determination of A's.

A man may make a lease to commence on the day of his death. There has been some dispute when a lease commences, when said from the date, or the day of date.

A lease to commence from the day of the date will be considered as inclusive, or exclusive of the day of the date according as it will give effect or make void the instrument, or the intention of the lessor.

A lease to commence from the date begins at the moment of the date. Now is a leasehold estate given to commence from the day of the date a good estate? For said that is a leasehold to commence in futuro. Lord Mansfield considers all the cases in Part 7, 144 on 145.
Estate for years.

First clearly the good estate for undoubtedly the person creating it intended it to commence from the time of making the deed. Indeed I think "from the day of the date" is exactly synonymous with "from the date."

The time of commencement may be past as well as present, or future, provided the time of ending be fixed. It may be good by reference to something certain, provided certain

provisions named it, to reduce to certainty. Sec 35. If for any years as B shall say is good

provided he names it, to reduce to certainty. Sec 35. So in any

years as C leased for, or as long as the lease which he holds.

But a lease for as many years as C should say, seems not to be

within the Stat of 135. for the time don't appear in the in-

strument. 2 Burr 1028.

If of lease to A for one year and so on from year to year is good

for 2 years. More Sec 37.

But a lease for as many years as B shall live is void, as a lease

for years. Sec 35. A Lease till $200 is received is no lease at all

so uncertain.

In the reception of a lease the estate commence immediately

without any entry, so he may convey before entry. If he is bound
to pay rent. This estate is called his interest. This tenant for

years is liable for waste, and to repair; and is entitled to

orders to repair, unless covenant on part of devisor to do it.

Formerly it used held that a life estate could not be created
Estate for years.

by tenant for years, because it was considered a greater than an
estate for years. This is so now indeed, but in devise the rule is
otherwise, for tenant for years may devise a life estate, however
the first idea was he could not create more than one life estate.

But the rule is now, he may create as many life estates as he
pleases provided all the devisees are in being at the time.

A term of years can't be entailed, of course if a man does at
least to entail it, the first devisee takes all so to A and hoary
of this body.

Now the policy of the law would allow entailments,
why may not be create something out of it, once a life estate
might the limited after a life estate? Why not allow devise to take
life estate, and then let his heir take the whole estate, no danger
in this, and this would be giving effect to the intention of the
testator as far as desirable, that question never is now agitated in
England.

What is entailing an inheritance? When a man in making pro-
vision for his family by deed or will gives a lease to a younger child
which is to cease on receiving a certain sum of money from the
nee, then the estate descends to his heir who then takes by de-
scent. This is entailing an inheritance. It is a method of raising a
portion and providing for younger children.

If B wants to give an estate for life to A, remainder over to his
son, now if this estate is surrendered at birth as son is born, the
contingent remainder is destroyed. But to prevent this effect,
Estates in year.

Haste are appointed in the deed to preserve the contingent remainder, in whom it will vest immediately on the estate ceasing and continue till the death of the heir of the stock in strict settlement means to it and

... the one, and his issue, and so on failure of these to vest, also the one and so on.

Estates at will.

This is dischargeable at pleasure of either party; no writing necessary. It is a licence. Cal. 56. While the tenant holds the estate he is bound to pay rent. It may be terminated by express words of breach, or by his exercising acts of ownership, which are inconsistent with tenants right. Cal. 57. LORD 860, 1581, 1582 247.

But the lessee may not vacate the dwellings, as by vacating, this is itself a breach it would determine the estate. The lessee may leave when he pleases, but cannot pay rent for the time which he stayed: if he commits waste he determines the estate, also he is not liable in action of waste. LORD 860, 1581, 1582 247.

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Estates at will.

who invades them.

The lessor may consider this plaging either as a defiencie or as a theft, and bring an action accordingly; of course he may have an action of ejectment if he pleases. By Stat. in Eng. and the 6 Hater, he may assemble a court called a freehold court and turn him out if he retakes, or forcibly enters. If a man forcibly enters on another's land he may use all necessary force to drive him off, and if he gets killed its his own fault. Id. at 418. 44.

All goes peaceably he is bound to pay rent according to contract, and if the lessor determines the estate, he is not excused from rent, but if the lessor determines it before the year is ended he loses it because its his own fault, and no apportionment of the rent can be made. If the lessor eats timber trees its not waste but theft. No man can be a thiefpaker who has possessory till that possession is determined. Addison's.

A lessor for grass by lease is tenant at will, he is no thiefpaker, his lease is only a licence, and not good evidence.

There has been a great question made in Eng. respecting reserved rent, when the lessee recovers quantum meruit. By late decisions this question is at an end, and the lessee may show his licence to enter and his lease is used to show quantum meruit. This is presumptive evidence and the rest to be obtained but it may be rebutted.

Estate at suffrage.

Differ nothing from these at will,
Estate at Salluence. Some observations.

only that one is an implied, and the other an express permission.

An estate at Salluence is when one comes into possession by lawful tite who holds over after his tite is expired, he is bound to pay
but according to contract. I will now make some observations on some things omitted in their proper place.

I have said that a freehold cannot be in Salluence. Thus

An estate is given to or for life remainder to 33 heirs. Here the
freehold vests in 33 and the fee in 33 heirs.

Tenant in tail after possibility of issue extinct "is where one is

tenant in special tail and the person from whose body the issue
is to spring dies without issue, or having issue that becomes ex-
tinct—this is an estate for life subject to all the incidents of
a life estate, except he is not liable for waste, and the the thing
wasted or cut goes to the survivor. Leite 2 Bl 30125.

one thing respecting devise. By that if the devisee waste the is

liable to lose it, no provision is made for actual waste only for

damages. The may cut timber, still by usage and practice in Connec-

the is not sued in an action of waste but is liable to the heir in

an action of trespass to recover damages. He dont recover

the thing wasted.

As to permissive waste, our law don't suffer an action of

waste to be brought to recover the thing wasted.

If the tenant in dowe dont repair, the heir may go and re-

pair and then take possession to reaid himself. He usually
Observations

takes some part of the form. He must only make such repair as is necessary, and this he must determine by an action in dispute about it. All this is done by Hat. and I am told by farmers that it is a very beneficial law both to the heir and widow.

Now consider the term months in contracts and leases.

By months is meant about two lunar months, or mercantile law 12 solar months. This is settled law. If a man hires for a month it means four weeks. The original idea on this subject was I believe that it meant 26 working days. 66. 61.

In English terms for years are personal property and the length don't matter. In connected we treat them as fee simple—have endorsed—made the husband tenant by the conveyance, and we have admitted the tenant for years for a young man. In English there can't endure the wife because personal property. They don't consider the succession any thing. Our mode of treating this estate is a matter of great inconvenience.

These species of estates may be conditional, and may be liable to be defeated by that provision. Co 215.

These conditions may be precedent or subsequent—

An estate given to A for life with remainder over to B if he marries—this is a contingent remainder and if B marries it vests.

An estate in fee may be created and yet be under some incum- 

bance. All the lands in Pennsylvania held under Penn, and most in New York are held so. There man may create a fee and reserve an annual rent to himself and heirs, but the owner of it,
Estate upon condition

i.e. for may not it when and as he thinks proper, yet it goes under this incumbrance and this quiet rent must be paid.

A sum to B and his heirs forever receiving $20 annual rent, and provided it not in factually paid, I shall have a right to recover. This provision must be made in the deed. This conveyance may be made and it the condition is not observed may be defeated.

or if he chooses to pay a certain stipulated sum he shall be leared the quiet rent.

Estate upon condition

B will was consider the difference between a condition annexed to an estate and a limitation of the estate. When an estate proper estate is confined and limited by the words of its creation that it can endure for any longer time than till the contingency happens upon which the estate is to fail. This is denominated a limitation as when land is granted to a man so long as he is Parson of the Isle, or while he remains unmarried. In such case the estate determined as soon as the contingency happens viz when he ceases to be Parson and the next subsequent estate which depends upon such determination becomes immediately vested without any act to be done by him who is next in expectancy.

But when a condition between the grantor and grantee is annexed to an estate, and that condition is broken, the law prevents it to endure beyond the time when such contingency happens, unless the grantor or his heirs or assigns take advantage...
Estates upon condition.

of the breach of the condition and make either an entry or claim, in order to avoid the estate. Yet the strict words of condition be used in the creation of the estate, if on breach of the condition the estate be limited over to a third person and does not immediately revert to the grantor or his representatives, the law continues to be a limitation and not a condition.

This is an universal rule that if the terms used are such as denote time to a limitation, but if the terms used do not denote time to a condition, a grant to B and his heirs an estate while he continues unmarried is a limitation. But if voided a grant by A to B and heirs forever so that B continues unmarried, now what is the difference come in course? But what is it in law? Why in one case he is a顶层设计 for staying and in the other not? A grants to B an estate so long as he continues. Pass of date, this is a limitation by reason of the words "so long," denoting time, but if such an estate is given to B to be defeated on his paying £15 to a condition and if he don't pay it, it continues.

In case of a limitation the estate terminates upon the happening of a contingency, but in case of condition it continues, if grantor or his representative don't take advantage of the breach of the condition to enter or claim, and so avoid the estate. Suppose an estate granted by A to B on condition that within years
Conditional estates.

B intestaining with A, and on failure thereof to D and his heirs. Thus the law confines to be a limitation and not a condition because if it were a condition then upon the breach thereof only of or his representatives could avoid the estate by entry, and D's remainder might be defeated by their neglecting to enter. But when it is a limitation the estate of D determines and that of D commences, and he may enter upon the lands, the instant that the forfeiture happens. 1064. Went. 202. Eio & 205. 40. 2 Litt. 43.

These extreme conditions annulced may be of such a nature as to be of themselves void without reference to any thing else. Still the grant itself may be good. Thus, if the conditions at the time of their creation are impossible to be performed and afterwards become impossible by the act of God, the grant being made, it vests, the grantee not being to blame. So if the grantee himself defeats it by his own act or if the condition is to be defeated if the grantee don't do an unlawful act, it vests in order to remove the temptation, or if the condition is referable to the nature of the estate the conditions are void. 40 Litt. 260.

In any of which cases if they be conditions subsequent in to be performed after the estate is vested, the estate shall become absolute in the tenant. But if the condition be precedent as a grant to a man that if he belies another he shall have an
estate in fee, here the void condition being precedent, the estate, which depends thereon is also void and the grantor shall take nothing by the grant, for he has no estate until the condition be performed.
From the reflection, examination, and description of the subject depends on a form.
Real Property

Page 23

Of Estates in Possession, remainder, and reversion.

This subject depends on a few general rules or principles. If I understand them to be an elementary treatise upon it, it is the view more to be taken. regard will be had not to the quantity of interest in the owner but to the time of enjoyment.

Estates under this view of the subject are of two kinds—divisible or indivisible.

Divisibles are divided into two sorts: 1. reversion created by
act of the legislature, 32. division created by operation of law, 2. 16.

Estate in possession is estate executed having a definite term. Estate in the books means an estate in possession of course unless the contrary appears.

1. An estate in possession is a present interest not depending on any subsequent contingency, and accompanied with a right of present enjoyment. Blackstone's definition is imperfect. He says it is one by which a present interest resides in the owner, not depending on a subsequent contingency. This applies also to a reversion. But the right of enjoyment is deferred and this is the ground of the distinction. 2 Bl. 168. See dec. 239. Poole.

The rules given by Judge Reeve all apply to estates in possession. Of Estates in Remainder.

This is an estate limited to take effect and be enjoyed after another estate in the same subject matter is determined, as the
Real Property.

Main land. E.G. An estate granted to a tenant in fee for years and after the determination of the term to B and heirs, this is an estate in remainder, or is called particular tenant and B remainder man.

The estate that precedes the remainder is called the principal estate and the estate that follows it the remainder. (Cited 1413, 2 B.C. 164.)

These two interests are one estate, i.e., they compose only one estate in fee, they are each of them component parts of the estate in fee, which embraces the whole estate, that can be had, is enjoyed in any real property, or subject. All these then constitute but one whole according to the mathematical principle, that all the parts are equal to the whole.” (2 B.C. 164, 2 Wood’s 158.)

It follows that no remainder can be limited on, or after a fee simple for the fee exhausts the whole interest so that there can be no ordinary interest. The fee is supposed never to determine, the owner may die without heirs, 2 B.C. 164. (Nov 29, 109-10, 76.)

It may occur that a fee or remainder may be limited even after a fee by executory devise. This is not however true, for then one fee is substituted for another in a certain event, but not additional to an entire fee simple, for this is physically impossible. The most proper word to create a remainder is "remainder" to the appropriate word, others however may be used. (Cited 1413, 2 B.C. 164, 159, 170.)

Thus far of the general nature of remainders.

Of particular rules on this subject.
To create a remainder there must be some particular estate to
that in remainder, the preceding estate is called particular estate.
E.g. Fee for life, remainder to B in fee, Remainder is a relative term
and implies that some other particular estate exists, i.e. that some
part of the thing is previously disposed of. Co.Litt. 47. 500 34. 25.
1 Esso Inc. 242. 7 396 165.
An estate then created to commence in future without a partic-
ular estate is not a remainder, not ancillary. Particular
estate and remainder are correlative terms.
One can exist without the other. 2 846 165.
A freehold interest cannot at law be created to commence in fu-
ture. It must take effect immediately in possession or in remain-
der. Reason is living of reversion is necessary to create this estate. 2 846 165.
5 894 457 5. Exception in the case of freehold rent. Pown 424.
The object of the last rule is to prevent the freehold from being in
abeyance which would fetter inheritances, and would prevent
the tenant to the Percepe from recovering his right in a real
action... As no real action could be brought, or he might create
it to commence 999 years hence, as well as one moment. Pown 224.
If this were the case the ultimate property would be of little
worth, value, could not be sold, and thus would inheritances be
fettered in value would be fettered. But the principle reason is the
other one.
E.g. At least made for 150 years not having a right, how the
title could not be tried by a real action. Now however real actions
Real Property

an out of use in Westminster hall almost as much in in Connect.

'loos 266. 200.

Here of course I observe was necessary to create a leasehold and in its nature operates immediately on both at all. that imports a present interest in the precise act of giving a present possession of a leasehold. and is an incapable objection to conveying an estate in future simply a contract.

Suppose then a particular estate created, here being of resiue or present possession is to be made to particular tenant, and that

waiver to give effect to B's remainder. So if the estate in remainder commences in present, the to be enjoyed at a future time.

2 Bl. 66. 46

lease of will is to precarious an interest as not to be sufficient to support a remainder. It is not regarded as a part of the inher-

ence. This is the true reason. Blackstone adds in care of a

leasehold remainder, entry to make biving will destroy an estate at

will. I think it otherwise, for the particular estate is created at the same time. Indeed that he not the reason appears from the circumstance that an estate at will will not support a

remainder. This dont amount to a leasehold, 2 Bl. 66. 46. 475. 475. 475. 481. 481. 481. 481. 481.

As there must be a particular estate to support a remainder, it follow that if the particular estate is sold at its creation, there can be no remainder, for there is no particular estate. E.g. an

estate for life not in elder remainder to B in fee, here is no remainder.
And if the particular estate the good in its creation is defeated before the remainder can vest, the remainder must fail. Blackstone gives the rule wrong, he says it defeats the remainder, if it ever fails. I say it does not if it may vest when the other is determined. E.g., estate to A for ten years, and after the expiration of that estate to B, can A pass to B his estate at the end of five years, this defeats the remainder, because it can't vest then. But if limited to A for ten years and after the expiration of that estate to B for life, here the determination of A's estate in two days only accelerates B's estate, for in these cases the expiration of it by prescription, remainder, or the like causes to the benefit of the remainder. To be sure there must be no chance. This rule does also apply in cases of contingent remainder, 2 Bl. 167, but not to vested remainders, they being void at the creation of the estate.

2 wood, 138. 6. 10. Scurr, colling, remainder, 209, 234, 241, 260, 2 Bl. 155, 167. And as the remainder depends on the living of reversion made to the particular tenant, if this is defeated by grantor entry for condition to be done, the remainder fails. 2 wood, 138, 2 Bl. 167. And once in 2 Bl. 155, 167, and we can that be called a vested remainder, 2 Bl. 169.

2. General rule is that the remainder must vest or pass out of grantor at the time of granting the particular estate. This needs explanation. The absolute or contingent right must then pass out of
Real Property.

The grantor

Sells an estate to A for life remainder to B in fee absolutely, how the rule applies, B's remainder fails by the life of

A made to A, but suppose estate to A for life and remainder
to B in fee on a certain contingency. How I think the contingent
eight to enjoy the estate (unless it happens when it passes in-

fee from A) don't go to the remainder man, for it is a vested
interest, so the rule applies only to vested remainders. 288616.

Lift text to. 5. New 25. 2 wood 179. Modern 242. B.

That interest don't fail as to contingent remainder man is certain for

to settle that the interest limited continues in the grantor till

the contingency happens, so it will descend to his heirs. The con-
tingency would be in executory to no where. Ether 262. 247;

28g. 6. 267.

A remainder can't be limited on an estate already in effect

created before hand. To be sure the interest remaining may be

granted as a reversion and not as a remainder. If he should

call it a remainder still it would be a reversion. Indeed it

means there must both be created by the same instrument.

Peach 228.

3 Rule is, the remainder must part in the Grantor either during

the continuance of the fractional estate or be instant. It must not

cease to exist and not in possession. If it is vested in interest it suf-

fices.

Suppose an estate to A for life, remainder to B in fee. B
being alive, remainder vests at the creation of the particular estate, not in possession, but in intent.

So to life, remainder to B provided he returns from over sea in 5 years, he returns within the time and at the moment he returns the interest vests and is good within the life.

So to A and B during their joint lives, remainder to the survivor here the remainder vests co-incident with one's life determines.

Indeed it vests also in possession this that is not necessary. It never can vest in possession during the continuance of the particular estate.

It follows that if it does not vest but supposes the remainder must fail. E.g. estate to A for life, remainder to the oldest son of B unborn. A dies before B has a son born, here the remainder fails, in the estate cannot be enjoyed in continuity and from the nature of their being but one estate, both must be in one together, and one is held to support the other. Prov 24:3. 166 188 1 23 179 186.

Indeed it may be void at its creation, thus to A for life remains, due to B to take effect after A's death, is void in its creation.


Remainders are of two kinds vested and contingent.

By vested remainder is meant one vested in interest to affect it but in possession till no longer a remainder this is conveyed from an estate in expectancy to one in possession. A remainder as is fulfilled or terminated in parts expectancy.
A vested remainder is one by which a present interest passes to the grantee to be enjoyed in futuro, i.e., to take effect in possession at a future time. A vested remainder is one which attaches with it a present, fixed right of future enjoyment. (1) Co. Litt. 348. 2 Bl. 165. 2 Wood's 175. To $72 for years, remainder to B in fee, hence the estate is vested in interest.

A contingent remainder, or executory remainder as it is sometimes called, is one by which no present interest passes to the grantee, but is to take effect after a contingent or uncertain event, as the birth of a person. This is an uncertain event, as the meaning what Blackstone says who calls it limitation to an uncertain person. Cf. to A for life and remainder to B provided he remain in being beyond the time before A's death, here at the moment of his death the remainder becomes vested.

Again, to A for life remainder to the eldest-born son of B. This is contingent, but on the birth of a son during the life of A, the remainder vests an interest. Here a possibility adhered with an interest is describable. The right to enjoy the property is indefeasible. 3 Black 228. 3 W. 26. 2 Bl. 8. 169. 2 Wood's 174. 2 Co. 250.

Bd. 2857. 1 mod 252. Pearson 2, 3, 4.

Suppose an estate to A for life, remainder to B in fee. This is vested. But if to B after the death of A, this contingent for A may vest in A. But to B after the determination of A's estate is vested. Doug 251. Remainder to person unborn is contingent.
Deputy

At common law if the remainder were limited to the eldest of the particular tenant, his son an infant in utero in men by the time of the determination of the particular estate, could not take, but
bequeath to another. Indeed at common law he was deemed to be in fee for very few purposes only. See by this 12811 b 1690. For by these the remainder bequeath to a joint heir or a child while in utero. 28 B 21, 164, 166, 200, 252.

The remainder may be limited to one not in fee, yet it must be limited to one who by common possibility may be in operation, before the time when the particular estate determin

common possibility is distinguished from remote possibility,

If son in utero be a live born, remainder is the heir of B. B being in life is good, for the possible B may die first and so have an heir, so be one no one has an heir while he lives, for remote est heres preents. The law presupposes every one will live an heir, so there are not the uncertainties in contemplation of law in such a case.

But remainder to eldest unborn son of B he being unborn at the time, is void in its creation, to a possibility or a possibility, be here too expecting that B should be born and then should die during the continuance of the particular estate.

So too the eldest unborn son of the unborn son of B is void.

Codit 25' 184' 1904 33' 126' 170.

So too in an unborn person by a particular name is void in its creation. Thus to John, the eldest unborn son of A is bad.
Real Property

In there is too remote a possibility, for a man is just to be born, and then called John. Troam 77, 265.

On the same principle a remainder limited on the happening of something unlawful is void, as to a remote possibility in legal contemplation. e.g. Remainder to an unborn illegitimate child is void. 2 B. 7, 247. Troam 75, 6. 2 B. 597. Crow 32. I consider this as grounded on policy. It is indefensible to presume an unlawful act.

The rule itself is absurd. A limitation in failure of a preceding limitation is not of course contingent. 1 Bos, 256.

It is a rule that a contingent remainder is freehold cannot be limited on any estate less than a freehold. The freehold can't be in abeyance. I think the whole freehold don't pass out of the grantor. A freehold not the freehold must pass. Reason is there must be a vested freehold somewhere so that there may be a tenant to the freehold. It must then vest in the particular tenant, not remainder man, so he is not in existence at the event has not happened. Since then it passes out of the Grantor and by the construction it can't vest in the remainder man it must vest somewhere it does in particular tenant. 2 B. 17, 116, 130.

Ray 151, 2 Wood, 149.

 devise to A and B for their lives, and the life of the survivor. But if B marries and has issue, then after his death to B, and her heirs, and if B dies single without issue to A and her heirs, A and B take a joint estate for life, with contingent remainder in fee to each in the alternative. Song 945.
A contingent remainder may be defeated by the determination of the particular estate before the contingency happens, agreeably to the statute ex. death, alienation, frustration, &c. The particular tenant forfeits his estate while the remainder man is yet unborn. 

2. B. 117. Poem. 241. 248. 262. 252. 48. 211. 2. 2. 3. 11. 16. X. 135.

But the determination of the same actual reversion of the particular tenant does not of course defeat the contingent remainder, for the particular tenant should in fact be extinguished, he has a right to enter and his estate continues and so the remainder is supported.

2. 106. 194. 12 221. 174. 12 6. 8. 1. 3. 5. 59.

To prevent the destruction of the remainder in such cases the practice of appointing trustees to preserve contingent remainders has been adopted. This arose in the time of the civil wars in England to prevent the destruction of remainders by forfeitures in reason. E.g. to A for life, remainder to B during the life of A, remainder to C an unborn child. Now if it is perfected by A & B having a valid remainder takes the estate till the death of A, & as the case may be till the birth of a child. This depends on the limitation 2. 8. 3.

2. 6. 1. 8. 8. 8. 7. 12. 47. 4. 15. 5. 8. 5. 9. 5. 5. 1. 12. 5. 1. 12. 5. 12.

Poem is the ablest writer on the English law on any subject.

Hob. 38. 5. 65. 1. 42. 2. 48. 248. 572. 57. 57.

The question whether a remainder is vested or contingent does not of course depend on the probability or improbability of its ever commencing in possession, but on the limitation of the heirs.
Real Estate

of his body, remainder to B. This is a vested remainder and gen-
to not probable it will ever take effect. It is the uncertainty
whether the remainder will ever vest in interest, not whether it
will ever take effect in possession that renders it contingent.
But the nature of the limitation determines it, and not the
Probability of the limitation being contingent, then the remainder
is contingent, from not.
Again to A life, remainder to B, is vested, and yet it may be
limited and so the remainder be destroyed. But if to A life
remainder to B, if he survives A, is contingent, and yet the prob-
ability of enjoyment is as great here as in the other case:

2d dread 191. 2184. 192. 2d 123. 3d 230. 2d 232. 3d 485. 2d 231. 4. 3d 485. 2

To determine whether a remainder is vested or contingent, this is
the universal criterion by which to describe its nature, viz.
If it has a present capacity of taking effect in possession, if it were
now to become vacant, it is vested, but if remainder has not this
present capacity of taking effect in possession, it is always con-
tingent. Peam 149. If to A life, remainder to B if he return
from beyond sea in 5 years, and if A die before, he can't take
for he has not returned. But after his return, he can take at any
time, to be vested, so if limited to the heir born son of B, till the
child is born its contingent; for if the particular estate should
determine first, the remainder would fail. Then after the child is
born, Peam 149. If an estate is limited to two persons, remainder
Real Property.

in one event to one, and in another event to another. These latter limitations are called crop remainders. E.g. Estate to A and B as tenants in common, remainder to survivor, Stat. 33, 4.

4 Baccus 332, Lem 37, Dyer 363.

said that crop remainders can't arise between more than two, for otherwise there would be complication. This is not true and whether crop remainders or not - crop remainder is a question of construction, and when raised by implication, the presumption favors the construction if between more than two, and the complexity is the reason of the last distinction. This is the amount of the rule, Calp. 780. 31. 797. 2 East 40. 36. 116. 1 do 229. 40a. 335.

But where crop remainders are expressly limited they are good, however numerous the remainder men, except to A and B, to B after the death of both without heirs of their body to B, here is plainly an implication that so long as there are any heirs of the body of either of them, this shall have an estate tail, Calp. 780. 791. Part 229. 2 do 40. 146.

And again that crop remainders can't be created by deed, this is not true, Codice 75. 4 Baccus 333.

The true rule is this, they can't be created by implication in a deed, but may be in a devise, but not in a deed. E.g. so to A for life, and after his death without heirs of his body to B. East 416.

Seems to be the prevailing opinion that in convey a free hold estate may be created to commence in future, in a deed as well
Real Property

...as a will provided it is to a person in being or the immediate donee of a person in being at the time of making the deed. This is involved in one of our statutes which says such estate shall not be given unless to a person in being. I however think it questionable.


This is a species of contingent estate and is very much like a contingent remainder, the only difference in the mode of its creation. Blackstone defines an executory device to be a devise of a future interest, not to take effect on the death of the testator but on some future contingency. This includes a contingent remainder created by devise, so the definition is imperfect, for the it gives the general nature, it does not aslogicians vay give the specific difference. Pearson 2 P. 172.

A better definition is, an executory devise, or bequest, is such a limitation of future interest by devise as the law admits in a devise, but not in conveyance. It follows that every limitation. It follows that any limitation, it can ensue as a remainder, can't be an executory devise. A contingent remainder may be created by devise and is good and get is not an executory devise. Pearson 798, 293, 296. 2 Wood 222.

2 Wood 222. 398, 497, 568. 2 Beeky 611. 2 Wood 383. 3 Mat 998. Calk 344.
Exeuntory devises are allowed out of mere indulgence to men's last-words and testaments when otherwise they would be void.

The indulgence in almost all cases extends to the construction, but here it extends to the limitation, reason is well amade by men without counsel more consicile in extremis, so it would be hard to apply the common law rules of construction to devises. They were introduced by Stat. H. 8. 288. 172. 3nd. 250.

Fearn 299. 2. 295. 221.

Exeuntory devises originated in the reign of Edw. and have been regularly built up since that reign till they have become a common practice. P.B. 98. 5.

It differs from a remainder in three essential particulars. 1st. An exeuntory devise is a feehold to take effect in future needs no particular estate to support it even in case of a feehold occurs with a remainder. 2nd. By way of exeuntory devise, a fee simple or other estate on some contingency may be limited on or after a fee simple. 3rd. That by it a remainder may be limited of a charged interest with a life estate in it. 288. 172. 993. Fearn 93. 1. 93. 4. Jalk 229. 69. 69. 4.

Such limitations as mentioned before, in common conveyance are void allowed only in last words and testaments, so a feehold could not be given to commence in future, and a fee exhausted all this
Real Property

interest a man had in the subject, and again a life estate is greater than any chattel, and so exhausted the whole term for years.

Frame 305. 6. 4935. 250.

A contingent limitation may be so made by devise, that the in its
contain a good remainder, yet it may in a certain event become
an executory devise. Thus if contingent limitation is made by
device to depend on a preceding interest capable of supporting
it as a remainder and the preceding interest fails before the tes-
tator's death, as by the death of the first devisee, the second limi-
tation shall then operate, or on one as an executory devise, and
yet it was a good contingent remainder in its commencement.

Frame 401. 418. 19. Salt 44. 84. estate to A for life, remainder to the
husband son of B. if dies before the testator dies, how this limitation
fails and never takes effect, and so becomes void before the death of
the testator, for the devise is not consummated till testator's death
will how the courts will no continue it at all, in any ration given
recent, and will allow it to continue as an executory devise. For he
knew before his death that the particular estate had determined.
so he must be supposed to intend it as an executory devise.

And reason is, if the first devisee survive the testator, the estate
commences and after it has begun to operate one way, you
cannot change the nature of it. Frame 401. 415. 19. Salt 44.

To explain the rule in executory devise.
Real Property

1. On executory devise even of keephold needs no particular estate to support it; if a limitation by devise of lands or any other estate to C and his heirs, to commence on the day of the marriage is good. For a keephold to commence in future without a particular estate to support it.

Again a devise in fee to the heir of C when he shall have one is good by way of executory devise, yet some of these inventions yet both of them would be void in a deed, for in a limitation of keephold to commence in future, without a particular estate to support it.

2 Bl 178, beam 103, 4. L Dow 233, Dow 255-56. Col 2875, 1 Col 138, 609 398
262 226, 229. R 432, 1 69, ca. 139

And in the mean time till the contingency happens the interest and

Additionally, the fee descends to the heir at law of the testator by

the scions son of C when he attains 21 years, how till the time

the heir holds the estate without accrued but his inheritance is

as possible. 

2 Dow 233. 1 Col 138, 609 398 note.

But if he fee or other estate may be limited on contingency after a fee,

E.g. to A and his heirs, and if he die before 21 then to B and

his heirs. This is good by way of executory devise. Again to C

and his heirs, provided that if B pay £500 to A by such a
time then to B and his heirs. This is good. In this case the sec-

ond fee is not to take effect after the first estate expires, for

a fee exhausts all the interest that can be had in any subject.
Real Property.

Here indeed the last limitation is not to take effect after the expiration of the first fee. It is then a mere substitute for the first fee in a certain event. This is not a remainder, for then a particular estate is carried out of an estate, and the remainder constitute one estate. So this 2 interest canst be barred by fine or recovery at interest. 1 S.W. 120, Pr. 516.

Indeed to same as this, I devise my estate to fee to 4, if he dies first and thus, and thus, and if not then to B and his heirs. Pr. 516, 416. 2 B. 176, 373; 2, w. 181, 6, 226. D. H. I. 185. 1 B. 12, 10, 360, 2 and 229. 4th. 229, 132.

Pr. 132.

34. A remainder may be limited of a chattel interest after an estate for life. Of J. D. having a term for years devise it to A for life, remainder to B for years. This is good as a devise. It could not be by deed in our law conveyance giving the life estate (which is higher than the term of years) amounts to a total disposition of the estate. 5 C. 95. 2 B. 174. 2, w. 120, 338,

And this may be limited to any number of persons successively for life, and yet give the ultimate interest over, and they all take in further succession, if all intervening ones are dead then the last takes next to the first. 2 B. 174. Then was formerly a distinction between a begot and chattel to use for life, and a limitation over, and a begot of the thing itself for life and limitation over. So in the former the limitation i.e. the remainder was good and in
The last it was bad. There is now no difference, both are good.

The purpose is the distinction in the mode of execution of executory devise and contingent remainders rather than to the different nature of the estates when created. Deem 946.

There is an essential difference in their nature also by executing devise can be barred by lice or common recovery from if contingent remainders.

The reason is executory devise is not a present interest seen with contingent remainders.

But the principle reason is it does not depend on any existing limitations or particular estate, for it descends to the heir in the meantime. To do what if he suffers a recovery, this does not affect the devise, for his estate is not a contingent part of the same estate with that of the heir. 1 B. 617 B. 30 620 106 652.

As an executory devise can be by a recovery, a time is fixed within which the contingency on which the ultimate limitation depends must appear in order to render the limitation good, or otherwise men could create perpetuities. This is against the policy of the law, since with contingent remainders for they may be barred, so the contingency may be even so remote.

A perpetuity is an estate unenforceable. 3 H. 5 288 177 178 5 229 7 200 290 1.
Real Property.

The rule as to the time of limitation is this: An area of ten acres to be good must be so limited as to take effect, at all, within a life of lives in being and 21 years, and the fraction of a year, as of 9 or 10 months afterwards. E.g. the estate in fee to the unborn son of A when he attains 21 years of age. This is good, but it extends only to the life of the Father and 21 years of age, and a fraction, which is intended to provide for a forlornous child, 1st. 228, 236, 174, Doug 590. Fearm 314, 320, 336, 338, 595, 100.

The examples above is one of a life in being. It may happen during a life in being so he here as no danger of perpetuity. Thus to the unborn son of A, and to A and if he has none to the unborn son of B, and so on through the unholders, but you cannot limit it after the life of a person not in being.

So you may vary the limitation. Thus to A and heirs with condition, that on a certain event it go to the unborn son of B when at the age of 21 years, But the limitation to the unborn son of a person unborn is bad for it exceeds the rule.

Above if according to the terms of the limitation the contingency may by possibility happen at a more remote period than that prescribed in the instrument it is void in the creation. E.g. devise to the first unborn of A, the unborn son of A is void, yet it may be within 21 years after the death of A yet it may be thereafter. Fearm 200, 214, 320, 336, 166, 427, 246, 174. Blackstone and others lay down this rule differently.
as to remainder of chattel interest being that all the remainderman
must be in use during the life of the first devisee and that the
contingency must happen during his life. But this is not law.
For this remainder to A for life, remainder to B in life, and re-
know by the return son of A would be bad law, as to the
return son of A for the contingency here might not happen
during the life of A and of course the son might not take
the ultimate interest. On the other side 457 281 174.
Section 34. But to were settled that the rules of limitation
are the same as all the 3 kinds of executory devises. 7 711 102.
Aberg 37 43 6. 16 . 324 357 304.

It follows as a general rule that if an executory devise is limited
to take effect after a general failure of issue too remote
and so void, as it may take effect at a time exceeding that
in the rule. E.g. It take effect after A dies without issue, as
to heirs, and if he die without heirs to B. But how is the con-
tingency too remote? I answer that the case may be this con-
tingency may happen at a time after the life of lives in being and 21
years afterwards, and a fraction of a year. In these words in fact
his heirs ever failing which may be 100 years after his death.

The remoteness of the contingency depends on the construction of
the words, if the die without heirs because the words in fact a
failure of issue at any future period. Is to giving him an
Real Property

estate tail by implication and remainder in fee after the lineal descendants become extinct. To be sure, his dying must be after
in the time prescribed, but he may die without heirs 1000
years after his death. Dean 315. 322. 441. 6o 426. Tottel 266.
Bair 84. 301. III. 302. 60 441. 146. 124. 24. 34. 39. 34 58. 226.
823. 129. 136.

and this rule holds as to all the three species of executory
devises. Dean 322. 341. 16at 79. 371. 146. 182. 611.

You will remark, remainder in joint of time is unimportant
in contingent remainders, for there is no danger of perpetuity.
because the allotted.

But remoteness of time is the criterion in executory de-
vises for otherwise there would be a perpetuity. Observed this
difference. Limitations to A and his heirs, and if he die with-
out heirs then to B and heirs. This is not an estate tail by
implication but it is a fee after a fee, and this is good.

But if to A and heirs, and if he die without heirs of his
body, to B - This is an estate tail by implication and B may
take under the limitation as a remainder over. This is bad by
way of executory devise. Dean 301. 170. 391. 145. 6. 70 246.
29. 234. 20st 426. 1870. 146. 23.

If however in case of such limitation over and of failure of
heirs of body, or if given to A and if he die without heirs to
B. If here there were no remainder or if not die 25% are qualified & certain.

If
by other words meaning there would be used in their original sense, meaning at his death, it is a good executory devise, because his dying without issue is confined to the life of a person in being. But when it is not an estate tail by limitation, it will continue it in almost any manner to take it out of that technical construction, as if he say, if he die without issue, then to B then take it out of this rule. So if he die without issue at his death, is good as an executory devise to leave no issue behind him. So Franc 252. 50th 255. 166th 207. 
Pro Dec 251. 397 A 146. 170 322. 50th 282. 226 314. 308. 376. 132. 172. 482.

306 258. If one devise to A for life, remainder to B in fee provided that if B’s wife bear a son born, the land shall go to him in fee, for the birth of a son (not in issue) defeats B’s estate, but if B are the particular estate. Pro Dec 251. 222 127.

The law is that by Supreme Court of Error that the words to A and heir and if he die without issue you are to be construed according to their ordinary acceptance, and not according to their technical meaning. A limitation may also be good here as in executory devise (word) W. G. Goodwin thinks it best to adhere to the English order, for you must otherwise overturn much of the English law. You can’t give both constructions. This might in that case operate as a remainder.
Real Property.

It is doubted that the executor's devise shall take effect as such if it can take effect by way of remainder. Any limitation of a fee
interest in real estate by way of remainder tending to create a
fee-simple is void, whether in a deed or devise. I have said in
this construction which we have adopted with all the
remoteness by means of executory devise; of course no remainder
which would create a fee-simple is good.

By to A for life, remainder to his unborn son is good but to
the born son of his unborn son, remainder to his unborn
son for life is bad for so the ultimate he is always in abeyance.

So the rule is the positively established viz., that no limitation
can be carried further than the unborn children of a
person of reason in use. 1 Wills 81; 2 21 R. 237. 4. 8 June 1652.

In some such cases however limits of justice to effect the
general intent in devise, will construe the limitation according
to the doctrine of a free, so near as may be i.e. will give an
estate tail to the first unborn devisee rather than the estate
should fail. 2 St. 248. 2574.

When a contingent or other estate is devised over a condition
resorted to the preceding estate, and the preceding estate never
takes effect, the subsequent estate of limitation takes its place,
the remainder will be accelerated. E.g. Devise to A for years
remainder to his eldest son if he takes his name i.e. the testament,
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and if not, remainder to B. If B dies before he refuses, it takes it. This is substituting one for another - proved by the terms of the limitation itself. This differs from the case mentioned yesterday of a particular estate determining during the life of the testator. Dean 163, 393. 415, 16, 18. 492, 740, 748, 16, 134, 420. 34, 229, 2. 4 Hen. 36. 2, 4 Hen. 136. 12. Re Chan. 1916.

29 B. 36. 2, 4 Hen. 136. 2. Re Chan. 1916.

So a devise to C in tail, and remainder to D, if D dies while testator lives, takes immediately on testator's death. Doug. 323, 326, Proro 240, 52, 422. 22, 191.

But if the ultimate limitation can't take effect, if the preceding limitation fail, i.e. is void through the non-occurrence of the contingency, the ultimate one takes effect as a substitute for the other. But the preceding was on a contingency too remote, or fortuitous, the latter is too remote. The preceding is bad in its execution. E.g. devise of personal property to A, and if he die without heirs of body to B, remainder on contingency to C. C dies (atrescia). Now can B take? No. C can't take as failing of B's remainder, for the limitation to B was void, for the property is personal, and so the substitute can't succeed the principal. 29 B. 251, 242, 245. 2 Hen. 365. 34, 1310, 5. Dean, 447, 15.

So if a subsequent limitation depends on a prior one, and the prior one don't take effect, the subsequent one can't. E.g. to C, for life, remainder to D, the unnamed children of E. If B refuses the grant, so there is no particular estate, and the remainder fails whether vested or contingent. 29 B. 251, 44.
Executive devices

Some general rules as to contingent remainders are: descendants, devisees, heirship, assigned to personal representatives and assignable before remainder; the remainder is in perpetuity. Personal property is not assignable, but is assignible only. In this case, the interest is present right a right to enjoy at a future time. 2 word: 287212.

The big modern authorities the same rule is settled as to contingent remainders and executory devise, except that they are not assignible in law, but they are in equity, and this before the contingency happens or before the interest vests.

The latter are called executory and vested with an interest. Visibility descends but in equity law an interest is necessary, in order to an assignment. But they are assignable in equity but not in law because equity contemplates an agreement executed to a grant to an executory agreement, where it created effect as a grant. This is to further the general interest of the parties, so when the contingency happens that will compel the interest to be transferred in consequence of the grant agreement. 326. 312. 38. 9. 31. 296. 419. 99. 11. 11. 22. 41. 271. 19. 20. 29. 297. 109. 46. 78. 11. 12. 72. 9. 13. 12.

This is now abundantly settled. But it is a distinct conclusion between executory devises of real and personal estate. Not 2 word: 218. 24. 24. 24. 77. 77. 12.

A contingent remainder in executory devise cannot be transferred
Exeuntory devise.

by deed at law, for there is no present interest in a grant made
(like of a present interest) except the interest in the contingency
and this can't be called an interest. Plow. 432. 2. 230. 187. 212. Plow. 152.

Indeed, to a meaning of law that no man can convey any thing at
law by deed, except an actual or potential interest, but here is
neither. But the re such interest as exeuntory devise, or contin-
gent remainder can be conveyed by deed, yet they may both
be taken away being of freehold by suit or recovery, by way of
estoppel.

Here is this difference however. In the case of exeuntory dev-
ise it can't be barred unless the party in the contingent de-
vice himself is party to the suit or common recovery whereas
a remainder man may be barred by suit levied or recovery suffered
by the particular tenant. 2. Wood. 222. 238. 30. 1593.

A suit or common recovery is bar to the party and all claiming under
him. 310. 9. 73.

Reason in the latter case is, the suit destroys the fractional
estate, and then the remainder falls to the ground. But in the
former case the bar is only by way of estoppel.

An exeuntory devise may be altered at law to the owner of
the land before the contingency happens. A release does not neces-
arily import a conveyance of any interest at all, it is only a
 waiver or abandonment of all the right or title a man may
have. For may bind himself neder to make claim. 2. Wood. 213.
Executive devise,

An assignment of an executory devise will be carried into effect in Court of Chancery only. Equity contains it an executory agreement or covenant of conveyance. Chancery don't give effect to the grant as such, but merely as containing an agreement. They will confer the party to make the conveyance when the contingency happens. 2 W. 213. Merc 1407. 3 Barn 442. 2 D. 444. 16 Eliz 6.

B. Freeman 250. 9 G. 101.

But the assignment must be for a valuable consideration, or for a consideration in "the second degree" as for the advancement of a child, not enforced if purely voluntary. 2 B. 250. 1 Eliz. 6 G. 101.

Events happening after the execution of a devise and before the confirmation of it by the death of the testator may vary the limitation from a remainder to an executory devise. Doug 325. 6 Ind. 476. France 401. 49 Pa. 26. Doug 476 for note.

To the the event happens after the testator's death, if there is a double contingency, so that a limitation in one event that has not happened would have been a remainder may in another which does happen be converted an executory devise. The limitation in such case is called a limitation before a double contingency. Doug 477. 478. 2 Doug 249. A when a contingency upon a double aspect, 2 D. 476, and this may be implied. Doug 479, for here its operation as an executory devise in one event is provided for by the terms of the limitation. 2 Doug 243. Doug 479.
Exemptory devise.
If the first limitation is an exemptory devise, there that follow will necessarily be so, and be laid down in the books as a general rule, that when the first vests in possession, then that follows vest in interest and become vested. This requires qualification, for the rule don't apply to remainder that is due to exemptory devise.
For the second remainder may be contingent and the subsequent one vested.
This last rule can't extend to cases where the subsequent limitations depend on events which have not happened, when the first vests in possession, suppose then, it is limited to A and then over to B when he arrives at 21 years of age. But the first part of the preposition is true, because if B is born, the possession vests in A, and the subsequent vests in B entire in interest. Suppose to the oldest natural son of A, on his birth it becomes vested, dispose the limitation further to the eldest natural son of B when 21 years of age. Now B is born before B's son is 21, and it's interest vests in possession. But B's can't vest in interest. Hence does the rule apply, and if when the event has happened before the first vests in possession or during the continuance of the particular estate, long 475. Brass 396. This far of exemptory devise. Long 479.

Of Estates in Reversion.
An estate in reversion is the residue of estate left in the grantor, and to commence in possession after the determination of some particular estate granted by him e.g., a lease for
years made by tenant in fee simple have all the interest except
for these years remains in the grantor.
To again if the grant an estate for life, so if he gives an estate-
that there is still vested estate the let much regarded.
2 Bl. 175. 2 Deed. 24. 2. Wood. 172.
This reversion remains in the grantor by act of law without
any reservation at all, for what he does not transfer remains
with him of course. 2 Bl. 175. 9 Deed. 6. 2. Wood. 172.
A remainder is always created by contract, compact, or in
some way by the act of the parties i.e. by some species of
common assent. But reversion is only created by operation
of law. 2 Wood. 173. 9 Deed. 30. 6 Deed. 22. 2 Bl. 175.

A vested reversion is transferable as well as a vested remain-
der, see to an estate in prevent to take effect in futuro i.e. to
a fixed right of future enjoyment. 6 Deed. 22. 9 Deed. 30. 2 Bl. 175.
2 Wood. 173.

There may at law law be a contingent reversion. I know
however if that one instance e.g. A conveys to B and heir’s a
lease or qualified fee, while they continue tenants of the mar-
hor of Dale. This is defeasible by their ceasing to be tenants
of the manor of Dale. So it may be an estate in fee, and it
may not be a fee. The ordinary tenant is contingent till
the event happens, afterwards to vested. 2 Bl. 169.
Remainder.

Such contingent remainders cannot be conveyed by deed for their present interest, may, however, be created by estoppel I suppose. Indeed, there can be no attachment in this case.

A remainder is created by act of law only, it follows that if a man grant an estate for years, life or with remainder to himself and to his heirs, for what he then intends himself, as remainder is a remainder. The old estate never passed out of him, his a remainder, not a remainder for the law continues the old estate in his of course. To an absurd as for tenant-to-tenancy himself. 2 Bl. 476. 2 W. 173. 6 Co. E. 321. 7 Leof. 406. 7.

On the other hand, if one should grant an estate to A for life to receive rent with remainder to B and heirs. This is not a remainder but takes effect as a remainder because it is created by act of the grantor, it is an imperfect use of the words "remainder." 2 Bl. 476.

Where rent is reserved on a lease its incident to the reversion, so that by a general grant of the reversion the rent will leap, &c., if adverse, reversion to B, now the rent is due to B. to lease 149. 2 Bl. 476.

But rent is not inextricably incident to the reversion. Therefore, may be a special provision to the contrary, and by if the rent may be granted without the reversion, and the reversion without the rent. E.g., the rent may be granted for 10 years, and after that it is due to the grantor. But the the rent will follow a general grant of the
reversion yet the converse is not true, ie by a general grant
the grant the reversion will not pass. The incident follows the
principal, but not the principal the incidents for acquisition
was direct and serveral means principal. Act 1542. 8 El. 1.

It is a rule of common law that a lease cannot convey a
reversion till theilee enter. This arises from the necessity
attorneyment. For the Lord could not alien his regency with
out the consent of his tenant and vice versa, which is called
attorneyment.

This doctrine of attorneyment by 4 Eq 5 et. dace 11 Geo 2
has ceased. As I think the rule does not now obtain in Eng. in the
U. States the doctrine is unknown and is of no force in necessity
for it there. Ditt. but by Act 46. 1040. 2 28 El. 2. 255. 290. Attorney
acquaint from feudal principles 2 El. 32. 288.

The reversion may pass under any words that are descriptive
of the interest, so that the intention is intelligible. If a
conveyance of one "lands" is made, the reversion passes if be has
an other interest. Reversion in the most proper word 1 El. 4.
New 438. 2 1741. even before the Stat. of lands, a freehold and
reversion could pass by recite deed, and attorneyment only by
live & recovery for no liberty of seisin can be made of if
it being an expectancy. But a certo reversion for years may
be passed without deed, these must however be some one
Reversion.

- Randomly agreeably to Stat. of France, there may be reversion of a chattel interest. 2 Wood 174, 2 Part, 367. 2 Wood 175, 2 Part 145.
- Deed of a reversion was always good without attornment, for a devise of an estate in perpetuity is good without delivery. Reason is, to require attornment would defeat the devise, and it applies only in case of grant. 2 Wood 174, 2 Part, 367.

A reversion may be conveyed entire, or it may be subdivided, and then conveyed. A particular estate may be granted out of it, and that there may be a reversion interest in the grantor. E.G.

Reversion grants an estate to B for 10 years, and to C for 20 years from and after limitation to B ceased. 2 Wood 174, 158; i.e. that it is to commence from the expiration of the subsisting particular estate.

There may be a reversion of a chattel real. E.G. leases for 99 years, leave for 20. 2 Wood 175, 3 Part 1545.

The reversion is expectant on the determination of a fee tail.

It is so remote, that the law in many instances regards it of no value whatsoever.

Another reason is the estate can always be deducted and usually will be in the reversion is in the power of the tenant in tail, to for the purposes of aspects. The heir never can be subjected on the covenants of the ancestor on the ground of his having aspects by descent provided he has nothing but his reversionary interest. 2 Wood 174, 3 Part, 235, not applicable.
Some rules as to Expectancies.

As a general rule that if a greater and the estate meet in the same person without any intervening estate the leap is non-
repealable or merged in the former greater. As if a fee simple
or is purchased for the tenant for years, the estate for years.
Cases, the latter and greater interest absorbs the other. This
rule proceeds on the ground that the union of two interests is
a virtual surrender of the particular estate to recovery. If the
law did not merge the less estate, he could not surrender
to himself. 1 Bl. 178. 30 E 302. 3 Leav. 437.

So cause a merger the estate must meet in one and the
same right in the same person. So if he has a fee in his own
right in the same person, & if he have a fee in his own right, and a
fee for years as Executor, the title for years continues, and
this is right, so if a merger took place the title would be as
sole and the creditors would be defeated.

So also if revenue in fee holds the particular estate in right
of his wife there is no merger, if there were her interest would

But if an estate tail and reversion in fee should meet in the
same person and the same right, there would be no merger,
for no actual surrender could be made by tenant in tail, or
resurrection of the estate except by loss. So the law will not
of Injuries to Things Real.

Here I shall treat of 3 only. 1st trespass, 2nd waste, 3rd of things real. Trespass in its most extensive sense means any trespass upon a piece of land. But in the more limited sense it means any forcible injury done to the person or any property of another. And as I have already consider'd it signifies the entering on another's lands, tenements or hereditaments without lawful authority and doing some injury or damage. 3 Bl. 209.

Col. 2. 10. 2.

Every uncommandable entry on another's land is a trespass and is called trespass by breaking his close. Every such entry implies some damage, as treading down grass, hedges, so soon the there is grass on the ground.

So proof of entry is sufficient, so far as he is in possession he violates the right of the lawful owner. 3 Cal. 309. 1 Bl. 38. 3 Bl. 62. 5 Bl. 37.

2 Swift 74. To remedy the entry should be unlawful or uncommandable. For in certain circumstances an entry on another land is allowed by law without licence from the owner.
Help to Real Property

E.g., a person may enter on land to serve legal process, the bail may not break the mansion house for this purpose.

If also of debt due over money which is to be paid on the land, or creditum demandatum, he may enter to make payment or tenure. The contract amounts to a licence, the law is said to grant the licence, as if there is a contract to pay rent at a certain place.

So also it is lawful to enter on lands of another to take deer, when a person has a right to drive deer. E.g., a claim of driving in default of payment of rent.

So also a letter may enter to see whether waste is committed, and committed, there is a licence of the thing wasted.

So also a traveller has a right to enter a common way. The law gives a licence. Indeed, going on an inn is an implied contract with the public to allow an entry. 6 H. 29, 21; 232.

6to 146, 6th 830.

So if A leases lands to B excepting trees, A may enter to take away or distance of trees. 10 Co. 46, 381.

So also one may justly entering on the lands of another for the purpose of destroying noxious beasts. This is grounded on general necessity, laws with other animals. 5 Bla. 15, 2 Bub. 62, 329.

12th, 24. Stetson 2, 117, 10, 2, 2, 555, 10, 2334.

And, in this case, the person running may not dog the hunter, for then a lasting injury might be done. Same authorities at supra.
If the authority does not extend to animals as well as men, as a

law, it is possible of policy requires it. 5 Theo. 150. Paul. 484. 7 Bible.

is laid down in the books that if a man has a hare on his own

to the man's hare on another land, this is questionable

principle. I know as in practice it another man to kill

any wild animal. Why should we have a right since policy

does not require it. 7 Bible. 556. 7 Noah. 755. This right is of little con-

sideration. If an animal hare nature is killed on any land and

killed, then it is mine, 1 Cor. if done on another ground and

then killed it is then the hunter. Eph. 484. 7 Bible. 556.

If he might presume a hare he might a flock of hares. This

that the hare have a right to enter on lands to glean them,

after harvest is removed. This is now settled to the contrary.

by 7 Bible. Eph. 483. 7 Bible. 556. 81.

And in regard to the

that in regard to the similar cases when the law gives a

licence, any subsequent unlawful use of the authority so given

makes the licence a high paper at issue, as is said the legal pro-

Humphreys arising from the subsequent act, is that is entered or-

inally for the purposes of committing the unlawful act.

This is not the true reason for it would apply also in case of a

licence given to the party. But in such case he is not a high

paper at issue. So the rule reads 3 30. 213. 26. 76. 5. 

Bible. 484. 10. 561. Eph. 387.

Bible. 484. 7 Bible. 561. Eph. 387.
This tis why a traveller having entered a taverne should firstly he becomes a trespasser ab initio by relation.

So also of a landlord having discharged tenant held the despots or wards it he is a trespasser for entering the land or for taking it in the street.

And here of justification is made the Caff may make a valid assignment of the subsequent trespass, and this is sufficient

Trinch. 147, 381, 213, 831, 381, 388, 221, 147, 192, 12, 56, 146, 33. Bar. 147, 192, 12.

But in general I have been scrupulous in respect cant make once a trespasser ab initio by relation. If mere neglect or omission is not itself a trespass.

I think the subsequent act must be a trespass itself independent of the licence in order to make the person entering a trespasser ab initio. The wrong then must be a tortious act, omission to make once a trespasser ab initio.

So if a traveller after entering a tavern refuses to pay his entertainment, this is a trespass, a breach of contract and doit make him trespasser ab initio. 5 Bac. 161. 2. 381, 263, 381, 146. 192.

So of a discharge of goods should refuse to continue the discharge on payment of rent or on terms of amends before im

bursing, this is a non performance, even if he should work there.

381, 146. 192. Ready is case.
But this general rule as to misprision it is said admits of no exception in case of a writ in the ex parte act, not final. This, suits to make return of the writ. But not final for the debtor has no interest in that the the creditor has.

In case of ex parte process he is interested for he is bound to make return, so if he suits to make return he is a highpaper at it.

Reason of this exception is, unless process process is return

ed after its returnable, its not admissible in evidence. E.g. process made to day, writ returnable next Monday, its not returned, will he offer it in evidence in a suit for false imprisonment? How can't justify till its returned, for a committing act. The must plead matter of record in justification, but till returned its not matter of record. 5 Bac 162. Hagg 659. 167. 409. 14 167. 14th 17th. Cowp 2d. Boc 412. False false imprisonment.

I think there is still another reason that operates in this case the last is sufficient. I suspect this is true. Whenever one acting under license of law is bound to do future act, by way of consummating or completing what he has begun, the omission of the uttering or future act with make him, a highpaper by retention of intent. The principle I take to be this, that when a man has begun an incipient act, and neglects
To do the commencing not to give it effect, to incompetent
In turn to say the acts under this. Not at all does the right
which the law gives them. He is a trespasser by relation. I
know of no case of this kind, so if having distrained, he
should fail to unseal he would be a trespasser at instance.

But when one enters on the land of another, under licence in
fact from the owner, a subsequent use of the authority, don't
make him trespasser at instance. 5 4 103 3 8 4 146.

I object a person who knocks at my door to come in, and he of
himself commits a trespass. I can't see for an unlawful entry,
may indeed sue for trespass. But if I should go for the entry, I
should fail entirely, for a justification of the entry covers the
whole gravamen, the rest being matter of aggravation.

The reason is where the law gives a power in relation to the
right of another, it will protect the latter against any abuse
of that right. But when the party gives the licence, he takes
the risk of it being a wrong, so far as respects the original act
done by his permission. He should in his contract have annexed
the limitation expressly, which he law in the case above an-
excess implicitly in giving this licence, he indeed has his remedy
for the subsequent act. 5 3 5 4 162. 3 for the reason. He also help
him in injuries to personal property.
Jeopardy to Real Property

It is in the books that to constitute the jeopardy the act causing the injury must be voluntary, for if done involuntarily, and without fault no action lies. This is not correct as a general proposition. Indeed, to go far from true, as a general rule in any cause, that favour is always wrong or untrue. Eph. 2. 383, 5 Bann. 185, 186.

I think this rule never true where the fault complained of is in fact committed by the deft himself, and yet it seems to be laid down to apply to this case alone. The intent in jeopardy is not regarded for civil purposes, to be rare in criminal cases because of new minister's act. So lunatics, infants, and idiots are liable civilly in jeopardy. It also is a man robs a cane in self defense and hits one behind him he is a jeopardy. Likewise may aggregate damages, but don't affect the issue. 10th 184, 879, 19th 184, Ray 485, 2 B. & P. 896, 10th 184, 112, 117, Doug. 649, 5 Bann. 179, 12.

At any rate it can't be true that the wrong must be voluntary. It is equally true that mistakes or accidents, not inevitable will not excuse in cases of jeopardy. So if a man breaks another's door thinking it his own, he is a jeopardy and liable civilly.

Action of ap. and bail 2d 5 c. Rep. 2d.

If a farmer should strike a servant in his house thinking it was a burglar he is a jeopardy. 3 Rep. 37, 2d Rep. 303.

The rule then applies only in cases where the act complained of is only constructively the act of the deft. E.g. goes dog chased
Helps to Real Property.

Cattle on his own land. He had a right to set them on and then it is his nature to pursue them; therefore as he did not intend it, he was not held liable. The act here is that of the dog itself only constructively and not in fact, because he does not owe diligence to call him being a mere instrument. An act can never be the dog's constructively unless his mind causes.

So if a dog goes voluntarily and kills a deer his act, not his act, occurs when he shoots a gun, or kills even by accident.


The same rule applies in case of an act done by a servant, indication there is of importance to show whether his master rat or not. Is it not his act if not ordered by him?

The action of trespass for an injury done. The things real will not lie of the subject, as land in a foreign country. The reason is of the subject is local the action is local and that in our general rule that when the subject is local, and the remedy is local. Is it different when suit is brought for lands in Eng. since the judge operates in Eng. 5894. 402. Code 117 42d.

246. 410. 391. 389.

Trespass actions may be brought anywhere.

The action when brought for an injury done to land, is called trespass upon the land because taken from the words of the act in the register. The word chasman in Eng. is ende-
1. How may a tenant maintain this action? In general rule that no person can maintain this action except hein who has the actual possession at the time of the injury done. A remainderman and remainder can maintain it during possession of particular tenant. Reason is this action is intended as a remedy for an injury to possession. Remainderman cannot maintain it to other actions. S. 333, 444. Con. C. Dep. B. 1, 4, 33, 5, 166, 279. S. 209, 209. 263, 2, 263, 2. 263, 2. 263, 2.

For the action of trespass is founded on possession, i.e., to a remedy for an injury done to the possession. A common sense that a bare right of possession is sufficient, provided no other is in actual possession. Even if described is for there the description has actual and adverse possession. "Trespass".

Tried in the books that the possession in this case must also be lawful, and that an intending of course cannot have the action. This as a general rule is incorrect. Sec. 546, 4. 134, 226, 147, 134, 226, 147. 546, 4. I think the rule applies only as between the wrong-doers in possession, and the rightful owner, i.e., he notes that the right of possession, &c., has decided that any actual possession
No. 123. I do certify that the seals of the said Corporation were received in due form, and are in good condition. The said Council of Directors have also placed a copy of the same in the hands of the said Corporation.

Dated this 1st day of January, 1859.

J. H. Smith, Secretary.
Ref. to Real Property.

Securing maintaining this action for an injury done to it between the time of defeasance and re-entiry for he is not in possession at the time of the injury. 273 C. 1003. 285 556. 556. 106. 144. 285. 556. 556. 106. 144. 285.

But said it the plaintiff right who is defeasized determines in the mean time so that he can't recede, he may have his

re-entiry for an injury done after defeasance. This is from necessity, since if it were otherwise he would be remedies 285.

But after defeasance and actual re-entiry he may have this action against defeasance for all acts done during the defeasance, for as between them parties the defeasance of defeasance after re-entiry is considered by relation as having been continued. This fiction of

law is introduced for the very purpose of giving him a remedy. Further when suits injustice, he may therefore have an action for the divine profits and cannot lay his action with a continuance.


But even after re-entiry the party defeasance can't maintain this action as B persons i.e. strangers for injuries committed during i.e. between the defeasance and re-entiry for here the fiction don't sufficiently, it obtains only between defeasance and defeasance.

Thus A defeasse B for 6 months and during this time B enters, and
Ref to Lex Property

If the paper now the defence can say to have trespass against J. Hiley. The same is true if the defensor conveys to J. S. and he goes into def- 
session, and afterwards J gains actual possession, still he can't have trespass as J. Hiley. 5 Bac 155.

Authorities are contradictory on this point. 1. Plow. 3, [p. 354].

This question is still in dispute. In principle I should think the defensor might extend to 3 persons, for no injustice would be

wrong. Reason for the rule are 1st. That the purchaser it is

hoped had paid the defensor a consideration, and ought not

to pay twice. But I answer he has either made a bargain of

bailment, or he has taken covenants of indemnification, and has his

remedy on them. 2nd. His said the stranger is liable to defensor

if there was no contract, and he ought not to be subjected twice.

But I answer perhaps the defensor is not responsible. I think it:

more reasonable the 2 defensor should run the risk of paying

twice than the defensor should be exposed in the last degree.

But the rule that the defensor after security can have this

action is a stranger held at any rate only against actioners

not against prohibitions as by the second defensor for the defensor

in any security to which he can find therein. Reason is the anti-

social difficulty arising from the fact that the action don't apply.
First to Real Property

Then arises the question whether the defendant may have an action as heir for the conversion or use of the profits by the second defendant. For so he can. Doug. 2150 Proc. Mont. 1834.

Defendant may before securely maintain this action for the original defendant, for this was committed when he was in possession. It was an invasion of his possession in point of fact, to also for a trespass committed before his possession. 5 Baco 168. 61. Com. D. Defs. B. 2. 21. 15. 53.

A person who is tenant at will or tenure can may have trespass only against a stranger but not ag. lessor or landlord. The title to the estate of the landlord in these cases determines the estate. 1 St. S. 477. 537. 5. Baco 167. 136. 69. Com. D. 21. 15. 50.

But lease for years or life may have trespass against lessor. 1 East 139. 5 Baco 137. 2 Inst 1051. Yet A. G. thinks lessor at will may have trespass against lessor for invasion of amenities for which belong to lessor. 2 B. 144. And however that lessor at will can't have this action against any one who enters without by color of right. This can't be made for such person may actually be a wrong doer and against such an one any prosecution is sufficient. 1 St. 347. 5 Baco 167 21. 53. Com. D. B. 2 62.
Said that lessor at will may maintain help against a stranger of the trespass or injury to the land. Lessor is recipient of lessor at will is that of the lessee. He is a species of servant and is liable to be turned out at pleasure, has no adverse right to the land on which they stand. Of course he may have the action against any one who enters or injures them during the term.

5 Rev 67. Const At f 2 B 2 2 Rile p 455

If the lessee commits voluntary waste, lessor may have trespass, e.g. dig, for such an act determines the estate, and of course puts the lessee in privity and makes the lessor the trespasser with permission on the injurious waste, so this does not determine the estate to little A. Whitfield 361. Const 2 Rep B 2.

A lessor entitled to the estate or interest of land may have the action of privity of estate for the injury done to it. This presupposes he has a present interest and possession of the estate at the time of the injury. E.g. Partus let for the freeman 381 210. 206 731. Dryce 255 29 349 10 10 302 104 10. Const 2 Rep B 158 Rev 167.

This so much is laid on being in privity, yet Esg not be in privity of the estate at the time of bringing the action. It is only necessary to be in privity at the time of committing the trespass. For then the right of action accrues. E.g.

Keep on land to day which he sold to morrow, here he may have the action after hearing Rev 381 2 Rev 167. 5 Rev 158.
5 Co. 1 Rob. 10a.

The owner of the soil of the highway may have his action for an injury done to it while it remains a highway. As being a highway entitled to the public only to the right of passing over it. The title, soil and possession continues the same in the owner unless some other person ousts him by enclosing it. 12 T. 1204. Beav. 147. Tip. 428. Cont. 10 D. 157, note l.c.

Agreement has been made if a man lets land to another to till on shares and an injury is done, who must bring the action, said by some the owner must bring it alone. Plaintiff cannot join for he has no possession before the crops is preserved. It is agreed that they may join for an injury to the crops, the rent will help guaranty right. 3 Co. 143. Holt 565. Which should be brought by owner alone. 5 Bac. 158.

Yet in trespass on the case he said that if Bague with the owner of the soil to plead and new and give the owner, if the injury is done to the crops, Bague may be alone in trespass upon obvious right for breaching down the corn, for said that A has no concern with it, till restored, and is not jointly interested before, and then he is entitled to his share as a lessee of rent. He cannot have the action for injury to crops but may by the for-lost. Beav. 85. 2702. Then in his own condition jury or inconsiderate. The latter appears to me preferable.

Husband and wife must join as trespass committed
On her land for the action would survive to her. Ces 8 76 133 Ex 1304. See "litle husband and wife".

Tenants in common or coparceners, as well as joint tenants, must join in this action for an injury done to the subject held in common or coparcenary. The action is personal, the interest in the personal right is common and the their estates are several, yet damages to be recovered an entire can not be joined. See text dec 315. to date 198. 2 BL 194. 2 Am 327. Esq. 444. See "tenants in common".

If a commission of Bankruptcy has been issued against one who was not subject to Bankruptcy laws, and the apographer takes possession of his real estate, he may have this action the commission being void. 9 BL 480. 3 Cal 382. Esq. 2 395.

For what injuries this action lies and what not.

Every man at law is liable not only for his own acts, but also for his cattle injuries in acts, if they be his negligent keeping them upon the land of another, and much more if he derides them. To subject the owner for the injury of his cattle to not as easy to prove negligence or fault, whereas for injuries done by domestic animals, as by dogs, he is not liable unless he knows the creature is addicted to mischievous tricks. In case of cattle: 49. Am. Jur is the action, in other cases, case is the proper action. No reason for this distinction or difference. 3 BL 105. 5 Bar 179.
$51$

But if the cattle of one enter and do damage on the land of another, then the neglect or fault of the other as not having his fence good, which he ought, the action lies. 2 Roll 565, 3 Bao 119. Vide "Appossum".

And if cattle of one are on the land of another wrongfully the owner of the land has his election of two remedies, the one, either distrain them, damageasserat & hold them, in payment made, or have the action of ge. clam. plag. 1 Bao 2, Eph 3867, 5 Bao 179.

This action lies against an agister, one who takes cattle to pasture for another, so if the cattle stray out of his pasture into that of another, some say the action must be brought against the agister and him alone, I think it may be brought against either. The agister is taker of the cattle and for the sake of which he is the owner. 5 Bao 1889, 2 Rool 546, Eph 387. Where the owner has his election of two remedies as in this case between the kalf, and distrain damageasserat, he cannot regularly have both, for suena deus, one is a ba to the other and either is sufficient to be entitled to but one fail's production. Vide "Appossum for distrain" 1 Kwik 248, 12 and 2663, 5 Eph 387.

But the owner of property is not of course liable in all cases for the injury it may do to the property of another. Eph 3. The tree of A is blown down on the land of B and injures it, it is not liable, may he may enter on the land and bring it away, to an
Help to Real Property

inevitable accident, and the rule as to this is, that he on whom it falls must bear it. 5 B.C. 178.

But if it falls on the land of B he is liable provided he could have prevented it by proper caution and he may not go on B's land to bring it off. 5 B.C. 178. 2 B.L. 875. Doug. 279. The latter not inevitable. If A's tenant plants on B's land and does damage, A is liable, not B's keeper. I think but I care. I suppose his liability is on the ground of negligence. 2 Pem. B. 2578.

If A puts his house on B's land, he may not go after him, even if the house is stolen and put there, here he will be justified.

P. 287. 5 B.C. 178.

If the fruit of A's tree falls on B's land, it may go and gather it, and not trespass. If he has a right to have a tree in that situation, the falling is inevitable. 5 B.C. 120. 5 B.C. 176.

But if the roots of a tree extending on to B's land extend into B's land, they are burdens in common of the tree and fruit, so if the roots do not extend into B's, even then it overshadows B's land.

1 D. R. 179. 2 E. 285. In that case the whole is B's.

A man may enter on another land to do his duty as to build or repair a hedge. 5 B.C. 179, and cannot do it without going on B's land, he is justified in going on the land by necessity.

If A has sold trees growing on his land to B, B may enter on A's land to cut and carry them away. That is implied in the contract. This is precisely like the case of land sold which is surrounded by the land of the grantor, i.e., in the
body of his farm on which case the law gives a right of passing and stopping to and from the land. 5 Bac. 180. 2 Met. 549.

Anciently it was held, that entry of one on another land adjoining a navigable river for the purpose landing boats or navigable craft was justifiable. Public good. This is now settled to be law. 3 Doug. 198. 6 and 163. Perk. 1 Burn. 86. 292. 3 F. & R. 253.

It is well established that if a public highway is impassable travellers may go on the adjoining land for the purpose of passing required by public convenience.

This suppresses the road obstructed for he may not go on the land, because it is more convenient. 2 Doug. 89. 2 Bl. 28. 286. 39. R. 263. Sept. 400. 14 Geo. 1 Burn. 298. Lea. 234. Where the adjoining land is encroached, 2 Doug. 89.

But the rule does not hold as to private ways, for public good don't require it; public not interested in it. Besides the party is not bound to keep it in repair. Whereas corporations are liable to the public for not repairing a public highway. Not travellers. Doug. 716. 2 Taylor vs. Whitbread. 2 Bl. 36.

A man can't maintain this action for an injury done to the backage of land on which he has a law right of common use to pass over for he can take it only by the mouth of his cattle, till owned. He can't be ejected of it, even if it is his property till he

The entering another house without permission given either by the party, or by the laws in without authority is a misdemeanor in authority
A to Real Property

in person a trespass even tho’ the door is open. The law does it to be done with force since it is an act which the law proscribes. Nov 46. 2 Rob 555. 2 Rob 288. 3 Bac 182.

But if an owner has unlawfully taken the goods of another into his house, the owner of the goods may enter peaceably to regain them, the door being open. If the owner of the house is the first wrong-doer, the law may not however enter without force against permission. Co 8 24. 2 Rob 356. 3 Bac 182. The law gives the licence.

In general that any person may enter the house of another without intention to steal, to pray, or other disturbance of public peace. If for public good. In both these last cases he enters by licence of law.

The law also allows to enter the house of another to pray, to recover demand or receive money then due if he does it peaceably. 3 Rob 212. i.e. the door being open. Sup 380. An officer may peaceably enter the house of another to execute legal process. 3 Rob 212.

And a house may be broken open to execute criminal process, provided the officer first demand admittance, and maker known or declared that the cause of his demand.

If he does not first demand admittance before the entry by force he is a trespasser. This is true only in cases of necessity.

1 Bac 454. 5 to 91. 423 to 441.

But an officer i.e. a sheriff may not break an open door or
A man's house was his castle where he might shield himself from all civil processes and set the law at defiance. The reason given was that he adventure thieves and robbers might be admitted. This is not the true reason. The reason every owner of a house was a sort of Baron or Lord. It grew out of feudal law. 5 to 91. Bk. 1. ch. 899. Holt 62.

But this privilege of castle is now construed strictly, extends only to outer doors and windows of the mansion house. It does not protect inner doors, barns, sheds, stores, etc., or any other internal enclosures, they may be made after demand and search made. In short, to effect this purpose he may disarm the whole of the interior house. But he may not treat inner doors unlawfully after entering. 6 to 94. Holt 62. 263. Bk. 64.

This rule does not hold in case of a suit having facial jurisdiction which gives the judge a right to execute for the value of things disposable to give satisfaction without entering. Where as in other cases the court is not of course defeated by the privilege. 5 to 91. 2 Bac 179. 3 to 183. Gid 9.

There are some intermediate positions here, for which see Little's Theory,

A thief may break a house to save a legal search warrant, i.e. in nature of criminal process. A search warrant is defined
to be a warrant obtained by a party whose goods have been stolen, to search for them wherever the suspects they are.

But all general search warrants are illegal, strictly void, as they afford no justification as to search for all stolen goods, or to search for goods generally in suspicious places. (Hale P.C. 150 2d ed. 245. 291. 839. 499. 409. 408. 254. 220d. 31.)

And as the law is now settled, to a good search warrant the following requisites are necessary.

1st. The party applying for it, or requesting it must state in oath to the particular facts, and also that the goods are concealed in a particular place.

2nd. The warrant must be executed in the day time, if not done in day time he is trespasser.

3rd. It must be executed by a known officer, for the law requires confidence in him, not by any one specially appointed, or authorized for the purpose.

4th. It must be executed in the presence of the officer, he must point out the place to search and take the responsibility on himself. (Hale P.C. 150.) and even then all these requisites are observed, yet the officer is justified or not by the event, tho' the magistrate and officer are justified whatever the event may be. If he don't find the goods, he is a trespasser at first, he assumes the wife -

2d ed. 291. 2d ed. 399.
In all these cases where the rent or was not lawful depop

You can claim for the rent.

You consider against whose this action will and will not be.

General Rule: if will not be in Sega for years for cutting trees

But the man who is not in possession of the tree, he has no right to the remainder timber. Lit. text sec. 79. 66.-

But if Sega after having cut the timber permits it to be long

enough to become personal chattel and then carried it away he is

liable to depop not for the rent, but for the cutting but depop

in injury done to personal property for the carrying away. This

lies for the chattel is his, and he has the constructive possession i.e.,

possession in law.

It becomes personal property whenever the act of cutting

and carrying away is not all one continued act, as if he should

take to day and tomorrow remove it. Whether it is a continued

act or not depends on circumstances. 48.-62. 66.-400 (see below.)

If one leaves lands removing trees, Sega can claim for the

rent in action for cutting them, or the lease, must put the depop out

of possession of them. Lit. text 79. 1st. Sega is a stranger to them.

And action lies for Sega as Sega at will for cutting timber, Sega

on the land, even tho’ no such reservation is made, for the very

act determines the estate. 48.-62. Lit. text sec. 79. 66.-400. So if

he does any other positive injury to the subject, 56.-18-4. 66.-8.
But the action will not lie in such case against tenant of the estate, unless he has entered or the act done determines the estate. 9 Bl. 150, 100. 1 Ed. 2, 100. Before entry he is not a tenant in possession, but a tenant in possession.

But the trees are removed, or excepted in a lease for years, yet lessor is not liable for injury or destruction done to them by his cattle for he has the use of the soil and a right to suffer his cattle to go at large on the land. 1 Ad. 789, 110. 4 Bl. 640.

This action will lie against an infant, idiot, a lunatic, for the intention is not material, notice not necessary. 1 Bl. 184, 128, 110.

Every person convicted in committing trespass is a principal, not an accessory, for there are no accessories. E.g. all actors, abettors to A. Command or request B to do it and he does it, they may be sued together or severally. 10 Ed. 449, 101. 10 Bl. 613, 4 Bl. 36.

It is said if A agrees to a trespass committed by B for his benefit, A is liable also the fact not command or request it. By agreeing to it is meant he actually taking the benefit of the trespass. If injuriously done, he would be liable in trespass for injury to personal property trespass or trespass would lie.

While master and servant for distinction on this subject, but generally the master is liable for the acts of his servant done under his command. If several persons join in committing trespass, the suit
not may be against 1, 2, 3 or any number in several or joint or
both joint and several. 56 159 5 126 34.

Said by Bac that if the party injured has brought his action
against one, to a bar to a suit against another for the same
harm, this is not law. The pecuniary of one can't be pleaded in bar
he may sue each in a separate action. 5 Bac 185. 4 Bac 142. It is
5 Bac 142.

It is true however that he can have but one satisfaction
for his recovery in damages. He can pursue only one of them to
judgment and his judgment is a bar. Reasons is what was before
mooted is now liquidated and become certain, is reduced in
new publicans. Whereas if two are sued on a joint and several
contract judgment to the whole amount may be had against each,
the only one execution can be levied, and if it is to the may be
had except as against costs. In this case indeed there is always
a rule of damages, and therefore a party would not for more
speculation presume the 20 to judgment so he can get no more.
But in this case the damages are always proportional. Different
juries would estimate them differently, so take the most. 
55. 79. 67. 7 Bac 145. 4 Bac 155.

A former recovery in this suit is a bar to any other action
for the same offence. 6 Bac 145. 6 Bac 146.

Said also by Bac that an acquittal of theft in one action is bar
to another. 5 Bac 155. 6 Bac 145. Mr. Gould thinks this is not law.
He would in one case can't be given in Evidence in the other.
But in case of an action to recover the rents and profits of the land to another enters on the land and takes or destroys the cattle, it may be an action against the owner of the cattle. Indeed it has been decided in the case of a lessee, however, that any injury to the lessee by the grantor, or to the land by the lessee, constitutes a valid action against the grantor.
Now consider the readings in this action of keep peace, claims are just. When the keep peace committed consists in abuse of authority, improper by law, it is sufficient for the defendant to state the keep peace generally in his declaration; i.e., he is under no obligation to notice the authority given by law. The particular injury or abuse of authority given by law is not to be put in the replication, by way of novel assignment. This action was originally to be brought in the common pleas.

Let there indeed plead the authority by way of justification of the defendant, and if the defendant abuses the duty of being home and taking good care of keeping furniture so justification of the duty, replication stating the subsequent wrong, particularly by new assignment.

So if a person commits theft in public house, he who brings the action need not state particular facts. Indeed this would be unnatural, unless he may sue for breaking the house first. 221. 3 V.P. 198. 474. 300. 292.

And if in this action may include several distincts, not proven in our declaration, this is according to the rule that several causes of action of the same nature against one party may be included in one declaration; thus entering and cutting the house breaking his house, dispersing his goods. 58 479. 487.
laid for the purpose of showing the aggravation which attended the theft, in order to increase damages. Hays may state the declaration wrong for which he cannot maintain an action. E.g., breaking and entering the house, and beating wife, servants, or children. I don't suppose the injury such that he born the company of the wife or service of others. There are to show the aggravating circumstances with which the theft was committed, for which action is brought. These facts don't support the issue of guilty at all, but still they are proper to go to the jury because they show the enormity of the theft. 8 Ch. 417.

It seems well settled that in theft cases clause may join in the beating of wife, servant &c. in an action for good service amidst a conspiracy amidst. But this is only true where the theft is a component part of the beating act in which it can be treated as the same transaction. So they can't be joined if committed on different days, if the theft and the separate injury action is theft, &c. on the case, for the theft of service is a mere consequential damage. In the former case the theft is the only gist of the action, the beating is a consequence of the act.

B. Ch. 412, 6 & 7 Will. 3 c. 113, 114, 115.
When the acts may be joined in the same declaration, then if he wishes to recover for loss of service must lay the action with the quorum meeting present, otherwise the action is more aggravating. No evidence of loss of service is admissible, and no recovery can be had for it, unless the loss of service be laid in the declaration.

Talk 64.

The trespass must be laid to have been committed on some certain day, yet need not be the true day, need not be proved as laid to material. But the material necessarily, if to appear to prove according to the truth of the fact as laid, occurs to inmaterial. So if a bond declared on to be dated in the first of May, and it is dated the second day of May, here is a variance; so the time is material. So if the other, he may prove it to have been committed on any other day, the inmaterial.

In declaring in trespass, time is prima facie not material, but may become material by the plea of Delf, as if Delf should object trespass on one day, and should assign another on a different day. But 235, 58 52. Bishop, Eccles. 235, and Delf may join in one declaration several trespasses, or he may one each of them severally or singly. Tit 420, 8 59 9. Nae 158, 6.

But said that if it appear on the face of the declaration, that to certain person not sued was a party to the trespass with the Delf.
To Real Property. Readings

The declaration is ill. This appears to be questionable. Win. in Saunders consider it not bad. 1 Dean 4. 4th 194, 5 Bac 192.

Ward 291. 695 766. This appears destitute of principle, for to draw it not on face of declaration, it don't affect the declaration even tho' it appears in general evidence under the general issue, or be pleaded in a subsequent. It is allowed that iff may, the one if the pleasure. Ward 291. 695 766.

Indeed it has always been held, that if it appear on the face of the declaration that the person not sued, who was concerned in the trespass, is not known to the iff. Readings are good, yet it seems the action appears to be joint as much as in the case above. 1 Dean 441. 5 Bac 193.

Yet the iff may always be both alone acting nothing of the sort, i.e. the plaintiff is to take notice in the declaration of any party to the trespass or who is not joined as defendant.

Essential at law that the declaration should charge the trespasser to have been committed with force and arms, in the name, and with the person. These at our law are essential; and the continuance of the gist of the action not aided or cured even by verdict. Reason is the trespasser is liable to pay a fine to the King, so this must be uncensed in order to let in the claim of the King, and to authorize a cavet in. Whereas, if the not with force the party is only answer to and the judgment in misericordia. 4 Bac 11. Salt 636. 640. 2 Bac 536.
By, 9 Ch. 16, 17 Car 2, the opinion of these words in a de-
cretion may be amended after verdict, the bad or good answerer,
9 Ch. 16, 17. 448.

And new by, 9 Ch. 16, 17. Any the judgment of capiatar
surprise is taken away. It enacts however, that instead of said
judgment, the def. shall pay 5/8 by way of fine to the King and shall
recover it from the def. by way of costs, 5 Bac 507.

Holt says none since the Nat the words, wit, are not nec-
essary, none both judgment are now in unis et necessitate. This is not law,
the no fine is paid unless the act is laid to have been done wit,
against the parties poors, 5 Bac 9. 985. 5 Bac 19. 2. The words are still
necesary in Egl. to let in the provision of the Nat of Wit and obey.

In connect it would not seem that the words are necessary, on prin-
ciple as matter of substance, for then no fine is paid, Judgment
is no in all cases, the judgment of capita surpri is un-
known to our law. Indeed it was once decided in case of
Broome vs. Phillips in 1776, that the opinion of both sets of words
was not ill or special demurrer.

I dont know but the court would now consider them as matter
of form. I should think they would be necessary in point of form.
In the case of Bosworth do a writ of suum was prayed out but not
recorded. In general rule the injury for which an action is brought
must be specifically alleged in the declaration in with particularity.
The exception namely where the injury arises out of the course of the business is insufficient to state the wrongs generally as may be understood to be intelligible. This is to prevent an inquiry on the face of the record. So not made so in point of fact. See 228. S Bac 194.

In no case can state in declarator the value of the property for the letting or hiring to which the action is brought. The words of statute only to lose or property or some thing of the nature of property i.e. subject of valuation. So if action is for breach of contract, the value of it is to be stated but cannot state value of an area or reputation.

So also must generally state the quantity yet it need not be the precise value or quantity. Indeed in some cases no quantity can be stated as cattle calling graze, persons go for it cannot be ascertained. E.g. 4385. The omission of either is aided by verdict, for that satisfies the value or quantity. 150 39. Esr 407. S Bac 97. E.g. 4385. So to form 20 Aug 113. Read 1 equal 488. 497. That is aided by verdict. Esr 407. 4. Bin 2455. Aug 181.

In the case of a permanent nature where the injury is such as is capable of renewal or continuity, it is renewed or continued, the party may recover by laying the trespass in his declaration with a continuando. Thus if the cattle of one enter on the land of another from day to day, he may say the injury with a continuing from such a time to such a time, because the acts are so blended that they cannot be separated. In these cases the trespassor
The Pll is not obliged to bring the action in this case with a continuance, to at his election. Lyke 320.

Laying the action with a continuance is not laying it with a continuance, D. Ng. 240. Lyke 396.

But where the trespassing acts are such as terminate in thenselves, and being once committed cannot be continued, they cannot be laid with a continuance, the done at different times, from cutting trees on different days, for the cutting of one day is distinct from the cutting of another.

So if one should enter on another land and kill hares on different days, it would be frivolous to lay the action with a continuance, for the acts are completely independent, and not continued acts, nor with cutting down the same grass on several days or consuming the heathage. D. Ng. 237, 675. 3. Bl. 212. 1. Bl. 39. Salt. 6387.

But in these cases where there are several trespassing acts on different days but which don't in their nature demand of continuance, yet they may be made to in one declaration and charged to have been committed on divers days and times between each and such a day. Salt 635. 3. Bl. 212. D. Ng. 320. The Pll may recover for the whole in one declaration action laid with a continuance.

Litle 545. Ex. Amusing or cutting or heading down grass &c. he may bring a separate action for each days separate injury. Lyke 320.

It is to be observed that if several trespasses are charged to have been committed on one day, the evidence can be introduced of trespasses which are not committed on one day, i.e., on four or one day. It be sure he may lay them to have been committed on another.

2d Ray 248, col 406.

Here are two modes of declaring with a continuance for the whole time; how such a time like such a time, and this is sooner when the trespasses are committed without interruption for a longer time than one day. But when the several acts are not done in continuity but at different times, at intervals, they may be laid with continuance, not from such a day to such a day, but by continuance, or their days one three times from such a day to such a day.

2d Ray 248, col 396.

But the particular interesting days need not be laid; but is the distinction attended to in practice? E.g., cattle trespassing for several days in succession, again they enter at intervals.

But where there has been an owner of the cattle, precedent and a century, here the owner and all acts since under it may be laid with continuance for the owner continues as long as the dispossession. The other acts are incidental to the principal trespass.

Note the rule goes further: if the owner is ousted and then reenters, he may lay the whole with a continuance, etc. 184, 2d Ray 379. 379, 3d Ray 385.
...happ Parth People.

In another rule. If after the Id has been posted and executed, he is arrested and seized again, the king, then lay with a continuance for the whole time that the king was out. There is no continuance in the rule of taking down in another rule. Where the head of the assembly consists in a disease and healthy under that disease as well as the healthy, so we may lay with a continuance, considering him as not been in healthy during the whole time. But he may set forth the earlier and a special state of the facts. By the common form, after the arrest, he is supposed to have been in population by relations, but there is no need of their form. Do they? 2 Pet. 3:5. Thus, these distinctions may be artificial and rather to refuse - laying unhealthy with a continuance in a healthy defective and cannot be cured even with a recover. By provisions, should state that heft.

Kilbea. If he knew a certain day and by continuance killed him, to another day. Ylih 6:39. I. Cor. 2:6. 6:42.
in the other hand if some of the humped
are laid with a contumelious words of
the declaration and some that may not
and each the verdict as also intent
on each, yet the declaration is good.
21st June 1736. That the declaration is
good when declared is never doubted for
yet if there is any doubt laid properly it is
good yet the question is whether it can
be cured by verdict or not take the
verse.

The Jury on the last of the floor
In every action finding in fact
the general issue is not guilty. If a
person is convicted for theft and con-
tempt and that contempt is in the wrong
words he is forever stopped to plead
not guilty. so an action of theft,
ought be the same wrong. 2 T. 595. 233
CpD 4111. Where the parties are not the
same the best case present that record
from being given in evidence. reason is
that his conclusion is the same as any decla-
rational in or out of court. - verbal decla-
rations are good yet not conclusive.
but a record is conclusive.
If in an action he hath pleaded not guilty and was convicted, this could not be given as evidence as being the effect of conviction. 

If self-defence was in question justifiable, the issue at court, said, please it specially, and not give it in evidence upon the general issue. For the general issue denies the facts in the declaration but a justification admits the facts but denies the operation of law upon them. E.G. Just pleads guilty and purifies that he entered as being. This evidence contradicts the plea he made against the facts yet caused the effects of the law. (See 61. 125 Ray 338. Salt 282)

In Connect the case.
Mercantile Law

Of Bills of Exchange.

Some distinctions between mercantile and common law. Mercantile law is not a custom, it obtains in all commercial countries. It is thus the common law operating on mercantile transactions, not confined to other charts. As a mechanic may draw a bill of Exchange.

There are local usages with respect to mercantile law. It is not necessary to plead law merchant, is not a custom. The form is according to custom of merchants, but used not be proved, whereas a custom is proved. So we have more the law of other States.

Usages of mercantile law are proveable.

Bills of Exchange, promissory notes, Insurance, chart party contracts of, ship owners, and masters, law of masters, of navigation, are subjects of mercantile law.

Some points of difference between mercantile laws and common law.

At common law an instrument, or bond can be assigned. So that action can be brought in assignee's name — his property vests. To be sure the endorsement of assignee contains a promise not to discharge the obligation nor impede the collection of it, yet he may do so and subject himself on promise, or it under seal, to an action on covenant. Reason of this rule was, rich and
Powerful men brought law suits, and that was a matter called maintenance.

But for the benefit of mercantile concerns bonds may be assigned.

But there have however undertaken to protect the asignment of bonds, and if discharged, equity will compel them to be paid again, i.e., a bill will be for his fraudulently receiving the discharge, and we allow an action at law. So in this way bonds are assigned.

But the mercantile law allows the endorsement to be an absolute sale of the property in the bill or bill of exchange. This asignable quality is peculiar to mercantile law.

Exception in case of warranty that runs with the bill. This is the only instance of a bond being assigned at common law.

A mercantile law allows a first where there is no priority of contract.

Another very material difference is that in equity a bond passes to the assignee with all the equity of law. So if there is equitable ground why the obligee should not pay the assignee, he need not pay the assignee. E.g. Bond obtained by fraud or duress, or an illegal consideration.

But by mercantile law the rule is different, for here the assignment of mercantile instruments is cherished, for after a bill is negotiated, the bond side holder must receive, except in two cases, which are by force of the words of the Statute, viz.
Mercantile law.
Gambling notes, and usurious notes. The Stat. says that such contracts shall be void to all intents and purposes.
At common law you can inquire into the consideration of a note. In mercantile instruments you cannot go into the consideration at all—after negociated—it's same as if paid. Reason is if the note were otherwise all confidence would be destroyed. But it may be gone into as between the parties.
The rule is to specialties arose from a technical idea, occurs with respect to bills of Exchange.
Again, at common law, obligations must be founded on prior of contract, or on prior moral duty. E.g. A supplies B's wife with necessaries, on B's refusing.
So at common law if one pays another debt, yet no action lies.
But by mercantile law, if one pays money for another without request, action lies. E.g. acceptance to the honor of drawee—whereas a voluntary duty never subjects at common law as if one repays for another voluntarily.
By mercantile law acceptance binds the the drawee did not live the drawer yet this is promise to pay the debt of another, and may be by joint.
Another difference is this, at common law if there are two joint debtors, and both are imprisoned, how if one is discharged the other in fact is liberated. So it said his being discharged is
Mercantile law.

Presumption that the debt was paid, and this presumption cannot be rebutted.

Anciently the body was a temporary payment—this is established law in England. If the Sheriff was guilty of a voluntary escape, it was discharge, and this was transferred to the creditor. But improperly, the Sheriff was guilty of a wrong.

But by mercantile law all debts may be sued and imprisoned in execution.

Again, at common law there is known theft in all cases of joint ownership of personal chattels, except instruments of husbandry. But by law merchant there is no stealing. E.g. One of two joint partners dies, the partnership is dissolved, but the property is held by Executor of deceased and survivor, in common, yet the survivor is to sue and be sued alone. This survivor, if he recovers, he is to account.

In general it is not true that promising by mercantile law, made without consideration, are good, yet there are some cases in which this is true.

Again by mercantile law goods may be shipped in transit. Poss. at common law of property sold to a Bankrupt on 6 months credit, the property passes at common law, and the vendor is on the same footing with other creditors. But by mercantile law he can ship them immediately to benefit of Commerce.
Mercantile law.

Agains if some property at sea is thrown overboard, to save the rest all must make contribution. E.G. Horses thrown over to save 
themselves. This is at common law.

So also if a ship is lost and the goods saved, the tennis is equali-
zed. So the mariners lose their wages.

Months in mercantile law mean solar months, by common law it means
lunar months.

A contract cannot be performed on the Sabbath for in law it is not 
regarded as a day. So said Finch v Dumcases nonsuit judgment.
So at common law if money is due on Sunday, Monday is the pay-
day, but by mercantile law, Saturday is the day. If the second 
day of grace is Christmas and Saturday there must payment be on Friday.

At common law, no matter how notice is given. But by mercantile 
law it must be by protest. E.G. Deaver cannot be subjected to induction,
not have other notice.

At common law a horse is stolen and sold no little is obtained.
To be paid to otherwise with money or any assurance. So if bail-
ment is of such a nature as to deceive Deaver, little E.G. A 
horse lent to go to Georgia, is sold and the little is lost, hence if 
only lent to go to tribe. But finder of a little gains an absolute little 
for which.

A little of Exchange is an open letter of request from one man to 
another containing a device to have a sum of money paid to a 
third person on the writer's account.
The early laws. **Bill of Exchange.**

Usually due to be paid to him in whose favour the draft or order is drawn or order, and sometimes is directed to be paid to bearer. In the latter case it is transferred without indorsement either by delivery.

The writer of the letter is called the drawee, the person to whom the letter is written the drawer, or after he accepts the bill the acceptor, and the person in whose favour this letter is drawn is called the payee, or after he accepts it, a person indorsing it he is called the indorser and the transference is called the indorse.

"Drawe" means the time of payment which usage has fixed in different countries. So "pay at drawe" is to "pay at that time." Pay at half drawe is pay at the expiration of half that time.

"Days of grace" are the time which is allowed over and above that which is fixed for payment. In England and in this country they are more or less different in different countries.

Promissory notes are negotiable. It has lately been a question whether a rider was necessary to make it negotiable. The word "rider" makes it negotiable, I think.

Two persons are concerned in making this note: the Promissor or Maker and the Promissor. The maker of the note is sometimes called in the books the drawee, but improbably, for he stands in the place of acceptor of a Bill of Exchange, not in that of drawee.

The Promisor of a note is in the place of the payee of a Bill of Exchange.

Indorse of a note is in the same indorsement as the indorse of
in bill of exchange. Indorsement transfers the power to receive the money and the right of action.

The indorsement may be and commonly is in blank, i.e., the payee merely sets his name upon it. This enables the holder to fill it up to himself and then bring the action against the drawee, or he may sell it without filling it up and then the indorsee may fill it up, and may bring an action against anyone whose name is on the bill against his immediate-his next-the action in the last case being founded on the priority of contract. Any indorsee may be sued even tho' the bill has not been accepted.

Every indorse is a security to the subsequent holder. After a bill is indorsed it passes by delivery.

The drawee contracts in good faith for several things: 1st. That the drawee or his agent shall be at home. 2nd. That he shall accept the bill. So if he does not the drawee is immediately liable. 3rd. That he shall pay the bill and every indorsee makes the same contract.

The payer in good faith contracts that he will use due diligence in presenting the bill and also that he will give particular notice of refusal by protest. If he does not why he has no remedy against him. In short he must give notice to all whom he intends shall be liable.

The object or reason of giving notice in case of refusal is to
Meantime law.

afford an opportunity to drawer to secure the effects of drawer
of he has any in his possession; or in case of drawer the object
is to allow him a remedy against supposed endorsers or drawer.

This is, in fact, a common means of transmitting money.

Frequently these bills are mere accommodation bills.

Often 2 persons are concerned in a bill of exchange, but usu-
ally only 3. E.g. A in London owes B in New York, and B in New
York owes C in London. Now A wishing to pay his debt, pays the
money to C and C draws a bill of exchange on B requesting him
to pay the same money to B. Thus the matter is settled.

In some cases there may be only 2 persons concerned in a Bill,
as in note and this is more frequent than formerly. E.g. A
draws C to pay it, and B accepts it and then endorses to B.

Beaver 450. Walk 30. 6 mus. 29.

This bill may be made payable at sight, in days after date,
at at usual, iv at date.

Disputed at how long if payable from the date, formerly held
to include the day of the date, but from the day of the date
excluded the day. I think both mean the same. Is a distinc-
tion without a difference.

As Mansfield says it shall exclude the day or not, according as
it gives effect to the intention of the parties.

But by the prevalent law the day is always excluded. 2 May 281
Hand 829.
Moneys due.

In Europe old and new notes are still in use. Difference is 11 days. New precede. If payable in a month it means that which would be a month whence drawn, not whence tie is to be paid. So of stale.

Bills payable at sight have no days of grace. 

There are two kinds of bills of Exchange. Foreign and Inland. In one stale law has nothing to with the latter; independent of statute, which have just bills on the same footing. In United States a bill drawn by inhabitants of one state or inhabitant of another is foreign.

Of foreign Bills a number of sorts are usually drawn: the first in the common form, the second of same date in pay if first is not paid. And so of others.

These bills if the first has been paid are of no use, yet they may be made a means of speculating, as they were in this country in one revolution when drawn on France.

It seems to have been a received opinion that a note thus "I promise to pay to A or order" was not negotiable. Hats have made them so. J. Reeve thinks they were negotiable in themselves at common law, as Mr. Chipman at Vermont clearly demonstrated. This is an important question in Hats where there is no Hat as in London.

"To order" means the person whom he appoints. But said that this is a promise to a person not yet appointed appointed i.e. to a
Pecuniary law.

Promiser liable. A person in writing is not bound. But in an analogous case, a person so situated may bring the action.

There is said the promise to made is to the immediate future. Suppose A promises B to deliver money to C which at delivered to B here & may sue B on that promise.

A in covenant of warranty to a man & his heirs, & assigns. The heir or assignee may sue. The truth is the assigns who is the right of action in the assignee. These are exactly analogous cases. Walker 129, 205, 273 & 275.

If J. son, death be being about to dispose of a farm, to raise a portion for a daughter. The son promises to pay the portion if he will not sell the land. Now the son is executor yet the daughter may bring an action on that promise unless she is entitled.

I think it negotiable at common law, it occasions no infringement of principle in any respect.

Who may DRAW Bills of Exchange.

Formerly thought to be peculiar to merchants alone now any person concerned in mercantile transactions may draw such bills. East 82. 1st 252. 1 Pearson 185. 2d 105. 2d 05. 01. 05.

General rule now is any person who can make other contracts may draw Bills of Exchange.
Mercantile law.

But the Infants may contract for necessaries, and not in general for other things, yet they cannot draw a bill of Exchange. What are necessaries? 1st. Meat, drink, lodging, clothing, &c. 2nd. Must be necessary for that particular infant in his then present circumstances, so if has a parent who is bound nothing is necessary. In all these cases he is only bound to the amount of the value of necessaries to him.

But you can never look into the consideration of a bill of Exchange. So an infant cannot bind himself by Bill of Exchange even for necessaries, not even the title can depend in the bill to be for necessaries, for it is not known whether necessary for him or not.

1st 56, 19th 40.

The consideration of a note before indorsed can be acquired into scan with a bill of Exchange except as between the Drawer and Payee, and as between the Drawee and Drawer. If an infant draw a bill of Exchange, and a person of full age indorses it, that person is bound.

As to Married women. They can bind themselves by Bill of Exchange in those cases in which they can make other contracts. If you agree to eat in Eng whether a married woman living separate from her husband on articles of agreement, and on separate maintenance can draw a bill of Exchange. All agree
that she may contract if her husband is banished the realm. To
this proves that she has a will and existence. I know he said the
husband is civiliter incapax.
So also may she if the husband has adjured the realm or is trans-
ported for 7 years. The only grounds of disability of wife are 1st
danger of infringing his marital rights or 2nd danger of her be-
ing concubine. But in the case before us he has abandoned all
rights to her person and this covenant is allowed to be valid by
a covenant to relinquish his right to her real property he is
bound. But said that Mansfield relied on separate allowances,
But Panwier, he made her liable generally on all contracts.
&c. 122, 198, 231, 14197.

The matter of a note stands as the same footing as the acceptor
of a bill of Exchange. 2 Macn. 676.
The indorse of a note is the same as the indorse of a bill of Exchange.
A note payable "to order of"本人 said was the same as if to
at or before 286. 1snow 8.

Difference of opinion when to "pay the bearer" whether to in-
dorse it as to subject all indorsees and make them liable
just as if to "at or order." 2 snow 29. This goes to the point that
the assignee is liable. 3d ed. 299. 1 Tulk 125. 12002 Ray. 180.
In an action by a conveyance, but not by the immediate law, the
interest could always sue his immediate interest at law law on
the ground of treaty of contract. But to have settled that to breach
all the quantities of deed of exchange. Indeed it has more for
it paper by delivery in the first instance. 181 R. 487. 3 June 1876.

a person who comes unfairly to an instrument of this kind cannot sue
maintain an action on it. 1 P. 455.

Whatever is a conveyance and bond is received, is test to the owner
when latter and the property is transferred to bond is received.
This has been extended to bills of exchange. 1 P. 459.
Now consider the privilege of bills and orders.

General principle that in all contracts at law law unless sealed
or bonds, the consideration may be acquired into. An about 10.80
may acquire whether the consideration is illegal in as to its
share but not whether there is any consideration at all for
the law presumes one.

The privileges of a bill of exchange are the same as those
of a bond and even greater, for after negotiation its true price
cannot be enquired into.

Notes of hand may be enquired into as to the consideration, be
Mercantile law.

To constitute a good Bill of Exchange it must have certain qualities. I don't mean that it is not a good contract at common law, as between the parties, without these qualities.

1st requisite is, it must always be a request to pay money.

2nd requisite is, the credit must be founded on a general personal fund, and not confined to any particular fund. E.g. A draws a Bill of Exchange on B in favour of C to be paid out of his growing substance. No authority to pay only out of this fund - not a good Bill.

3rd requisite is, to be paid out of the money belonging to the Proprietor of the bank &c. - not good. That's p. 228.

4th requisite is, to pay so much money out of the debtor's money as soon as you receive it - not good. 3rd 209.

5th requisite is, to pay so much money on account of freight - same principle.

6th requisite is, the particular fund should happen to be mentioned, yet if the personal credit is general it is good.

This doctrine has never been applied to notes of hand, but there are cases to the contrary - a man's particular credit is bound by a note of hand and that only as agreed. 228 May 1546.

A 3rd requisite is, the bill must be payable at all events - not
meantile law

Depending on any contingency: E.G. Pay so much money out of my 5th payment—when due. Here his uncertainty whether it would ever become due, but he had on another ground for his end of a particular fund. 23rd May 1863.

So pay so much money provided certain terms mentioned in a letter are complied with. Does not. Court finds not good, even tho' the terms had been complied with, for it was not good at first, & so cannot be set up. To pay so much out of Mr. S's Harwicke money taken received. 25th on two accounts. 23rd May 1862. 1866.

On note to B or order, if A don't pay it, not good. 391. and 369
On note to pay so much money if A lets us have so much, not good. 149. 323.

No matter about the uncertainty of time of payment, if time must come. 2 Strange 1211.

Paid a moral certainty is sufficient. Moral certainty don't apply where we should think—t's a principle of policy as I apprehend. Suppose a note given to pay when the richest man in the County pays his servant—how he may become a bankrupt or to a cheat, is not good.

But acceptance to pay when a certain public ship is paid off, is in a certain time after is good—here the rule applies, for there is a moral certainty. Govern'd we have pledged ourselves. The truth is there are cases in which the public is concerned, and the rule is found.

If the ship concerned is not a public one, I presume there would be no moral certainty e.g. ship belonging to East India company, yet they are as liable as government to pay. 11th 26th.

This moral certainty is confined within narrow limits.

Bill of exchange signifies no technical words, but any words that convey the idea of saying away, with the other requisites are good. To place to deliver is good. To deliver to A or order is good. So to account for 50 debtor to B, or order discharged. But cannot held it the same as a promise to pay 50 debtor. 1st change 629. 22nd 8th 1876.

Are the words "value received" necessary in a bill of exchange?

Namely they were, I was sure they were. 12th 22nd 1875. 22nd 1876. 11th 25th. I decided not necessary. Ground of dismissal in that case is that bill of exchange is a sealed instrument.

But how is it with notes of hand? Why I suppose it would place the burden of proof on the proponent. But as between the parties promise and promise - to B or order not better than to B. This is all the operation it ever has. The words being inserted render it prima facie evident that there was consideration.

If the word order "essential in bill of exchange as between drawer and payee of bill of exchange - it became proof on drawer. I know of no decision of this point. 1st change 12th 31st 12th 1875.
In favor however, it is true, long usage would lead us to conclude this to be the original idea, that the words "in order" are specific to note of hand to make it negotiable, and present practice to lead authorities supra.

In Hard's 128. decided not necessary to have those words. But I think they are from practice.

Of acceptance of Bill.

An acceptance of a bill is an engagement to pay it, and the acceptor is liable. If he don't pay it, the drawer and every indorser is liable. Common mode of acceptance is by writing on the back. To accept "seen" any thing but negative words, to except sufficient attributed to bad spelling.

Acceptance may be by word as well as by writing, or by the order of agent. So if it may be by any collateral writing, or a letter. 3 Beav. 648.

A promise that a man will accept is good, the bill is not yet drawn. If if is drawn, and he refuses, and he then says when it and I will accept -- this is a present promise to pay. Hard 75.

The acceptance of a bill is usually made between the time of drawing and the time of payment. But an agreement to accept is acceptable. So may be before bill drawn. 3 Beav. 668. 1 Walker.

If present after time limited for payment is out,drawee may then accept it, and even if the acceptance is to pay according to the
Meanwhile see

[Incomplete text]

A person may accept for the bank of drawer, as when the drawer is about to refuse to accept. This acceptance binds as much as drawer would have bound him. It however affects no personification of effects in the hands of acceptor.drawer 436 455.

If the acceptor engagement.

This in fact a contract made personally with the holder, but yet it implies in it an engagement to pay all prior and subsequent holders. It amounts to this "I accept this bill to pay the contents of it to any holder" whatever.

If acceptance is made beforehand it must be to the drawer, and if he has no effects it is not binding, it is a sound fact. En the there are such circumstances accompanying the transaction as would induce third persons to take it. Sound sound fact.

As being in writing or verbal makes no difference. Indeed this tendency to deceive don't bind him to drawer but to all other persons.

If there is no other evidence than drawer to in meantime the a sound fact, in every case. Conf. 572 574 10th 175. Drag drawer or Hunt. Into, does not this reach all theors except drawer.

Any words "I accept," "accepted," "due," "complied with," "mean according to the tenor of it."

Acceptance is different from the tenor, it goes to the extent of the acceptance and if paid it operates as a discharge pro tanto to the drawer and drawer. E.g. Acceptance to pay £700 instead of
1804. Notice must begin of the acceptance being partial.

2 Tha 114.

So it may be to pay at a different time from that in the bill. Section 45.

An alteration in the bill by the drawer or acceptor will not avoid it in some cases, this as a general rule can never do under it could.

If a man accepts a bill to pay at another man's store, from another hand, now if the holder don't go to the store & demand, and in the mean time the man fails, the holder is the loss.

2 Tha 1195.

Acceptance to pay half money, and half some thing else binds.

Sec 87.

Acceptance may be conditional. But in all these cases there must be a protest. 2 Tha 1162.

So I accept if I feel the range of such a shift for cash. 2663.

It has been a question what is absolute, and what is conditional acceptance. 1 Tha 646. 18 R 182.

If the acceptance is in writing a penal condition is void for penal proof. What not contracted written. A penal condition is never good at common law when the instrument is in writing. 2657.

If the acceptance is conditional and that is complied with, the acceptance becomes absolute.

That shall be an acceptance is matter of dispute. If the acceptor says leave the bill till tomorrow and I will accept, this is absolute and binding. Soons, if he says leave the bill and I will
lack our way accounts and accept it accordingly. Gold 8 1/8.

3 Boc 614 Beaus 455.

any thing on the back of the bill of exchange but refusal, is ac-
ceptance. E.g. "I accept this draft at 15%". I suppose however the words
must import an acceptance yet to issue.

If a person write to A & say that bill it is an acceptance the

But if A receive a note to C at for satisfaction, and A receive a
bill on B to know whether he will accept. This is not acceptance
of the original bill. Oct. 26th.

Now notice a case of great celebrity in 3 John 1663 which is prob-
able and very important in this branch of the subject. The case
was, at wanting to draw a bill in favour of B on C, wrote to A
to know if he would accept and promising to give a bill on a
house in London. Answered in the affirmative and paid the
money. Afterwards A wrote to the house in London to know if they
would accept a bill of exchange and charge it over to A, the
house wrote that they would, but before A saw it failed and then
the house refused to accept the bill to mid the house, and the ar-
gument was that this was a common practice. They said the mo-
ney was paid beforehand, and so it did not induce the payment
of the money. But the court said, it bailed B into security, and
so he must recover.

On law law principles indeed this flexibility of
Third persons being injured is no consideration under mercantile law.

A contract, being in writing, is good without consideration. This idea is not true.

Transfer of Bills

If payable to B, or to B orBearer, it is transferrable by delivery.


Yet in this case A may endorse it. If payable to B or order, there must be an order to an indorsee. Before it passes by delivery.

Indorsements are of two kinds. Blank indorsements and full.

A blank indorsement is where the name only is put on the back, and the holder may fill it up as he pleases. He may fill it up with false of fictitious, or make it payable to himself. Short.

After endorsed blank, it is transferable by delivery, yet it may be indorsed over as payable to B, and then it can go no further without indorsement.

In case of transfer by delivery, no one is liable except the immediatetransferer, and in cases where the two principles, there being plurality of contract, but by mercantile law the holder may sue any one who has held it.

If for a mere matter of accommodation, he cannot be paid at law.

An indorsement in blank may be filled up at any time after the bill has passed. 1512. 2. 575. 28. 206.
A man may endorse a note, blanks, and then be become liable to any amount that it may be filled up.

So as long as in London.

My meanwhile law you are only in the 1847. 14th 128.

This acceptance may be conditional as in trade, or only a power of attorney to receive money. 1 Will. 3/2. 2 De B. 571. 1 Mann. 183.

There is a case where he was bought and sustained for a bill which had been stated and then transferred to a side, and when it came to the Bank, the clerk being ordered, stipped it and pocketed it. 1 Will. 184.

When a bill is once rendered negotiable, the nature of it is such that it cannot be limited as an endorser, to restrain its negotiability. 2 Bree. 1226.

Here is a bill in favour of B on B, who accepted it, it was endorsed to D without the word order and then to E and he said at 1876, by the Court that word order was not necessary. D Okansfield in this case admitted proof of usage - but this was wrong and D Okansfield afterwards said so.

Here is the 1 Strange 557 where the same principle is adopted.

Layman's indorsements may be restrictive - or as totally to destroy its negotiability, that the restrictive words must appear on the face of the indorsement. E.g. if the within text for my use, here is no transference. So if he says credit the amount of the bill. This shifts it.
In this case indorsement is forged, yet bona fide holder cannot
because of acceptor, for he should have examined the bill.

Case of Infants.

An infant is never liable for an indorsement. Whether the
act of an infant is void or voidable is a question. I think there
is no such thing as a void act. If it were void then the indor-
see would receive no power by it, but he may sue the acceptor.

Then a bill once passes by delivery, the stolen any bona fide hol-
lee may recover, no matter how he came by it. 1 Burr 452.


If one of two payees, who are in partnership indorse, the goods both
are bound. But if they are joint payees, who are not partners
both must indorse or only he who indorses is bound.

A and B draw a bill payable to themselves, and one indorse it.
I should think it would bind both, because the transaction holds
them out as partners. But the court, in another case held other-
wise. 206th vs. Hodge, 1 Doug.

So if the situation of the person is altered as of married, the hus-
band may indorse. 1 Strange 516.

They held that their names on a bill are only liable. 2 Burr 1225.

Dunlap 459.

If one executor indorse, they cannot do it as Executor, they
May take a bill as Executor. 19 F. 487. 10. 445. 316.

It has been a question whether by movablelaw, the payee can be trustee for another, that he can, and the action on

law is never to be by him who has the legal title, yet held that in some cases contrary que one may bring the action when

the trust is the legal prosecutor cannot.

As in case of Executor who was liable on a promissory note made in favour of his son. Here the son may sue the Executor or

acceptor or, otherwise justice would fail. 1 K. 5. 27. 509.

2 Shower 509.

A bill can never be indorsed part to one and part to another,

for otherwise, the parties would be liable to a multiplicity of law

suits. 1 K. 466.

Of the engagements of the parties.

All the engagements of Drawer, Drawee and Payee are condi-
ditional, on the ground of each doing his duty.

Drawer engages to the Payee and every holder that he shall be

accepted according to the tenor of it and also to pay it.

He engages for the acceptor's responsibility, that he or his agent

is to be found at the place specified. If any of these fail he

is liable to an action immediately and the acceptor afterwards

paying it is no defence. It indemnifies damages. 1 K. 469.

A bill signed blank and delivered to the payee carries with
The authority to draw on full it is for any sum, and the person
who signed it is held. 1 Shaw. 8212.

The duty of the holder is to give notice of non-acceptance, or non-
payment. The object of this is to give Dra. opportunity to with-
draw his effects, and in case of an indorsement to give to give
opportunity to go back on the drawer or third indorse. If no
notice is given and insolvency happens, holder loses it.

The idea is not that when notice is given the debt commences,
the debt has never been paid; the Dra. is debtor before. As this
debt can be proved under a commission of Bankruptcy and this
prove of was the old debt. 31st. 16.

Indorse liability, was the same as that of drawer except he
can resort to Dra. and his engagements are the same as those
of Dra. 20th. 1833. 2 Shaw 541 de 441.

Nothing can discharge the drawer and indorser except actual pay-
ment of the money by some one. A judgment against one is no bar
to an action against another but payment is.

To bring an action against all indorsers at a time. This was a
litigation point but now settled. I think the decision was on
soundless principles. In of a man has a number of securities he
may sue on either one joint and several bonds, one judgment is
no bar.

The case of this is different. In the first place this case of the bill of
Mercantile law.

Exchange was compared to that of lands, for in lands a judgment against one is a bar to another action.

But in contracts it never was a bar, for in lands the damages are uncertain, but in contracts they are certain, and this distinction is founded on policy in order to prevent litigation. 3 mod 86. 2 Thomer 441.

But the great argument contended for in this case was this, that there is a rule of law that where a man has two remedies and elects one of them he cannot then resort to the other. But this is a case where there are two and several distinct contracts and remedies.

The rule applies to such cases as these, as where you may bring either the ejector or hook for the same injury, if you elect one you cannot resort to the other.

So when you may detain a being an action of trespass for damage precedent, you cannot have but one remedy.

As a man was actually taken out. Execution on one of these contracts and find the debtor in jail, he cannot then sue another for the same debt for injunction, removal is a partial satisfaction for the debt. But by the own law of the man lets the prisoner out of jail the debt is exchanged of course, but by the mercantile laws a creditor may take a man from jail and then sue another who is equally liable as the case of two or more in one, one may be liberated from prison, and the other may then proceed.
When the holder presents the bill for acceptance and the drawer refuses, this does not except him from presenting it again at the time of payment. Case of this kind. drawer refused to accept the bill, the payee then brought an action against the drawer, but at time of payment, the payee presented again the bill to drawer, and he paid it, payee gave no notice of this to drawer, but proceeded with his action against drawer, and the drawer not knowing the bill was paid, paid it again himself. Afterwards, the drawer found out that the bill had been paid by drawer, and he then brought an action against the holder, for money had and received. The court said in this case that the drawer should recover back from payee, deducting however so much of the money as the damages arising from the non-acceptance would amount to.

If the payment of the bill is limited to a certain time after sight, the question then arises, when must it be presented. There is no certain time fixed and the only rule is that it must be done as soon as it can be in any hand of concealment.

When payable at a certain time after date, it is usual to present it a day or two before the day of payment. be certain time fixed upon. 5 June 2011.

It may be presented for acceptance and payment at the same time.

12th 113. If a man should send a bill of this kind to a factor, it is his duty to present it immediately, and give notice to his principal.
Macantle law.

If the acceptance of the bill varies from its terms, there may be an acceptance and notice must be given as before.

Demand for payment at common law cannot be made in a variety of cases, until such time as a man is obliged to make tender. But here the demand must be made on the last day that it is due for the last day of grace, and in sufficient time to have it protested on that day. Vide **Reynolds's Reports** 243. 1 Town 829. Brown 461.

It has been a great question whether these days of grace are to be allowed on negotiable orders. But it was settled, that they may have days of grace same as Bills of Exchange.

**Sted v. Wall**, Doug. 15 B. & C. 147. 120 148.

The bill must be presented at the usual hours of doing business, when persons are found at their offices and stores.

If the drawer is insolvent but is willing to pay the bill, notice must be given. It also when he cannot be found. And in giving this notice, it is necessary that the payer be particular in the mode. **Thurman** 441. 70 515. 26 Bl. 247 19 W.7.

This notice must come from the holder of the bill, it is not sufficient that another write to drawer and tell him that he cannot pay the bill.

If the parties live in different places notice must be sent off by next post. If they live in the same place notice must be sent within a reasonable time. How what this reasonable time is, is a question, no precise rule can be laid down on the subject.
Moral Tales.

Formerly this was a matter of fact and left to the jury, but now it is a
matter of law and left to the court to determine. But I have never
seen a case where this reasonable time was extended over 24 hours,
where the parties lived in the same place. 19 A 167.

One of this kind. A gave a negotiable note to B in order, and B
endorsed it to C. Here on the day the note became due it called
when ot at 10 o'clock in the morning, but did not find it at home,
he left word to have C call on him that day, but ot did not call,
it went next day, and A promised to pay the bill, but he did not,
and next day B went to B and told him that ot had not paid
him, and that he B must. The court in this case held that the
bill was dishonored, and B could not recover, for not having given
B notice in season.

As a general rule, if the deesee has no effects in his hands, no
notice need not be given to deesee. 19 A 415 416.

But this does not render it unnecessary to give notice to the
endorser, for he must have notice whether deesee has effects
in order. 19 A 714.

It may happen that although the deesee has no effects in the
hands of deesee, yet he may receive damage for want of
notice; and if he does I suppose he may recover. 29 A 746 718
of Inland Bills. Notice is necessary, but no particular form of
words necessary in the notice. 19 A 714.
In consequence, the payee, or the holder of the bill, first presents it to the drawer. If the drawer refuses to accept the bill, the payee then presents it to the next surety, who may or may not accept it. If the surety accepts, the payee may proceed to collect the amount due. If the surety refuses to accept, the payee is entitled to a protest, which is a legal form of notice of dishonor. The protested bill is then presented to the drawer, who must either accept it or pay it. If the drawer refuses, the payee may then present the bill to the next surety, and so on until the final payment is made.

This process is repeated until the bill is paid or until the holder is satisfied that the drawer is unable to pay. The protested bill is then presented to the drawer, who must either accept it or pay it. If the drawer refuses, the payee may then present the bill to the next surety, and so on until the final payment is made.

If the drawer is not able to pay, the payee may then present the bill to the next surety, and so on until the final payment is made. The payee may also present the bill to the drawer, who must either accept it or pay it. If the drawer refuses, the payee may then present the bill to the next surety, and so on until the final payment is made.

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Through. If the bill which is thus presented for payment is accepted but not according to the terms of it, as half, still protest must be made.

If the promise seems likely to fail, the holder must request him to give security and if he refuses, holder may protest for better security. P. 1 May 1743.

From this has originated the idea of suing for better security, but there is no such thing.

In this transaction you are to recover the principal, interest, damages, and costs, by costs are meant, expense of protest and like. A Notary Public — to damage. The mercantile law is different from the common law rule. At common law the interest is always the rule of damages. But by mercantile law damages are allowed besides interest. So damages depend on usage different in different countries. In the Eastern States the norm is 7.10 per cent. Remote or presumptive damages, even by mercantile law are never a rule. The actual loss is the ground of the rule generally. If usage has fixed no rule actual damages is the rule.

P. 647, Section 481.

Inland Bills of Exchange upon principality of Ben law stand on the same footing as other inland contracts, and of course there is no recovering of damages and no need of notice to stop.
If I state they have put them on the same footing as foreign bills, but we have no such bills here.

To the only enquiry here is, what is an inland bill of exchange. A bill from one State to another is a foreign bill.

If the drawer pay the Bill on account of D he no change against drawer. Even if he accepts for honour of drawer, Section 45.

There may be an acceptance by drawer for the honour of any person and this maker liable too, notice being given, drawer is to give notice in the case.

The payor's name at bottom with the "accepted super fictit." A third person may accept the bill for honour of drawer or drawer and if he accept for honour of drawer he is liable to all persons.

The person who thus accepts for the honour of another is as much bound to pay the money as acceptor in the former Section 45.

The drawer may accept the bill after a person has accepted it for honour of drawer. Still this person or stranger is not discharged. Section 46.

He said that the possession of a bill is not obliged to pay.

Objection, acceptor is under after he has accepted the Bill.

He is under obligation to pay the bill to any person who holds it.

If the drawer has no effects of drawer in his hands and accepts the bill, there can be no recovery by drawer in such case.
Third person as indorser may recover [?].

On the other hand if Drawee has not effects and pays the bill, he may sue the Drawer for what he has paid.

If Drawee can never be discharged after he has accepted the bill, on principles of commercial law.

By commercial law the holder may discharge the Drawee and look to Drawer for the money, so acts when indorsed. Black v. Hall. 

To indorse shown to Drawer by the holder will discharge him for the time of time. Brightman v. Mensoli in Tong.

A return in part from Drawee does not discharge the Drawee, see G. in Tong.

All the effects the Drawee paying part of the bill has in that the Drawee has steps to pay and if Drawee pays the whole the acceptor has nothing to pay. How's 388.

Conditional acceptance is good, but condition must happen before the acceptor can be liable. 19 W. 787.

It was formerly said that if there should be a recovery up from the acceptor, this would discharge the Drawee a indorser.

But it was settled that it would not discharge him. 16th 262.

There has been a question of this kind, whether if Drawee or acceptor has been sued by the holder, and the Ball pays the bill, the bill is at an end, or whether the Ball can maintain an action on it.
But to now settle what the law is at an end. 1st, If A gave his note to B for $10, B negotiated it to C. D took the note and 4 gave back to B, E recovered judgment! and then D paid the note to C, and E gave him up the note, I then bought an action in name of C against B. The court held in this case that I must have his action against C according to our two principles. The indorser may maintain an action against either drawer or drawer as he pleases. (Statute 1st. Anglo, 46th. 2 Benn 667.)

Namely that the holder have.

Wherever rivalry exists between the parties, a certain remedy to the proper one, another action of debt. Indebtedness of principals is between drawer and drawer, distance and immediate distance and purchaser of a note if there has been a consideration sherved between them.

But a holder cannot have an action of debt against the acon-ceptee. (Statute 485: 1 Statute 285, 1 Eng. 182. 1 Tulk 185: 1 Thorne 680.)

Method of declaring on a Bill of Exchange.

The ancient mode was very different from the modern. In the ancient mode they set out the custom of full length in the declaration on the bill, that in the ancient law was a custom. But now this custom is not regarded recognized at all, because law being considered as part of the law of the land.
In the present case you merely state the facts as they exist, without mentioning any contest. Where 317. 22D 722. 1342.

Here all the facts must be stated in the declaration, so that Beaver made the bill and directed it to Beaver, directing him to pay the bill to Sawyer.

I will merely note you state in a similar manner.

In stating howsoever a regard is to be had to the legal operation for the same settled that a bill or note payable to a fictitious payee, you must declare that it was payable to Beaver, for this is the legal operation. 1 Den B. 318. 152. 183.

Still if you state the whole thing as it was your that it was payable to a fictitious payee, it will be a good declaration.

If a bill is payable to the order of B to the same as payable to B and you may or state it in your declaration.

I do join in making a note, and only one of them signed it you may have an action against the one who signed it. Then there are two or more signers and you may sue either of them. 22D 722. 845. 2. Range 317. Corp. 952.

If a note is made jointly, it must be declared on jointly, but no advantage can be taken of this only by plain abatement.

If a Bill is payable so long after date you must aver that the Bill was made on the day of the date. 1 Den 272. 211. 1722.
In the place where it was made must be annexed. This is more
matter of form.

If payable at once, the place of the place where the pay-
able must be stated in the declaration. In

ey every bill that is drawn must be subscribed by the drawee, till
in not necessary to state this subscription in declaration.

If it's a note you must say he made the note, you need not
state that it was made by his agent or clerk. But if his agent
and actually sign it you want to state it. 12 and 346 on 340.

20 May 1576.

When in case of Partners you must state that they both made it
bills that are drawn inJoint you need not state that the £2 £3
bill was not paid in order to recover only state the bill as it
is. 20 May 510. 1. Nove. 224.

If all other cases it must be further stated that the drawee de-
liamed the bill to the payee, and also if the bill is payable after
right, it must be stated that the holder presented it for ac-
ceptance and that it was accepted or refused as the case may
be.

If payable after date you need not state that it was pre-
tended then for acceptance, for it may be presented and accepted at same
time.

This far of what is necessary in all cases.

Now consider particular cases.

If the action is brought against the acceptor, you
must state the acceptance, and generally according to the letter of
§ 142, Dig. 263, De 547, Coth 429.
Suppose indorse being the name; he has got all this to state and
the thing further viz; that when indorsed it one to them
suppose a number of special indorsments on the back of the
bill all of these must be inserted in the declaration.
But if there is only one indorsement and after that it passed by
delivery, only the one indorsement need be inserted.
When payable to bearer, the indorsement need be stated state that
it was payable to bearer, and even that he is bearer.
It need not be stated when the payer indorses it one that he
delivered it, for the indorsement implies a delivery. But in one
of manner of a note, you must state that he delivered it.
If the acceptance is practical state that it was accepted according
to the tenor of it.
Suppose an action is brought against the drawer or indorser by
a subsequent indorse; it must be stated that a demand was
made on the drawer and that he refused to accept it, also
that notice was given; and it's said you must state the manner
of your notice. This is true, but still if you do not, verdict
comes in. But if you state no notice at all, verdict will not
come the defect. Burton 9 App. 34.
In an action brought by Indorree against Indarem you need not state a demand of drawer.

Suppose drawer becomes Indorree can he maintain action against acceptor? I see no objection why he cannot.

Suppose a refusal to pay the bill, now can drawer endorse it over to another person? He cannot, the bill is at an end.

Case of this kind in 49 R 497. It gives a note to B and endorses it, # endorses it, and C indorses it over again to B, how can B bring his action aginst C? The court said if B was a mere nominal holder, he could bring the action, but if he was the actual holder he could not.

It is usual to raise an account after having told this story.

No, it is necessary to raise this question whether our courts have determined that it is that I see no room for it, it is a mere matter of form. 1 D 128, 288. 1 Dalk 128. 2 Dalk 419.

Many instruments are given on good consideration which are not in form of notes or Bills because they want some quality which will make them negotiable. There can be no transfer of such instruments, so as to lay a foundation for an action at rescission 39 R 174.

A bill given to pay is always presumptive evidence of a debt due, but this presumption may be removed by enquiring into the consideration. But if a note is on the hand looking as though
Surely the law.

Then you cannot look into the consideration.

Whether you can inquire into the consideration of a bill under our law in respect to a matter of uncertainty. Whoever transfers any of these instruments without indorsement is not liable on the principles of suremable law.

But as between the immediate holder as transferee and transferer an action will lie. This action is grounded on the old contract it is an action of open account in quantum valeat 1 Pau 3 sqq.

The holder of a bill may have as many persons liable to him as indorsed it and he may sue them all successively and of course he may recover judgment against all. But he can have but one suit against.

The instance may be the drawer or acceptor or indorser or all of them, and he will have costs against each. Suppose the drawer or any of the others sued, comes and pays him, he can then take on the executors against the others for costs only. 3 B & 4 H 115. If he has recovered against all three and one of them pays the debt and costs he is precluded from taking out execution against the others. I.e. the person who had a right to take on one of two or more. The court will consider it as a conveniency and this will determine their. Strange 515.

Of course a bill in favour of B is C's, accepted it and B endorsed it over to D. D paid C and C went to jail, but was afterwards legally
I. 

Himself.

II. 

Himself.

III. 

Himself.

IV. 

Himself.

V. 

Himself.

VI. 

Himself.

VII. 

Himself.

VIII. 

Himself.

IX. 

Himself.

X. 

Himself.

XI. 

Himself.

XII. 

Himself.

XIII. 

Himself.

XIV. 

Himself.

XV. 

Himself.
The exception to the foregoing rule, when drawer accepts by agreeing to accept without ever having seen the bill. This does not prevent him from proving that drawer never drew the bill.

Acceptors hand writing must be proved of course.

Suppose distance was the maker; he must have authority to do this, and of course he must prove the hand writing of distance.

If the Bill is payable to Maker nothing need be proved but hand writing of acceptor.

If there are several blank indorsements the hand writing of all the indorsees need not be proved, he may strike out all of them except one or two, as he pleases and accuse their signatures. But he cannot strike out special indorsements.

Suppose a Bill is indorsed before he accepted, now an acceptance after this indorsement is no proof of the indorsees hand writing.

If the acceptance was conditional you must not only prove the hand writing of acceptor, but you must also prove the event to have happened and which the acceptance depended.

If indorsees bring an action against an indorsor, he must prove the hand writing of indorsor — no matter whether acceptor's hand writing is proved or not in this case. (2 Mees 373 1stN.Y. 174.)

1. Stangl 1844 2 Br. 675.

Now in all these cases where there exists a new liability to pay money this liability merely does not lay a foundation for an action. The action must be brought on the ground that he has
If the drawer once accepted he must prove the handwriting of acceptor, also that a demand has been made upon him and that he had to pay the bill himself.

He need not prove that he had effects in hands of acceptor, for the law will presume this, and if he had not, the duty of acceptor to prove it, 12 mo. 86. 16. 98.

If acceptor makes claim he must prove he had no effects in his hands, also the handwriting of the drawer, and the payment of the bill by himself must be proved, in order to entitle him to receive.

Case in 3 mo. 15, in which I doubt the correctness of the decision, he ought in that case to have recovered damages and nothing more.

If an action is brought by the person who accepted in the honor of drawer you need not prove effects in his hands.

An action against drawer is inadmissible you must prove present bailee.

Robert without the bill in evidence, but English custom is to have the bill produced and I suppose this custom is adopted in this country.

A bill if not returned for non-acceptance, but for non-payment...
- merchantable laws.

-ment only.

When an action is brought against one, and the handwriting of another is necessary to be proved, direct proof must be made. But when the handwriting of itself is to be proved a variety of circumstances may be introduced as proof - an admission of the fact. 2 Thes. 1:6.

Where a person comes by another as his servant, you must prove the handwriting of the servant and also his authority.

138085 346.

In these cases where protest is made, you must prove that the person has had notice, and this is done by showing that you sent a letter in the Post office.

In an action brought on note of hand and the maker having defaulted you need not prove his handwriting or a word of inquiry for the defendant acknowledged it. 2 B. & C. 48.

Green v. Hearne in 3 P. R. 361.

If a note of hand has been negotiated, the considerate cannot be injured into, only as between the immediate parties.

- illegality of consideration.

Rule of the law between the trustee and principal.

- illegality of consideration in a note will destroy it; and this is a rule of every law. But after it is negotiated illegality cannot
be examined into only by the immediate party.
If the illegal consideration does not appear, he may plead it specially, or may give it in evidence under the general issue.
18445, 391, 454.
If the illegality arises from a particular act, and the parties enter into a contract contrary to that act, and agree to pay an unlawful consideration, neither of them are bound by it.
But if one pays the whole, he cannot recover of the other. Still if he consents to the payment of the money by his partner, or has given him any authority to do it he is bound in both cases.
Any contract entered into which will induce an illegal contract is void. 4 B.C. 206, 138, 693, 391, 418.
If a clian who is not a citizen of this country, should sell to an American goods knowing that they were to be smuggled, he can recover of the clerk. This was formerly a question but now it is settled. Coop. 341, 391, 456.
But a citizen of our own country could not recover in such a case. There are few cases where the court have allowed illegality of contract. consideration to be gone into after the instrument is negotiated, and this was suffered on account of the practice of the phraseology of the Statute. These two cases are Money and Gambling contracts. The Statute declares the original contract
In such cases to be void to all intents and purposes.

2. There may be recovery against the drawer or acceptor of these notes. But suppose the note was endorsed on the note of money, he can recover for the indorsement is a sufficient warranty that the note was good. if it proves not to be good this fact will entitle him to recover. So it don't touch the principle just mentioned.

A bill may be indorsed over after it is due, but the indorsement in such case may be impeached. 312 R. 57.

A gave a note to B, this note was noted for non-payment, and it was indorsed after it became due. The court in this case treated it as the there had been no negotiability at all about it.

Bank note, Banker's cash notes, and Draughts on bankers.

Then are all treated as money, they are considered as cash. If a man should devise all his cash, there would be

In annuities all consideration is said except money. 312 R. 55.

Well, so said if they are money, they are a tender too here the bank of "the" bank, and give no decision, but if they were driven to it, I believe they would say that they are a tender. This is not the law in our country, if it is the only applicable to the Bank of United States, and it's reasonable that it should be in a state where the bills of that State are current.
Bank notes, Bankers notes, and Draughts on Bankers are receiv'd as cash, and if the person receiving them do not within a reasonable time make demand upon the person who made them, and a loss is occasion'd by it, he is the loser. 1 St. El.

What this reasonable time is, is a question of law. It is said that every case must be governed by its own circumstances. But I believe there is no case to be found where the time has been extended over 24 hours.

In all the cases I have examined demand has been made within 24 hours, where the person recovered. 1 Tha. 416. 2 De 1048. Barn. 482.

These are always payable to Bearer, and they are not payable without demand. But Bankers notes are payable without demand. These must be paid in money. 7 P.R. 423.

No protest is to be made of them. 28th 1787.

Question has been made whether a man must not present the acceptor has absconded. But it is now decided he need not. It said if drawn on Indorser near a Bankrupt at time of acceptance, no void of giving him any notice. I doubt the correctness of this decision. 3 Brown 1. 225. 168.

Suppose drawn absconds will it excuse sending him notice. If said notice need not be sent.

But if drawn has left an agent or Clerk, I see no reason why notice should not be sent to them. Eph 1st. 25. 54.
Accident has created an sudden demand on debtors in fronting alone at that time.

Can an action be brought for non-acceptance or must you wait till time of payment? You may sue for non-acceptance.

Till the mayor in London

Taking a bill is not a fragment of a debt, but it suspends all right of action at law. A bill is known whether it is accepted or not.

Case cited 2 Rot 106. 8.

It was formerly a great question how a recovery was to be had on a Bill of Exchange when the payee was a fictitious person.

The question arose upon the principles that no person could bring an action without proving the hand writing of the drawer, and in this case the drawer was fictitious how could a recovery be had. Is where a person draws a bill on a fictitious payee, he returns it to his name.

But the view settled that such a bill is payable to bearer, and that the holder has a right to me and recover upon it in the same manner as if given to bearer. 3 Binn. 2 Rot. 208, important.

The acceptor is always holder if he knows that the payee is fictitious. If also if he is not acquainted with the fact if he gave authority to drawer to draw on him in fictitious names he is bound.

Some Remarks on the Right of Arrest for Debt.
The law allows different executions viz. a capias ad satisfac-
tionem to take the body only, not goods; or he may take out a
fine specie, which is levied alone on the property; if this don't-
pay the debt, he may still take the body. But in some laws you
must take both the body and property at some time.

By our law in Connect. This law has been altered and so in many of
the States. Under our Stat. Execution issues containing a capias ad
satisfactionem, and a fine specie, yet you may not long or but-
one. The alteration is this, you cannot take the body till demand
of the money or personal property, and refusal to turn it out.
Real property may be taken after demand for a person cannot
protect the land by the body, but can protect land and body
also by turning out personal property.
Land will not protect person from arrest, for that cannot be
steadily held.

Further, the officer can't take the body till it appears that there
is no personal property. To be sure he is not bound to take the property
if he suspects the better title to the goods. And real property must
be taken till demand and refusal of personal property. Land
is protected by personal property but not by real, the the
officer may take real if he pleases.

But if the takes the body, he never can afterwards levy on goods
seen in Connect for great reason. In this
Meanwhile law. Bond for debt

If someone a new note be taken in prison to obtain liberty his note for ducats, and then you may again lay on the body, for this is a new debt, that I suppose a note given after liberation would not be void, as a modern practice, for moral obligation would be sufficient consideration.

Yet a man may obtain his liberty by act of Rescunty.

The principles of the law notably is obliged to support an insufficient debtor, so if no composition is made, then failure.

We have a Stat which allows a man to give libert for days notice and then swear out. The object of this Stat is not to liberate the prisoner, but to prevent starvation, for he may still be kept in gaol, the at the expense of the creditor on a prescribed price allowed by county court.

But the he obtains his liberty by the poor prisoners oath, yet this property is always liable, to a ficti facias well open on a ficti facias being brought. May I suppose debt on judgment would lie — the the difference between this and a ficti facias would be that in the latter you recover principal & interest.

In debt only the principle. To devise when this Stat was first enacted, it was retroactive & in its operations. But now it otherwise — the contract is made on this disposition.

The same objection may be made to insolvent acts — and of Bankrupt acts. But this question has arisen, whether one that's
Otherwise law.

Can stop these acts of bankruptcy and resolution for the benefit with Eng. says, the legislature shall not impair contracts. But the courts say this means they shall not do it except in the known, established ways of impairing them, of which this is clearly one. Judge Chase so decided. He said express facts here were applicable to civil cases, but only to criminal law.
Insurance.

The doctrine of insurance is a branch of mercantile law, and is founded on the law of wages. This usage varies in different countries, but is generally much the same everywhere. This usage is the same throughout the United States. But there are certain states varying these wages according to the government of the country in which they are made. I shall notice these states as we proceed with the subject.

We have no flat of this kind in this country.

Any person who contracts is supposed to have this usage in contemplation, for he cannot plead ignorance of it.

Insurance is a contract of indemnity against risks, against the happening of certain events.

Marine insurance will be the subject of these lectures.

The terms insurer so explain themselves. The person whose insurer is called the insurer, the person insured is called Insured. The sum given is called the premium, and the instrument in which the contract is contained is called the Policy.

It is a principle of mercantile law that the insurer must have an interest in the thing insured, otherwise it is mere wager or gambling contract, i.e., a wagering policy which is void. This is a principle of Policy. The insurance is made against certain hazards, or against an event of which danger is apprehended.
Insurance.

In Eng. they sustained wagering policies on the same ground as they did all wagers, but now by Stat wagering policies cannot be sustained.

At law, law fraud does not destroy contracts in many instances, the account of them will generally take care of fraud. But in Mercantile law the least fraud will destroy the contract. The Insurer must be satisfied with the strictest integrity, and the fraud may count as much in concealment as in direct falsehood.

What persons may be insured?

This relates to aliens, for any citizen may be insured. The property of aliens may be insured in case there is no animosity existing between the two nations.

The Eng. usage has been very different from the Can. law. The property of an alien enemy upon principles of Mercantile law is not insurable.

But the received opinion in Eng. was that it could be done, and they insured the property of an alien enemy in the American war. This led to the passing of acts forbidding the practice. But those acts were temporary, for they made the practice illegal only during the war.

Hartwick & Mansfield opposed these acts. May 32d 1925th.

It was made a question and agitated in their courts whether
The alien enemy could maintain an action against the insurer happening he refused to pay and it was decided that he could not. However the general principle is not affected by this for after the war is terminated the action may be maintained. 6 PA 24. 20th June 1734. 1 30s 8 PA 35.

In this country I think says the Judge that an alien enemy's property ought not to be insured, still if we have any established rule as to this point we ought to follow it.

As to a neutral vessel in an enemy's country and carrying on trade or in partnership with an enemy, it's settled that he can recover. 69 PA 843.

"If a person may be insured?"

By whom can the land and any person in an individual capacity, or any number of persons united into companies may insure, of course where we have no such State as in Eng. it will apply to us. But in Eng. they have passed a Stat excluding all companies from insuring except two—the London insurance company and the Royal Exchange company. But individuals may insure as before.

So where A and B acted jointly in the name of A and the company lost. A brought his action against B, for his half, but he could not recover. 256. 3 29 139.

So where A and B agreed to
Insurance.

be in partnership and a top ensued, and a paid it up, and B paid his half to B to be paid over to A, and A would not pay it. A brought his action against B to recover it, but the action could not be sustained. I should doubt the principle in this case for if A had got the money into his hands, he could hold it and I conceive it to be the same as if paid to A. Larkins 6 P. C. 468.

But suppose it should be a seizure for a person who did not know of the agreement between A and B, to settle he can recover.

Subjects of Marine Insurance.

The terms made use of are 1. Insurors 2. Insured 3. Insured's Vehicle and expediency bonds will be considered hereafter. There are certain articles or articles under certain circumstances which cannot be insured i.e. if they are, the policy is void.

1. Goods which have been smuggled cannot be insured. 2. Goods.

In order to evade this persons entered into a contract to deliver their forbidden goods at such a place for which a premium was given. But the flag that made this void ab initio and obliged the persons to return the premiums.

It has been a question whether a citizen of one country could induce goods in another country to be smuggled into the country of the insurer, i.e. whether a citizen of one country could make a contract to evade the revenue laws of another country. The French
Insurance.

Insurance is considered such contract as void, but in King's Tintin. So that a contract is not void. (Chatham v. Holker in Long. Park 237.)

Insurance upon a voyage to a colony of the brother country is void provided commerce with it is made illegal or insurance is forbidden. So also if any particular article is forbidden to be imported or exported, insurance upon them is void, because of the illegality.

Insurance upon contraband goods is void on the ground of the illegality of carrying such goods.

Contraband goods consist of arms, ammunition, war stores, and horses, and in short every thing which is necessary to equip an army or navy. Provisions are considered as contraband if the place is besieged or blockaded, and insurance upon provisions to be carried there are void.

In case a port or country is blockaded by proclamation in Decree only, and not actually blockaded by Ships, if a Ship is insured and goes in violation of those decrees and is taken, while the Insurance is holden and bound to pay, it, and this is on the ground that this commerce is not illegal in its not so considered by the laws of nations, but only by that nation who makes the Decrees, &c. But in case of contraband goods it is different, for this is agreed to be illegal by all nations.
Insurance.

In an actual blockade, the liability of the insurer to pay rests upon a knowledge of the blockade. For if he unknown that such a place is blockade, and the person should go there and be taken, the insurer would be liable.

But after notification is given of a blockade, and a person attempts to go there and is taken, the insurer is not liable. So if after he gets to port and is notified that he is in a blockade, and he then attempts to sail, the insurer is discharged if there is loss.

Again, assurance is void if made during the continuance of an embargo. This trade is illegal, and of course an assurance upon it is void and illegal. Park 234, Johnson v. Sutton in Doug.

Commence with an enemy in all countries is held to be unlawful, therefore an insurance of property belonging to an enemy is void. I do not know how this is considered in this country, but in King it has been usual to consider them policies as good, and in fact to consider them in the American war tie temporary that prohibited it during the war, and the it was determined that an alien enemy could not maintain an action to recover from the insurer, on the ground that an alien enemy can maintain no action of any kind. Yet the principle is not affected so after the war is concluded it could be recovered. I am clearly of opinion says the judge that the insurance is void, on the ground that the commerce is illegal.
Insurance.

It was made a question whether goods purchased in another country could be insured, and it was decided in the Court of King's Bench that they could. But afterwards in a case of the same kind, the decision of the Court of Appeals was reversed by the Court of King's Bench. So that now it seems that an insurance upon illegal commodities is void. For 1st decision E. & B. 345 for last 3 Dip. 548. And I am of opinion says the judge, that our Court would decide in the same manner, i.e. that such insurance is void.

There are some things which cannot be insured—vessels of war and weapons of war are not insurable, and the reason is to prevent all their execution to save the ship in times of danger, and not on ground of illegality, whether can any thing in the nature of wages be insured? 17 P. R. 15, p. 157.

But if after the wages are paid they are laid out in purchasing goods, these goods may be insured. Any thing in short may be insured which is considered as belonging to, or an appendage of commerce. As conveniences erected on the shore may be insured.

And it has been determined that a Port is a subject of insurance. 9 Bev. 19, 131 & 573.

Freight in general is a subject of insurance, but there are some wages to the contrary.

It is a settled principle that in order to recover for freight
Insurance.

It must appear that some risk has been run.

If a ship is lost in the harbour before the goods are on board, the policy is void. Or if a part of the goods are on board, again there may be cases in which nothing is put on board and yet the insurers would be liable. Or if a ship and freight is insured at a particular place, say at New London, and the goods were to be put on board at another place, say at New York, and if the vessel is lost in going after these goods, i.e. between New York and New London, still the insurers would be bound to pay the policy.

As to persons who may insure. Any person who has a qualified property may insure. As a pledgee may insure for his interest absolute disposal of the property. As the person who has the legal property may insure.

Case of this kind. A of London writes to B of London informing him that he has a ship and a quantity of goods and requests him to get them insured in London, and B gets them insured, after which A endorses over the bill and ships to C, and C writes to D in London to get the same goods and ship insured, and D gets them insured, now both of these insurances are good.

Year 1789. 1st March. 27. K. 155.

There has been a question whether a man can insure the property, i.e. what he expects to make in his voyage. I think it cannot, as contrary to law of nations, but
Insurance.

There are several decisions which seem to favour the idea that it can be done. Traversfield determined that it could be done.

This entitled that a man trustee who has the legal title without any interest can insure. 5 Ed. 11. 1 Will 915.

Vaguer Policies. Policies are either valued or open. A valued policy is where the Insurer and Insured agree that the ship is worth so much.

An open policy is where no such agreement is made. A wagering policy then must be a valued policy. These policies are void on principles of ineradicable law. But in this they are wagering policies are sustained upon the same principle as any wager would be, viz the Stat. 1 Poc. 2. Which declares them void.

How is this question whether at common law such a contract is good. How is it known that such contracts are directly opposed to a maxim of civil law as being against sound Policy.

How I take it to be a clear and well established principle that where there is maximum paramount to every thing else and decisions opposed to those maxims, such decisions are not law, if made by those judges who adopt the maxims in cases in general. Therefore we think we may overrule the Judges decisions on this subject.

We have no Stat on this subject, but I say wagering policies would be void in this country on the ground that they are
Insurance

Opposed to fraud policy. 19 & 56. 2. 3. 6. 25. 9. 3. 7.

The principle is the same in all wagers, and if wagers of all kinds ought not to be collected wagering policies ought not to be.

I will now state on what footing these wagering policies stood in point of authority. The first decision on this subject was in 1679, which declared wagering policies void; and in 1692 it was so decided in a court of Chan. 2. 132. 169.

In 1714 we find these policies to be held valid. 10. 132. 49. This was first case which held them to be valid.

But in 1716 the court of Chan. decided that they were not valid, and again in the same year than. decided that they were valid and from this time to the making of the Statute they were held to be good. 2. Strange 1430. This case was the cause of making the Statute.

We may therefore conclude that these policies are opposed to a maxim in common law, and that the mercantile law is also opposed to them.

Reassurance and Double assurance.

A reassurance is when the insurer gets some person to insure being this is allowable by the mercantile law, but forbidden in England by that except in two cases viz in case of insolvency and in case of the death of the insurer. Now the assured can never resort to the reasuror, for there is no contract between them.
Insurance.

A double insurance is where a man makes two insurances upon the same thing. In this case however there can be but one recovery, and the insured may recover the whole policy from one of the insurers, and in such case the insurer who pays the whole can recover half from the other insurer, even tho' there insolvency of contract. 13 B. 1416. Beauz. 242.

This rule was adopted in the time of Prince. 1 Prince 130. 2 Wood 489. Risks to be insured against. All risks may be insured in one policy, or any part of them may be insured. If the insurance is against the peril of the sea and the vessel is lost by the negligence of the master and mariners, the insurer is not bound to pay the policy he is acquitted. But if the insurance is against the pilfering or negligence of the master & mariners, the insurer is then bound - such an insurance is often made.

If the voyage is illegal or the commerce carried on is an illegal one, generally the insurer is not liable.

By this no insurance can be made upon seas.

The risks which a policy includes are the perils of the sea. Peril of war, fire, enemies, pilferage, thieves, &c. and in short all damage of any kind to ships, goods, and merchandize.

Here by the common law - merchant all losses of any kind not included in the words of the policy were recoverable. So if in part of the goods were damaged you could recover for them.
Assurance.

But this is made great difficulty, therefore this liability for all loss is now qualified when the loss is practical but not great, and when the loss is total. If the loss is partial, you cannot in all cases recover for it. A commander is now ordered annexed to all policies and in that it is agreed that a partial loss for certain articles like in some shall not be liable. There are articles of a perishable nature, e.g., corn, fish, salt, fruit and molasses; for certain other articles he is liable but not unless they exceed 5 per cent. There are sugar, tobacco, hemp, flax, hides, and woods, as to all other goods the loss must amount to 8 per cent at least unless the loss is general or the ship is stranded. If the ship is therefore lost by stranding the 8d common law is restored and the loss may be recovered 3 Bln. 1553, 1554, 7 Eliz. 2, 2 H. 8, 38 c. 39, 7 Eliz. 2, 216.

"In loss, the loss is general" by this is meant a total loss; it means of a total loss in which coming to save the ship, as by throwing overboard some of the articles, and in such case the smallest loss must be paid for. 3 Bln. 1553.

In case of a total loss of the aforementioned articles, the assured is liable and is only in a partial loss that the assured is not liable in certain cases.

It is always that when the loss is so great that the salvage is not as much as the freight his a total loss. 2 Strange 1005.
The doctrine of Lott Manfield, Part 116.

It has been held of the articles specifically remain the good for nothing, the insurer is discharged. This decision was grounded on a long usage. However, the Court held to allow H 210, and I think the result, for if the articles are good for nothing, and do specifically remain yet there is a total loss.

The owners and masters of a ship may be liable to such a manner as will discharge the insurer. If the ship which they provide is defective and such an one as ship carpenters would pronounce not to be sea-worthy and a left insurer on this account, the insurer is discharged.

For the negligence and wilful misconduct of the master, the insurer is discharged if this misconduct was not insured against.

The owners and masters are liable for the embarkation of the mariners.

Case of this kind, a man entered a ship and fell ill, the question was whether the master was liable and it was determined that he was liable. But I cannot see how this decision can be founded on the principles of marine law. Leat 238, 190.

But for the committed on board by the mariners, the master is liable, and this notwithstanding the word thieves, used in the policy for their to meant Pirates &c. and not common villains.
Meanwhile as.

theft. Beers 348.

4. Duration of the Risk.

And first on that of goods. The usual words of the policy point out all that is necessary to be known on this part of the subject.

The usual words of the policy say that the 
sure 
shall 
continue 

till 
the 
ship 
shall 

arrive at port and the goods be safely landed and discharged. Therefore if the goods are lost in carrying them to the ship, the Insurer is not liable.

The goods must not only be carried on board, but they must remain there unless there is some great necessity for removing them. So that the master of a ship, after the goods are put on board can change them into another vessel except for ship is disabled and in danger of being lost. 1346 345.

The Policy says the risk shall continue till the goods are safely landed and discharged. Here this extends to the boat or lighter which carries them on shore. The master has a right to land them at any wharf in the port under the frustration of the policy, unless otherwise expressed.

It is said if the Insurer should take his own lighter to carry the goods on shore, the Insurer would be discharged.

24 Feb 1836. But his said of the Insurer hiring a boat, and
Insurance.

The goods are lost, the Insurer would not be discharged.

Moreover it is now settled that it makes no difference whether
the Assured uses his own boat or hires a person to land the
goods, for in both cases if they are lost the Insurer will be

If the goods should be sold from the ship, the Assurer would
be discharged, the such are not landed.

These are some trades in which it is necessary to keep the
goods on board, and sell them out when called for. This
is the case in the trade to Newfoundland and on the coast of
Labrador. note by Kennedy in Doug.

Duration of the risk when the insurance is on the ship.

This depends on the words and construction of the policy.
If the policy says "from city to London" in this case if any
accident happen before the ship sails the Insurer is not li-
able, but if the word $\text{starts with a broadside intention of}$
sailing the risk commences, and the Insurer is liable even if the
does not sail 40 yards. Therefore in order to be freed from loss
before sailing they generally insert the words "at and from the
 favourable wind" and this makes the insurer liable before she
leaves 15th May 27th 379 37th 862.

They often insure both ways at and from trip to London and back
again" the question is when does the new risk in the risk
upon the homeward voyage commence. It was it commences
immediately after the arrival, but this is not the case for the
homeward risk commences 24 hours after the arrival. Therefore
I think the homeward risk commence on when the other ends.

Part 35.

The risk on the ship laden lasts no longer than 24 hours after
she is safely arrived in port. But suppose the ship is seized
for smuggling after the 24 hours have expired, the Insurer is
discharged even the time was for an act committed during the
continuance of the risk, text 2, IA 252.

Hence the insurance may be for a particular limited as for 6
months, in such case the Insurer is discharged after the time
has expired. IA 260.

It has been determined that the risk continues if the ship is
detained on quarantine grounds 2 days, IA 260. Paragraph 2.

Whatever prevents the ship from being unloaded is evidence
that she was prevented from being insured in port. IA 261.

Case in Maine not two, Part 38.

The insurance upon rigging and provisional continues generally
no longer than they are on board, but the rule is different in
four cases by usage. IA 340 to IA 346.

Therefore there is a usage in trade different from general
Usage, the note is covered by the usual words of the policy.

3. June 1787.

Suppose the Policy says the ship may touch at any port or place, by this is meant that she may touch at the usual ports in the direct trade, but she must not go out of her trade to touch at any ports in cases of necessity. Park 500, 50.

If no insurance is made upon a foreign ship and they have particular usages, these usages must be made known to the insured (as it is supposed, not to know them, seems Insurer will not be liable. Lavater vs Wilson in Doug.

Risk on Freight.

This commences when the goods are put on board. 2 Mar 1251.

But if some of part of the goods are shipped, the whole is insurable. 3 Ta 262.

If the goods are insured at one place before they are put on board, and the ship has to go to a different place after them, the risk commences when she safely arrives after them, and if she is lost or her passage after them, the Insurer is liable. 6 B & 4 C5.

Then must be nothing done by the Insured to change or increase the risk, 3 if he takes letters of maritme, the Insurer is liable, and the Insurer is not bound.

Some of this kind letters of maritme taken and it appeared in evidence on the trial that they did not intend to use them, and
Assurance.

But that they were taken for the purpose of obtaining evidence. The
court held in the case that the prisoner was discharged on the ground
that the temptation was such as would tend to make them deviate
from their track, and avoid the contract. 455 R. S.

Another case letters of marque were taken and with the same view
as in the former case, but in this case there was no certificate from
the officer that there were letters given. The captain deviated from
his track and a long course, the court determined in this case that
the prisoner was guilty.

Now these two cases are inconsistent with each other, and the only
way of reconciling them is that in the first case these letters
were legal, having been certified by the proper officer, but that in
the last case they were not legal letters of marque and the court con-
cluded them as having none at all. 69 R. S.

Of the Policy.

Policies are said to be often found valued, an open policy is where
the value of the ship is not fixed upon but left to be determined
after the return. An valued policy is where the value of the ship
is fixed upon by the parties before the sail.

There is no difference between these two only when the loss is par-
tial, a valuation is prima facie evidence that there was no
wagering policy. 149 R. S.
It is generally done by the hands of brokers and agents. The agent must either have an express authority given him from the principal, or it must appear to have been his duty.

3 Hen. 2, c. 27.

It is a rule of common law that no person shall be obliged to act as agent for another, but the rule is otherwise in mercantile laws; for there are three cases in which an agent shall be obliged to act, or become liable himself.

1. If a person has effects in the hands of another, and requests him to issue a negotiable paper, the person is obliged to do it, if the effects are sufficient.

2. Case is when a man has a correspondent who has always been in the habit of doing business for him, and has never refused, in such case the agent shall be obliged to issue if requested or become liable himself.

3. Case is when a merchant abroad sends a bill of lading to his correspondent, and he accepts the bill and gets the property: he is then bound to issue. 1 P. 22, 221.

I think in the last case the rule would be the same as our law.

Indeed the settled that where a voluntary agent undertakes to do business for another and a loss occurs by means of negligence on his part, he is liable. 6 B. 1 st. 41.

So when one broker employed another broker
Insurance.

To insure and be forget to show their letters reflecting the situation of the ship and a copy endorsed, the first broker was made liable.

The concealment of any fact will destroy the policy, but the insured can recover from the agent 17177.

And the agent may avoid himself of any defence which the Insurer might have done. Part 348.

The agent is bound to deliver up the policy extension, the Insured risks for it. Party vs Carter Young.

In most places policies the name of the ship is inserted, and in such case the goods must go on board that ship only. But the name cannot always be inserted, and then the usual instructions are to load any ship or ships which include vessels of every description.

The name of the master is generally mentioned in the policy, and if a different one is first on board the Insurer is discharged.

If the name of an experienced master is inserted with a view of obtaining the confidence of the Insurer to make him insure the same readily, and there is no intention of sending this man - his bond and the policy is void.

When the insuranc is on goods, there is no need of particularizing them - it is sufficient to say "the goods and merchandise.

If however these goods are specified, and there are other goods
Insurance.

If on board not specified and they are lost the insurer is not bound to pay the policy. 33 Bev. 1874. 188 299 405-422.

The insurer's death may be insured and if they are they must be specified and to trust the provisions be specified so they are not hid under goods and merchandise. 4 PA 226.

Goods lashed to the deck of a vessel must be specified. 3 Bev. 220.

Bottles and respondentia bonds are not considered as goods or merchandise. 4 Bev., in some traders, they have been so considered. Foreign coin, bullion, jewels etc. must be specified. It is, however, their custom is to the contrary. 4 Bev. 1966.

The quantity of the above mentioned articles must be made known to the insurer.

It has been made a question whether the insurance of a fish when it is landed is an insurance of the cargo. But it is clear that there are different articles and an insurer of one does not include the other.

The voyage must be briefly described in the policy, the time and place of departure and the place of destination must be named, from the insurance is void.

There is provision made sometime to permit the master to go out of his usual course. But generally he must not deviate from his track. 33 Bev. 226.

Wheneuer the place of destination is falsely named it will vacate.
The policy.
If a ship takes out clearance and is insured for one place and
instead going to a different one and is lost before she comes to the
dividing point, the Insurer is liable. An intended deviation does
not discharge the Insurer.

Here was a decision contrary to this rule in Maryland.
A vessel cleared out from Baltimore for a certain particular place
intended going to another, she was taken in the Chesapeake Bay long
before she came to the dividing point. But the court decided in this
case that the Insurer was not liable.

The insurer is discharged if the ship sails a different voyage from
that from which the vessel was insured, to or from any port in
Newfoundland to Palermo. She failed in fishing voyage and then
proceeded to Palermo and was lost, then the insurer was dis-
charged, for it was a deviation. 25 A. 30. To an insurance upon a
voyage from A to B and it was manifest a deviation was inten-
ded, for she intended to go to C and then to B which is a deviation,
but she is lost before she comes to the dividing point, then the In-
surer is liable. 27 Tex. 348.

Case of this kind. The intention was to go directly from A to B and
she is so insured with liberty to go to C, and she cleared out for C,
but she never intended going to C, and did not go there, is the
Insurer liable? Court decided that he was bound to pay.
Insurance.

I think this decision was founded on a different principle from cases of this kind in general.

I think if she did not go by the way of B to C, the Insurer would be discharged, if that was the terms of the Policy.

If ship is insure from A to B and there are two tracks, one of the owner of the ship directs the captain to take one of these tracks and he does and the vessel is lost, the Insurer is discharged, for the Insurer has the right to liberty to direct which track shall be taken. 9th 162.

In all cases of insurance the Reeds are to be insurance against care, or carelessness seen, the Insurer is discharged.

If all injuries to goods arising from bad storage or being exposed to the weather, the Insurer is not liable, for there was negligence on part of the Insurer.
The words "lost or not lost" in a policy have not been taken notice of as yet.

There is a clause introduced into the policy to enable the Insurer to procure all necessary means to save his ship, at the expense of the Insurer, and the policy always promises to indemnify the Insured.

Policies generally acknowledge that the premiums is received, but it is not always the case that it is received, for indolence?
Insurance.

It may happen, in such a case as I have described, that the assured may be liable for the payment of the premium, but not for the amount of the policy. In such a case, the insurer may be entitled to recover the premium, but not the amount of the policy.

A policy may be voided by a court of equity when it can be shown that it was not made according to agreement, and that the policy was not delivered. In such a case, the policy is void, and the insurer is entitled to recover the premium.

In this policy, there is an agreement on the part of the insurer called a warranty, and these warranties must be literally and strictly performed with by the assured. If not, the policy is void. If the warranty is in agreement with the assured, appearing on the face of the policy, qualifying and explaining it, this warranty is in the nature of a condition precedent, and it must be complied with before the insurer can be made liable and if it is not complied with, the policy is void.

Sometimes the warranty consists of affirmations, as that he will not fail to pay the premium, or that he will not fail to perform his other obligations under the policy. If he fails to perform these obligations, the policy is void. If the breach is such as to defeat the purpose of the policy, the policy is void.
In marine insurance, it is not necessary that there should be any fraud in these cases to
cstrate the policy.

There are also implied warranties resulting from the contract, so that
the ship is seaworthy and that she shall be navigated with skill
and care; that the voyage is a lawful one, and that she shall
go in the usual track.

The rule as to expiring warranties is that they must be strictly complied with, and these contracts are all void at the time if the war-
ranty is not strictly complied with; and in such cases the premi-
unum must be returned if it is impossible to perform the warranty.

This breach of warranty may be occasioned by any means, it is not
necessary that there be fraud or negligence in this case to vacate
the policy.

So where the insured warranted to take so hold on
board atLiverpool but took it only at that place and failed to
another port which was contiguous to Liverpool in very proximity
from Liverpool and took the is remaining hands to make up his
complement, still the premium was discharged. 198 348.

If therefore makes no difference if the best reason in the world
can be given for not complying with the warranty, so if it is not
strictly complied with, the policy is void. So if a ship is prevented
from sailing by means of an enemy at the mouth of the harbour,
Policy is void. C. v. P. 97. 99. 2 Doug.
Surely.

so if a person warrants to sail on such a day and be in prevented by means of an embargo laid by government, still the policy is void. Lord 934. Pocker 726.

One of this kind a warrant to sail or or before such a day, say the 1st of August, she sailed before that day and went out of her course to another port to get a convoy, and she would have failed from this last port on the appointed 21st of August, had she not been prevented by an embargo. question was whether the Insurer was liable or not. The court determined that he was not discharged. The doctrine to be drawn from this case is, that no ship has a right to deviate from her course in order to get a convoy.

20. 601. Kilpatrick vs Ferguson 2 Doug.

Visiting.

One of this kind a vessel sailed and before she got out of the port a storm arose which forced her to put back again and on that day an embargo was laid. The Insurer was not discharged in this case.

20. 607.

No warranty to fail with convoy.

A convoy must be one appointed by government. Sick 947.

A vessel must also sail from the place of rendezvous appointed by government. She may however sail to the place of rendezvous without convoy. Sick 148. 2 Strange 1265.
These words to sail with convoy mean the whole of the voyage is not part of it. If it is W. indias.

If the convoy is to a certain latitude, pay W. indias islands, here it does not mean that the ship must keep under convoy from the port of departure to the port of destination, so if they go under convoy to any of those Islands is sufficient. But if the ship is to be conveyed to a certain particular place, she must not leave the convoy till she arrives at that place.

9 Jul iii.

It is not necessary that one and the same convoy should take the ship the whole distance, they may have different ones. Part 349.

The ship must have sailing orders from the commander of the convoy - the true ship of war always may prevent this, and the commander may refuse to give them, in all such cases, he is excused for not obliging at having them. Part 349. 341, Not 5.

28th June 2 March 1758.

As to keeping with the convoy, the ship i.e. the master is to do all in his power to keep with it, and if he loses, in such case, the burden will be his. Laos 216, 1 chosen 320, 4 and 358.

The next express warranty is that the is mental property and if the warranty is false, the policy is void at instant. If the property is mental at the time of insurance, so
Insurance.


It has always been held in Eng. that a condemnation by a for-
eign court is conclusive evidence that the property was not neu-
tral—whether this is the general law I am not sure & I do not know
say the judge—It is not adopted in France—We have adopted
the English rule in this country in several cases, but they re-
spected it in some one case in Massachusetts 5 Met. 268 & 269.

It must appear on the face of the judgment that it was one-
year property. Sears v. 314.

It must appear that it was condemned for being enemy
property—for a condemnation on any other ground does not go to
show whether the was neutral property or not. If on other ground
the insurrection would be liable.

The insurer is discharged in case of a condemnation by a for-
ign court.

Now this does not apply to common cases where the judgment
of a foreign court is not binding in another court. But the judg-
ment of condemnation is admitted on the ground that the neutral
law governs in all countries and is not the particular law of
any nation.

1. The rule is it must appear on the face of the judgment have
been condemned for being enemy property. The shift may be
condemned on other grounds, and if so the insurer is not discharge.
so of a breach should not comply with an ordinance of a particular country, and should be condemned for that, the owner would be liable. It is only when they violate the laws of nations and not the decrees of a particular country that the owner is discharged.

The English case have gone still farther, for they have admitted evidence to show that the property was neutral, and thus made the owner liable. 7 PA. 283. 691. Burnam v. Brock. In this, the decision is not according to principles of our law merchant.

If it does turn out to be essential the owner is discharged at issue. But the master and mariner must do nothing which will amount to a perfidious of their neutral character, if they are the owner is discharged only for what is lost after the neutrality was forfeited. So in this case he is not discharged at issue.

Robe 140, 16, R. 32.

When there may be a perfidious of neutrality.

Suppose a merchant ship is bound to submit to any rule or regulation of non-neutral laws generally required by bellicose powers, and they refuse to do so, they forfeit their neutrality and if taken and a lop enures the owner is discharged. Now remark this must be the general law merchant and not the regulation of any particular kingdom, as the decrees of
Insurance.

France and the rules of war.

Now there is a great question whether a vessel to prevent her from being seized or a merchantman is in a state of neutrality.

Now this question depends upon another viz whether the law merchant or law of nations consider this as a state of neutrality.

Now I take it to be a fact that there never was any doubt on this subject till the beginning of our Revolutionary war, previous to that the right of search was not denied by any country.

Now that is the consequence of another rule viz. that to contrary to law of nations for a neutral to trade in contraband goods, and if there is the case neutrals must be searched for occur how will you ascertain whether they have such goods or not? 89 B 28.

How will the search finds nothing in those cases he will be condemned for costs provided he destroys the vessel and sends her into port to be overhand, seems if the only stop time on the highway.

Such rule consider the history of this subject viz the right of search.

In the Italian law merchant, this point is laid down,
That if enemies goods are found on board a neutral, by a 
Belligerent they can be taken by paying the freight. 
It distinguishes in the Dutch nation lays down the same 
rule except that the captor was not obliged to pay the freight, 
the says that when a treaty says that “free ships shall make free 
goods,” to an exception to the general rule, and that exception 
in such cases the Belligerent might not to quarantine. 
It tells sometimes maintains the right of visitation and parole; 
the same if the refugees for this cause alone the may be pressed & 
condemned.

The French, in a treaty with the Hans towns made an excep-
tion, so this exception proves the rule i.e. acknowledges 
the existence of it.

At the beginning of our revolutionary war some of the 
neutral nations of Europe as Russia, Sweden so continued that 
the two respecting search ought to be altered, that it was an in-
fringement on the right of nations.

However there was nothing done about it till the year 1780, when 
they entered into a conference to put a stop to their practice, to 
this Mr. Pitt would not accede. France acceded to it, using 
the power to revoke, but the latter did revoke only as it respects
 fermese.

The Dutch, after war discontinued for a while, till the latter part of
the century when the victory gained at Copenhagen broke the confederacy.

Spain and Portugal seem never to have had any thing to do with it.

But there is another question made by the opposers to this doctrine, admitting even they, that you may search but suppose you find a merchant. man under arrest, can you search his house to

clear you cannot search a convoy, therefore if a convoy is under

convoy you cannot search it and in this way you may trade any

where, and in any kind of goods.

But this does not affect the general principle at all.

The right of search is allowable on another ground. new

free ships must have the goods volue they force to show that

you must search in order to find whether they are free or not.

It is made a question whether any neutral passenger has a

right to deprive a cruiser of this power. If the ideas I

have suggested are correct there is no such right.

But in B. 3. Chap. 7. de 164.

Another ground of forfeiture is the failing without proper doc-

ments.

Thus no such seizure or documents are at all times liable to seize, for this is strong presumptive evidence against
Integrity. The former shall be discharged.

But the want of documents is not conclusive evidence against them, but it throws the burden of proof on those who are estopped of them.

Now there may be existing treaties between nations contrary to this general law and which these nations may observe. They must actually avail with these documents seem the Insurer will be discharged. 798, 705.

Belligerents often issue ordinances contrary to the general law merchant, and in a refusal to obey them the insurer is not discharged. 92, 262, 355.

But it is asked, cannot those ordinances have any effect? I answer, yes. The insurer ought to obey the terms of such regulations as much as he ought to do any other part, and so also the insurer ought to obey the Insurer. 51, 144, 342.

Representation.

Representation is any collateral information concerning the voyage and is made by the insured to the insurer, it is not contained in the Policy. Representation may be made by parol or in writing, hears any fraud or concealment of the truth or in fraud or thing which falls short of their integrity and honesty well avoid the policy.

The difference between a warranty and a representation is this,
If the representation is true in substance its sufficient, and the policy will not be avoided. To which it was represented that 12 years were to be taken and 10 years and 4 months were taken, here the policy was not avoided. <br>Round 383.<br>Now this in a warranty would have discharged the insurer.<br>

There is one instance where the policy will remain good if the representation is false, and this is where the policy points out the voyage, now if he represented that it will go a shorter route or less dangerous will not avoid the policy. Aug. 29. Park 182.<br>
A direct concealment of facts will avoid a policy in the same manner as a false representation. 18 1574. 1 Strange 1183. Park 181.<br>287. 4 P. & E. 378. 149. 4. Antony vs. Williamson Page.<br>

Doubtful scenarios must be told as such, and not as actual information. 23 314. 176. 2 pp.<br>The observance of any particular country ought to be disclosed. 08 B. 19 69.<br>

Facts of common notoriety such as are open and known to every person need not be told. So he need not tell him of the danger of the voyage nor the distance of such a place to another. So as to particular speculations of the insured he is not bound to tell the insurer of them.<br>A prisoner need not tell the insurer to what quarter she is
going to cruise.

As to the state of the ship, the court have determined that
by sufficient evidence that the true condition of her at the time of
Insurangu that she shall be or, according to law 1270, 3 June 1795, 1825.

1. Subject to warrant.

The 1st implied warranty is that the ship shall be seaworthy.
2. That the ship shall not be charged unusually seaworthiness.
3. That she shall be navigated according to law.

Then the court—be seaworthy in the sense of a substantial, light
ship and equipped with necessary stores, and if there is any defect
as to these things, the insurer will be discharged for his undertaking
is against unforeseeable peril at sea.

There may be some difficulty in ascertaining in some cases whether
the ship would have been lost if she had been fit, even
suffering from the weather. This will afford opportunity for debate.

If the insurer is not seaworthy, whether the ignorance or the in-
nocence of the insurer will make the insurer liable, if in fact she
was not seaworthy. Marshall 365.

It also where there was an agreement that she was not sea-
worthy, still the insurer was discharged. Marshall 369.
The owner of the goods in these cases cannot recover any more than
the owner of the ship can, but he may have his remedy against
the owner of the ship, which is in a case of a foundering ship.

Damages sometimes arise by entering ports without a pilot, as
to liability in such cases vide 7 R. 260.

It is that the ship cannot be changed. But if necessity warrants it,
it may be done. 12 R. 611.

So where a ship cannot navigate well she ought to take another.

Now the insurer must pay the expense of changing the goods so and
if there is an increase of freight he must pay it.

A implied warranty is, that she shall be navigated according to law or
according to laws of nations or according to treaties. 8 R. 192.

This includes several things and 1st that the ship not deviate from
the usual course of, there must not be a voluntary deviation from the
usual course without any necessity, so stopping at such ports as it
is usual to stop at is no deviation. 19 R. 848; 19 R. 601.

A deviation does not make the policy void at issue, for the insurer
is liable to all losses previous to the deviation. 2 D. Ray 346.

It has been contended that if no injury happens by means of a
deviation the insurer ought not to be discharged, but there is no
decision in support of it. 5 R. 319.

One of this kind Insurance from Dunkirk to Leghorn, and the
came across to Dover to get a Mediterranean cap and was afterwards lost. The insurer in this case was discharged.

Another case. Insurance from Glasgow to Holland with liberty to call at Havre, but instead of calling there she called at another place where it was usual to call; still this was determined to be a deviation, and insurer was discharged.

How is it difficult to account for this decision, but I suppose the ground of it was that the liberty to call at Havre was inserted in purpose to exclude her from calling at any other port, at least the decision furnishes a principle of this kind. See the case.

It is a rule as to deviation that if there are several ports of discharge mentioned in the policy, and of course the ship is intended to visit all such ports—the ship must go to those ports in the order in which they are mentioned in the policy, soon the insurer will be discharged.

(128)

And if the policy says to any ports not naming them, they must be taken in their geographical order, to any port in the Medi-

terranean, and she went to Genoa before she went to Genoa; insurer was discharged.

(128)

The general terms of allowance to order must be regulated by the course of the trade. Marshall 397.

This deviation however is always subject to the laws of necessity.
and nothing but necessity will justify a wilful deviation.

Eccles. 316.

Necessity may be given to raise and lower. 2 Kings 12:49.

As to the necessity for deviation, this is weather is sufficient necessity.

1939. 32. To also if the vessel is found to be out of repair, she may go into any port for the purpose of repairing. 1 Thess. 4:8, Part 301.

Going out of the usual course for the purpose of getting conveyance or

manage reasonably is considered as a necessary thing. 2 Thess. 4:15, Ludlow.

A ship may also deviate to escape an enemy or to avoid a storm.

substitute condensation may be considered as necessary for deviating as

where the terrain's condition is so. 2 Thess. 4:8. Ludlow.

After this necessity for deviating is over, or does not exist, she must take the most direct course again. Lawrence Wilson in Long. 751

1 What is considered a total loss.

By a total loss here is not meant an absolute loss of everything, but the loss is considered total if the voyage is frustrated, or if the value of what is saved is less than the freight.

Sometimes there may be a total loss of the ship and most of the cargo.

Damage arising from ship of weather unless it brings about a frustration of the voyage is not a total loss. So if a ship is shattered and sunk, and the goods are not injured, still if there is no
There is no limitation of time by which you are to determine whether a ship is lost or not. So if the insurer pays before the ascertain'd whether she is lost or not, he need not give any notice that he will repay it provided the same arrives. So if Insurer voluntarily pays the money thinking himself that she is lost and the afterwards returns, the money must be refunded of there was no prima facie ground for so doing.

If two causes of loss unite, the loss is to be attributed to the immediate cause. E.g.ough Ship is liable to be driven by force of weather into the enemies' shores, but before she gets there is taken by a Privateer; you must bring your action on the capture. (Par. 219.

So where a cargo of slaves proved to death they did not attribute it to the length of the voyage, but to the want of provision. (Par. 656.

So also when a ship was rammed against the banks of the sea, and by lying in the hawse was cut by the enemies' boat, and it was not occasioned by force of the sea. (Par. 442.

Thus when there is an insurance of the rigging, etc. this is not
against the ordinary wear and tear of it, but when it is injured
or destroyed by violence in order to save the ship and the like,
time is within the policy and the insured is liable for them.

Every thing destroyed by tempest is within the policy. It also
knowing goods or animals overboard to save the ship is within it.

It also if animals should die on deck by means of a tempest, they
are within the policy, unless if they die of disease or sickness.

When a ship denies by running against another vessel to within the
policy, so it is one of the faults of the sea unless if the ship was overt
the negligence or misconduct of the master and mariners.

Lose by Captain. This does involve in it the idea of legal cap-
ture, so it is no matter who takes her, whether enemies or friends, the
owner is liable as between him andPremium.

And this capture may be either a total or partial loss.

The insurer may at any time to the owner and, but if
the is recaptured it may then be a partial loss only. 2 Bench. 499.

The Premium cannot be compelled to abate when there
has been a capture.

If the ship is recaptured the Insurer is bound to pay all the expense
of it. 13 Geo. 3.

Ransom Bills are now prohibited by Stat in Eng. but they are
allowable by law in chart. 3 Benn. 1794.
Lest by Detention.

If a ship is arrested for state purposes which is frequently the case, still the owner is liable for it.

A detention after a declaration of war is held to be a capture, not a detention.

Arresting firefight under pretense that she is carrying enemies' property—this is a capture. But if she is arrested to find out whether she has been committing any unlawful act—this is a detention. 2 Beac 176.

For a detention by an embargo the owner is liable, 4 B. R. 753.

2 Beac 646, 6 B. R. 425.

A capture after a cessation of hostilities is not a capture but a detention, 4 Beac 441.

Lest by Baratry.

This is an injury sustained originating in the fraud or deceit committed by the master or owner in the course of the ship or property. There can be no Baratry unless there is fraud or deceit. Negligence does not come under this head.

Struggling, running away, going out of the course, or committing any crime or offence which will subject the ship to forfeiture or detention is fraud or deceit, and of course amounts to Baratry. 1 Chang 581. 2 B. R. 249. 19 V. 333.
In this case the *innocence* is discharged if the misconduct of master and mariner was not incurred against.

If a master of a ship should be owner and get himself against his own contract - void. 7 J.R. 505.

There must be an intention to do wrong. 7 J.R. 505; 2 Strange 1264.

6 J.R. 374.

The owner of a ship cannot commit *barnaby* whether he is calculated or not - i.e., he cannot injure the goods. 2 Strange 1178.

There was a question made whether supposing the owner of a ship was the mortgagee he could be considered as real owner, but determined that he was the owner. Marshall 457.

If the owner of a ship charters him the person to whom the ship is charted is considered as the owner. Coop. 143. 19 R. 990. 7 D. 339.

*Innocence* against *barnaby* he incurred against the *barnaby* of the master only in a lawful trader. The master without the knowledge or consent of the owner smuggled goods, questions as whether the *innocent* was liable, and the court determined that he was. 3 J.R. 279.

Then was a question of this kind whether suffering a loss half-way after the voyage is at end, which loss was occasioned by
Insurance.

Para. 29. During the voyage, the insured would be liable in such cases, the court determined that the insurer was not liable. 17A 252.

I will now consider that loss which arises from average contribution. Average contribution takes place when any person on board or person having goods on board a ship sustain a loss for the general safety of the ship. In such cases the owners of the ship, freight, and in short all those whose property is benefited by the loss are bound to contribute a share to the person losing. So if horses or cattle are thrown overboard for the general safety of the ship, the owners of the ship, freight, etc. must make up the loss.

Free from average is circled on the policy, by this is meant free from any principal loss, but not free from general loss, for then the Insurer is liable.

And this loss for the general safety of the ship and cargo is always insured against. Therefore those who contribute for the general good may recover from the Insurer. 12 q 65. Harts, cables, anchors, etc. are on the same footing when destroyed for the general safety of the ship. As also is a sum of money paid to a Pilot to prevent his taking
Insurance.

The captain and officers of the ship are to determine when it is necessary to throw overboard for the safety of the ship, and the approbation of the master is conclusive.

If a Prize should come on board and should merely fill the several articles, as taking a barrel of wine, so there would be no contribution in this case.

So also if some particular goods are damaged in a storm there is no contribution, for that is not done for the general safety of the ship.

The rule therefore seems to be this, that when a loss is sustained for the general safety of the ship or if the loss contributed to other things being saved, then there must be a contribution. Moore 29.1, Hearne 33. 1.

If any contribution to be made provided the end is not renewed and the ship is destroyed at last; ie. supposing the goods are not lost, shall such persons as have not lost their goods contribute? No. for the end was not attained for which the goods were thrown overboard. Part 220.

Cases of this kind, suppose a vessel finds a bar at the mouth of a river and in order to get over it is obliged to unload part of...
The goods and put them into a lighter hay if the goods are lost in the lighter then must be a contribution, for this was for the general benefit.

But suppose on the other hand the goods in the lighter are not lost but the ship is lost - now there is to be no contribution in this case, for if the goods had been on board the ship it would not have contributed to face her.

A question has been made whether the expenses and wages of a crew during the detention or capture of a ship was a general loss. There are different authorities on this subject - it appears not to be settled.

I should say, however, that they ought to be considered as a general loss. Bowers 151. 292. 142.

There are damages, as injury to the rigging so is not a general loss, but a special one to face the ship. East 240.

There as to what persons shall contribute. All persons who have purchased any thing for the purpose of obtaining something shall contribute. But those passengers who may be imposed on by personal commands as fools so are not bound to contribute. Wearing apparel and specie! money solely, I suppose will not subject a man to contribute, demand wages do not contribute that shall 466.
They must contribute in proportion to the property which they have
interested.

The mode of proceeding is this: After the ship arrives the master and
two or three respectable masters go to a lottery public and make protest
that such and such goods were thrown inboard or that so much
money was paid to a Prime for the express purpose of saving the ship.
The articles thrown inboard must be particularized as nearly as the
nature of things will admit of.

After this is done the average may immediately be made by the
Captain and Officers, who are to settle what the average is.

As the persons are eventually liable for this loss they have a lien
on the goods saved and may prevent their being landed or taken
away till average is made. Marshall 466.

But suppose the goods are taken away and there is no contribution
made—how the particular sufferers may bring their actions against
such one who is liable to contribute. If the sufferers are insured
they may look to the Insurer for the loss in such case. There can the
Insurer in such case after he has paid the amount from those who are
liable to contribute i.e. will be free in the place of the sufferers
after he has paid up the loss?

But till such a bill may be filed in favour of sufferers in equity, to
Abandonment.

Abandonment is the act of放弃 or relinquishing possession of 船 or cargo to the government of the port of destination. It is a form of deliverance.

The sum of money taken to what each man-share is to contribute is to have the ship and cargo valued at the port of destination delivery and then estimate the loss by the following rule: As the value of the ship and cargo is to the whole loss, so is each man's particular property to his share of the loss.

Loss by expense of salvage.

Salvage is here meant the expense of saving, and the person who saves the goods may detain them till a reasonable sum is paid to him. This is regulated by Art. 125.

It will now concern that right which thecruiser has to abandon his property to the cruiser.

This abandonment by the cruiser is a transfer of the property to the cruiser in which case the cruiser is bound to pay as for a total loss. Indeed he treated as a total loss.

In what cases may he abandon? 1st. The may abandon in case of capture. The cruiser considers this a total loss, saving the captives and if the cruiser abandoned the cruiser may be afterwards recaptured still the cruiser will hold her.

If the is recaptured before abandonment it's then a partial loss generally, but it may in that case he a total loss if the voyage is
Insurance.

Insurance on the salvage is to be taken at the freight—will be so considered, even if the news of capture and recapture arrives at the same time.

Abandonment is once made it will remain, and either the owner or insured can break or destroy it. 2 Bunn 646.

Abandonment may be made at any time during the capture.

2. Abandoned or abandon if the voyage is defeated, or any fault which shall have place sufficient to frustrate the voyage, or by the King & Co. is sufficient. See 1 K. 2 Bunn 158.

If a captured ship is ransomed there is a partial loss. 2 Bunn 119.

1 Bunn 276.

Suppose a ship on her voyage gets into trouble and is obliged to stop into port and should there be all her freight. Ship, cargo so being unable to go any farther. Now this is a total loss and the insured may abandon. Also a sale after recapture, the insured may abandon. Miller v. Hobson, in Chape.

I. Insured may abandon in case of ship wreck. This is upon the same principle as the last. If the ship is considered and the goods should remain, still it would be a total loss, provided there was no other way ship ready to carry these goods into ports.

But if a ship is thus ready and does carry them it is a partial loss. So if the ship is abandoned and there is no very great damage done to a partial loss and he cannot abandon. 1 Bunn 157.
There is no established rule to determine when the salvage is more than the freight. Pack 186, 320 Par 12004

If the voyage is frustrated by accident or storms the loss is total, and the thing is to convey the goods to the place of destination.

The principle adopted here is if the damage does frustrate the voyage the law will consider it a total loss the in fact is partial. Pack 186, 2 Nov 1898, 1 Strange 1265.

As to when the abandonment can be made, the time is in some countries fixed, but the common law merchant has fixed it upon no certain time. The rule seems to be that the owner must abandon as soon as he hears of the loss i.e. he must inform the insurer within a reasonable time after he becomes acquainted with the loss. 13A 605 680 Pack 172.

8/12/59 23/8 1709.

Notice of abandonment may be given either by word, or in writing, both are good.

The law does not require any particular form for this notice but only that it be explicit. Conversation on the subject merely is not sufficient. 13/12/12.

An sufficient of notice is given to the agent of the insurer. Pack 171, 172. The insurer can never abandon a part when they are contained in one entire policy. The whole in such case must be given up or none at all. But part may be abandoned if the goods are insured in separate policies. It also part may be abandoned if they
Insurance.

Strictly valued in the same way.

The abandonment must be absolute and not depend on any contingency or condition. Marshall 578.

The abandonment is viewed as a transfer to the insurer, therefore when there are a number of owners they all hold as tenants in common without any respect to priority.

In general I believe the right is not transferred by the abandonment as in some countries it is.

The insured do not abandon all their own interest in all cases. If the cargo is valued at £5000 and only £4000 have been insured against, in this case if there is an abandonment the insurers are entitled to one fifth of what is saved, but they are tenants in common with the insured.

Where there is a limitation bond the lender when an abandonment is made is only entitled to his share of the property saved as tenant in common. But in France, Hanover, and other places the lender is considered as mortgagee and to be entitled to his whole money, but if there is sufficient saved.

A ship and cargo are worth £1800 each, wholly worth £3600. A loss of £800 upon the ship, £2000 upon the cargo, and £2000 more upon the ship and cargo. The ship and cargo are to be abandoned. £1000 is saved clear. Insurer upon the ship must have 25-10 = £300. Insurer upon cargo will have £800 and £500.
If a ship is abandoned and it afterwards arrives safe, if the abandonment is made on false grounds, so that there has been a capture or upon a report that the ship has been lost where it was not, in such case the abandonment will not bind the insured but will be void, but if the abandonment was made on good grounds, it is absolute and binding.

A ship was insured from 1 to 1 the cargo lost and abandoned but afterwards several bunks of money were pushed up. Still it was held that the loss was total and the insurers would have the property saved, and from this case we may infer that in subsequent events can make it a partial loss. 4 June 1766.

The insured are bound to face every thing they can before the abandonment is made. If the abandonment is made the captain and mariners must endeavour to save all they can. They are then considered as the agents of the insurers—-and if the captain is guilty of neglect the insurers will have the loss made up in consequence of his neglect.

The captain has an implied power in case of necessity to preserve another ship to carry the goods to port of destination, he also has power to sell the ship and cargo if he deems it necessary and cost the fire-
...must of these goods be other goods and take them by another ship to the port of destination and these new goods are covered by the policy.

Adjustment of losses.
The insurer are to pay the loss. If the loss is total they must pay the whole. If the policy is valued and the loss is total they must pay the value. If the loss is partial and the policy is valued or open then the value must be settled.

And the rule is to take the prime cost of the goods and not what the goods would have been sold for.

If the loss is total or an open policy the prime value and premium, and other necessary expenses are recomputed. The ship is valued at her worth when the sail is added to it the necessary expenses in repairing her upon the voyage.

If there is a partial loss, suppose there are 100 bags of sugar prime cost £30 per bag injured some but sold for £40 if not injured it would have been sold for £50 per bag. The rule is to have reference to the prime cost. The loss is one fifth, the loss is one fifth of the prime cost. If the loss was to take one fifth of what the goods have been sold for, the loss would be £20. But the rule is to take one fifth of the prime.
Return of the Premium.

If there has been an error and the premium must be returned, or when the contract is void at first, the premium must sometimes be returned, and sometimes not.

If a person supposes he has goods on board, and gets them insured but when the ship arrives he finds they were never put on board; the premium must be returned, and if part of the goods were put on board, the strict rule of equity governs and a proportional part of the premium must be returned.

According to Burne if one employs another to do an illegal act, and gives him money to do it, the employer may recover it back if the thing has not been done.

So if there has been a premium given upon an illegal assurance, if the wrong has not been done the premium may be recovered.

But is the law as Burne says? In Long's 3rd, 12th, 19th, 20th, and 21st.

But this is not the case at present, the premium in such case cannot be recovered now. Judge Reeve thinks the decision by Burne was not upon good principles, and that it has been overruled.
If an insurance is made without interest, and the premium paid, the
insurer shall not recover back the premium after the ship has ar-
rived safe.
If a prize is supposed to be taken, and the captain gets the prize,
time to enter safe in port and it happens the ship taken is
the prize, here the premium cannot be recovered. 32 R. 54. 1551. 1353.
This is the only case where a premium cannot be recovered where
the vessel has been run, and no fraud practiced.
Where there was an insurance from A to B and the insured
was put any good on board and no vessel being run the premium
was recovered.
The principle then is this, if the insurance is void at an interior fault
fault of crime, the premium is to be returned except in the
case of the capture of a supposed prize; but if the insurance is
void at an interior through the fault or crime of the party — the
premium cannot be recovered.
If there has not been a compliance with the warranty, if there
is no fraud the premium must be retained if no vessel has been run,
but if there has been any fraud practiced at the there has been no
vessel run yet the premium shall not be retained, the the rule was
So also the premium must be returned when the voyage is given up. for
there is no vessel run.
Insurance.

The principle is, where there is no risque, the premium must be returned. Moreover, if want of risque arises from any illegal or fraudulent contract of the insurer, the premium cannot be recovered back again; and this is founded on a principle of justice. There are however very few of these cases which are not mixed with some risque.

In general, if the risque has once been begun, the premium is not to be returned. There are cases, however, where there is an appointment made, and here the court endeavours to make a distinction between two distinct voyages.

New Han. of opinion says, the judge that these cases of appointment are founded on particular usage of some trade, and that according to the general laws merchant, after a risque has begun to be one, no appointment can be made. But if in fact there are two distinct voyages then appointment can be made.

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Roman at and from 9, to sail at or before a certain given day.

How to say here are two distinct voyages, but the court, there was not enough to bind them, so that in this last can they proceed a usage.

Here are sometimes stipulations entered into by the parties that upon the happening of a certain event part of the premium shall be returned.

Some cases have arisen under these stipulations.
see binns vs. royelles, long. 7 h. 42. 1202. id. 11.

as a rule that if the purchaser puts an end to the risque, the insurer may retain a certain proportion of the premium as a reward for his trouble. however, insurer cannot thus retain if the insurance was upon an illegal trade.

courts of crown have jurisdiction in all matters relating to the shipping act 457. 233. 379. 389. re. on. 525.

most of the disputes arising from this subject are settled by the merchants themselves.

it has been decided that a clause in the policy which says that if any dispute arise it shall be settled by arbitrator, is void and does not vest the jurisdiction of a court of justice. 2 hns. 140. 167. 129.

but if the submitted and an award is made this is conclusive and voidable.

settling and repudiation bonds.

settling bonds were introduced to enable men who had not money sufficient to set out a ship, to borrow money on great interest, and hedge the ship as a security for the payment of it. if the ship is lost by any of the faults mentioned in the policy, the lender loses his money.

the same rules and principles which govern in insurance govern here.
Residentia Trusts are of the same nature as Bottomry Trusts only
the loan is on the goods and merchandise, and the borrower is
himself personally liable for the payment of the money.

Suppose in case of Bottomry Trust an eisiquis is over - the voyage being
given up, so in this case the lender is not entitled to his interest
but to his money only.

In case of a partial loss the whole of the Bottomry bond must
be paid, see in Insurance.

The captain has an implied power to take up money and pledge
the ship in case of necessity. Marshall 639.

For the effect of giving up a voyage in case of a Bottomry bond
see 1809, 163.

After the ship arrives the interest is legal till the money is paid.
Marshall 639.

That no partial loss can affect the bond see Marshall 652.

But the ship may be lost and yet the lender will recover his mo-
oney - and this is when the fault is on the borrower or his agent.
E.g., ship is not seaworthy - she is lost by smuggling - in this case
however lender in order to recover must not be guilty to the smug-
gling. So also a deviation from the voyage will entitle lender to re-
cover. 40114, 152.

So also if the ship is changed without any necessity.

In some countries it is true that in those cases the bond is defended
As common to have these bottomy loads uninsured. Park 423. or 233.
As in case of Dependentia bonds, if part of the goods are lost, it
does not affect the load.

Contracts by Charter-parties.

This is a covenant either in writing or by word, entered into by a
merchant or merchants with the master of the ship, or with the on-
her, importing the freight, or it may be for the use of the ship herself.

It is a rule in these contracts, that if there is no much given out-
ward and no much inward, and she is lost before she arrives at the
port of destination, no freight shall be paid, but if she is lost on
her return home then the outward freight must be paid. Rate 236.

If no freight is to be paid like the return and she is lost on
her return, no freight must be paid either outward or inward.
As an established rule that freight is always due at the point
of delivery, and if paid beforehand and she is lost it must be
paid back again—therefore the master has a lien on the goods
will be paid.

Now if there is any default of the master, that is ground
of loss, and he will lose his freight. E.g. if he return home without
without any leading of going to his own fault, occur if it was
owing to the merchants agent.
Chapter Parties.

If the ship is disabled, the master has it at his option to either to hire another ship and proceed. 2 Bern 582.

Every merchant who loads a ship with goods, has the power of abandonment and a total loss or destruction of them, with free initials, from paying any freight.

And if there is a partial loss, he may abandon if the salvage is not worth as much as the freight. 2 Bern 582.

The master is liable for all damage done to the goods by means of his negligence. So if he sails with a leaky vessel, so they may come upon the master and owners both for the damages. 2 Timo 55. 194. Than 1254.

They often add a penalty to these chapter parties. 20thk 555.

The rule is when there are a number of owners, the majority of interest shall rule of the voyage. Ethan 24.

If the master pays penalties for the ship, the owners are liable for them, the the master himself may personally be liable. 2 Bern 64. Talc 376. of master's

In a rule in all countries that if mariners ciate an open debate, they are to be put on shore and to lose their wages and goods. The captain is to determine in all cases.

To make a capital crime and punishable with death to con-
-agrie to force the ship out of her voyage.

The mariners are bound to stay on board till the ship is
Embarked and the lacket is taken down. They may be made to act as Porters but for this they cannot be specially paid. If they refuse to act as Porters they may be deprived of their wages.

They are entitled to their wages at the port of delivery and any agreement to the contrary is not binding. In the United States an agreement is made binding by statute. 20 usc 728.

If the ship is lost the wages are lost. 1 East. 179. 3 B. C. N. 1844.

Mariners lose their wages by joining a rebellion so that if they do not assist in saving the goods when the ship is likely to be lost.

The mode of proceeding on the death of one of two joint merchants, as to the claims in favor, and against the Company.

Now in all cases of joint mercantile, except that the property into jointly moves in case of the death of one of the joint merchants.

If A and B are joint merchants and B dies his property devolves to his Executor, and does not survive to A.

But the right of collecting survives to A, and you cannot bring a suit against A & Executor, you must bring it against A alone.

Every other right except that of seizing is in the Executor.

But suppose it is a bankrupt and unable to pay the debt and B was a man of property, here in this case B's Executor may be sued, but it must appear in the record that it was a Bankrupt and unable to pay the debt. 2 nyc 265.
There are certain cases in which contracts may be rescinded among merchants, which is unknown to the common law. This is called *stopping in transitum*. E.g., suppose one merchant sells goods to another, and before they are delivered to him, he discovers that the buyer is in failing circumstances. Here he may stop the goods and thus vacate the obligation and rescind the contract. But the seller does this at his peril.
Public Wrongs

The principles of this branch of the law are so simple that I shall give you very little that what may be found in the elementary books. This is the least simple branch of municipal law.

That branch of municipal law which treats of public wrongs, is called criminal law, treason law, and Pleas of the Crown which appertains to criminal law.

Public wrongs include all offenses against this law.

Crimes or misdemeanors consists in the commission of some act prohibited by law or in the omission of some act commanded by the law.

Crimes and misdemeanors are synonymous terms.

Crimes or misdemeanors differ from private wrongs in this that crimes an an infraction or violations of some public right inherent in the community, and private wrongs are an infraction or violation of the right of an individual considered as an individual. 488.5

In almost every case public wrong includes a civil injury E.g. taking, dead, theft, so.

But it does not include one in every case E.g. a Public nuisance may have done Injury to any man but still be a public nuisance.

But as generally a public wrong includes a private injury.
Central Law.

The object of the law is to give a twofold remedy, one for the public wrong and the other for the private injury.

The party affected by the crime is to prosecute the remedy.

So in case of battery, the King is a monarchial government, and the People in a popular one, prosecute for the public wrong, & the party beaten prosecutes for the private injury.

This is a material difference between the act and the offence. The act is the thing done; the wrong is the injury done. The act is a species, the character which the law affords to that act.

Hence one act may constitute many different offences, and so one entire offence may consist of many acts.

E.g., if A should strike B ten blows in succession how all these acts being committed in continuance constitute but one offence. The civil injury and the public wrong are distinct.

If the public wrong amounts to B零售, the private in- cluded in it, is brought in the public wrong, and the individual has no remedy. 4 Blom. 56. Bald. 136. 2 Rolle 357.

This doctrine of aggregate has been variously accounted for. It is said by some to be founded on the policy of the law in order to bring the offender to punishment. But I see no reason for this rule. 3 P. R. 176.

But the true foundation of this doctrine seems to be, that the punishment (which the law inflicts for the public wrong,
Criminal law.

Criminal law.

Penalties are imposable on the offender to satisfy the party injured. In all the cases and property are the only means of making satisfaction, and there are both forfeited in case of refusing to satisfy public justice, nothing remains to satisfy the civil injury. This seems to be the true doctrine of usurp. 2 Strange 373. 2d Reg 1572.

But if the crime does not amount to treason the individual has his remedy by a civil action as there is no statute here. In Connecticut the doctrine of usurp has never been regarded in any case. Civil suits have been sustained here for arson, burglary, and I believe for poisoning, and the reason of this is that here there is no statute of property.

Penalties occur in two cases only in Connecticut. 1st. For destroying a public magazine, and 2d. for treasonable utterances. These are provided for by Stat. of Connecticut 192, 155, 255.

But in neither of these cases is the life of the offender taken.

In case of this kind, in Connecticut, it brought a civil action, e.g. B, and secured judgment against him by information of Portland by securing a witness to prove himself, here the defendant in the former suit brought an action against A for the civil injury, but the court determined that the action could not be sustained because it would infringe the former judgment.

Norwich vs. Hearst. Thus far of the general nature of crimes, as
Criminal law.

contrasted with private wrongs.

Of the Nature of Punishments.

It seems to be agreed that the right of punishing for crimes is founded on the law of nature, and this right in a state of nature vested in every individual so to deprive individuals of this right is to destroy the sanction of the law.

In a state of society this right is transferred to the sovereign power. Society right to inflict punishment is from the consent of its members and supposes a compact.

But this notion of compact does not authorize punishment in every case. As in case of positive offenses or those created by positive law, not against the law of nature. Here the right of punishment is not derived from the consent of the members, because they were forced to exercise those rights. 1 Bouleauq 14, Poley 341, 10 Batt 48, 74.

This theory is of but little practical use. But I conceive the true and rational right of inflicting punishment in any case is founded on necessity or general expediency, even were formed for society and never can exist without it, but society cannot exist without a right to punish offenders. 1 Poley 349, 1 Steele 26, 13 4 B 67.

The end or final cause of human punishments is the prevention of crimes and this is effected in these ways.
The rule is different in civil injuries, for the intention here is not considered. 4 B. C. 20.

Now there is a defect of will in these cases. 1st. Defect of understanding. Hence infants under the age of discretion are not punishable for any crime whatever. Criminal law punishes guilt—civil law gives damages. 1 Warn. P. C. 1. 4 B. C. 22.

As a general rule of civil law that if the crime consists in an omission, an infant 14 years of age or under the age of discretion is generally not punishable. This rule proceeds upon the ground that an infant cannot
Criminal Law.

the command of his person or his property. 1 Edw. 26. 4 B. 22.

The age of legal discretion is 11. Under that age he can't disinherit. But at 17 and over he is liable. The same as an adult i.e. want of age does not excuse here.

Under 14 the presumption is in favour of Infants. But between 14 and 17 in capital cases, this presumption may be rebutted. Whether it may be rebutted in other cases is not clearly settled in the books, but from what Justin Blackstone says on the subject it would seem that it cannot be rebutted. 4 B. 23. 1 Hawk. 2. 2 Edw. 27. 25. 20th Ed. 72.

An infant under 14 cannot be punished for crimes and misdemeanours not capital. Under 17 he is not a subject of punishment and this presumption can never be rebutted. idiots and lunatics are not punishable while under this incapacity. But if a lunatic commits a crime in a lucid interval, he is punishable. 1 Edw. 10. 61. 1 Hawk. 2. 4 B. 24.

It was formerly supposed that deaf and dumb persons were not punishable for crimes. But it is now settled that these persons may be tried and punished if it can be made to appear that they were capable of receiving ideas by signs. Dovell 3 Ser. 106. 3 S. 1. 18th 155. 2 Hawk. 462. 4 B. 324.

On the ground of want of understanding will excuse a man from
Punishment is clear that if a man becomes insane after he has committed a crime, he cannot be arraigned, and if he becomes so after he is arraigned he cannot be tried, and if after tried judged cannot be pronounced, and if after sentence is pronounced he cannot be executed. Whether he is insane or not must be tried by a jury.

1 Thess. 2:4; Rev. 24. 18; Acts 3:7.

And upon the same principle he who incites a mad man to do an unlawful act is himself the offender. He is an accessory, but principally for a mad man, he is well but in mere instrument. 1 Thess. 2:7.


But a want of will arising from voluntary intoxication will not excuse an offender. A man can excuse himself from a forbidden act, but J. D. E. E., says all of opinion says all of such a weakness a habitual debility of mind brought on by a long course of intoxication would excuse him.

1 Thess. 5:24, 12:5. 1 Thess. 2:13. 1 Thess. 2:7.

Here I consider this debility as a consequence of desire and this desire terminates in the want of understanding.

But when this intoxication is not voluntary but occasioned by force or fraud, the want of understanding will excuse from punishment. I have this far treated, where the defect of will arises from a defect of the understanding.

But there are cases where the will is neutral, and it is a general rule that if one commits a crime from chance or accident, it will excuse.
Criminal Law.

This case is of this kind in homicide.

But if a man commits an unlawful act voluntarily, he is liable for an unintentional injury. (March 6, 1870, 46, 424, 424, 128)

I allege, in support of the point of fact, that if it should be held upon the ground that he was not guilty, the words, "the act was not a deliberate criminal," but civil, it is so.

But no man can excuse his ignorance of the law, that will never be permitted, because it is the duty of every man to know the law, not because it is impossible.

Now the reason why ignorance in point of fact excuses, and ignorance in point of law does not is that in a mistake in point of fact, the will does not come into the act, but in point of law, it does. (June 8, 87, 86-87, 86-87, 18, 1870, 17)

This may be a defect of will arising from confusion in necessity, and the rule adopted affirms the act. (August 27, 1870)

A married woman is in many instances excused from punishment by the coercion of her husband and the rule goes so far that it excuses a crime in the presence of her husband; she is excused and the husband is liable.

If she commits theft or burglary by the coercion of her husband, she is excused, but if she does it voluntarily or by his command and alone, she is not excused. (June 18, 87, 86-87, 9, 9.)
But in case of becoming hundered and diligent, the is not excused even if the is convicted. 4 B 29. 230. 241.

In the case of manslaughter a woman is not excused on the ground of marital coercion. 4 B 29. p. Christian notes. 11 Taw 4.

But a child is not excused by the command of his parent, nor a descendent by the command of his master. 11 Taw 3. 3 Fl 35. 3 B 35.

In these cases there is a want of compulsion, working a defect of mind that will excuse an offender, as where one commits an offense under duress for minor. But this will not excuse all offenses. 4 B 30. 11 Taw 52.

But this last rule holds true only as to positive offenses, not as to natural ones. 4 B 30. 11 Taw 52.

Another species of necessity arising from a legal compulsion where the rule is failure. To if an officer is obligated in doing his duty the may in all necessary violence to perform his duty. Here he acts in pursuance of a duty which the law imposes on him - the law does the act by him. 11 Taw 52. 4 B 30.

It has been a question whether a man excused himself for stealing in case of coercion want or necessity, but it is now settled that he cannot so excuse himself under principle of law which provides in all cases for the persons. 4 B 30. 11 Taw 54.

As two or more persons may be concerned in the commission of a crime this law has established a difference between principals and accessories.
Criminal Law.

The crime of Principal in two degrees: one in the first degree is he who is the actor or actual perpetrator of the offence. A principal in the second degree is one who is present aiding and abetting the actual perpetrator. The books do not all agree in this distinction, but I believe I have given you the correct one. 4 B. B. 634, ante, 615.


This distinction is not the same as it formerly was. 2 Doug. B. 523. 1 Doug. B. 437.

I have remarked that a principal in the 2° degree is one who is present, etc., but this need not be an actual presence, nor, in fact, being a sight; constructive presence is sufficient. And one stands as a guarantor or a spy. This is constructive presence, for he is assisting the other. 2 Doug. B. 350. Doug. 177. 2 Doug. 7. 572.

And for the purpose of assisting a person for aiding or abetting in any offence it is not necessary that the actual perpetrator should be known, known, the usual form of the indictment would seem to make it so. Leech 29. 2 Doug. 574.

This distinction holds in cases of felony; created by Stat. as well as in those created by Common Law. A Stat. felony is subject to all the incidents which accompany a Common Law felony. 2 Doug. 525.

It is not unusual to have that constructive presence be proved to make a principal in the 2° degree; it can only apply where a principal of the 1° degree must be present.

It is not necessary that a principal of the first degree be present.
when the wrong is committed, as in case of poison, and of letting
live famine beasts. 1 B 6 34. Reeling 52. Postle 349. 2 March 448.

B. 44.
But it is indispensably necessary to make a principal in the 2nd
degree, that he should act and assist in the wrong, and hence if
a special victim is found that the prisoner was present, judgment
cannot be rendered against him, he must assist. Reeling 77. 4 B 342. 2973.
2 March 527. 53.

An accessory is one who is not the chief actor in the offense, nor
present at the commission of it, but one who is some way concerned
in it either before or after the fact, so he must not have been present
to constitute an accessory, for that would have made him principal
in the 2nd degree. 4 B 35.

There are some offenses which do not admit of this distinction, but
generally there may be principals and accessories in felonies, but there
are some exceptions. In high treason all are considered as principals.
1 B 2 6 13. 12 B 51. 4 Post 57. 4 B 35.

It is to generally true that whatever will make one accessory in
felony will make him a principal in high treason, and this whether
before or after the fact. 1 Post 6 55. 2 B 439. 12 B 51. 8a 2 96.

There may be accessories in petit larceny and Muder and generally
in all those cases where the crime was premeditated. But in other
Aedelbo. Then can be accessory after the fact only.

In order to be an accessory, the law requires that the person be aware of the crime before it is committed. If they are aware of the crime and do not stop it or report it, they can be held criminally responsible. 48636

The guilt of an accessory follows that of the principal. He cannot be guilty of a higher crime than his principal.

Wills 615. [Paragraph 132. Exe 415]

Accessories are of two kinds: 1. accessories before the fact; 2. accessories after the fact.

Accessories before the fact are those who encourage, counsel, or conspire with another to commit a crime. They must be aware of the time of the fact committed, or they will be considered principal. 2 Wills 445.

Wills 615. More 475.

And he who procures another to do an unlawful act is accessory to all that comes within the description of the act. But he is not liable for any thing which does not come directly from it. If it causes B to beat C and to die of the beating, it is accessory. More 475.

[Paragraph 671. Exe 686 37. 2 Wills 4616]

To render one accessory in a felony too necessary that the crime be committed. But it would seem from modern cases that to inherit one to commit a crime is to authorize the act, and not done. 2 East 55

[Paragraph 531. Exe 475. 2 More 7. 8 Exe 101]
to procuring another to commit a crime, but before the commission of the act, and if the act is committed, how the one procuring would not be an accessory, as it was not done by his request. He would be liable for a misdemeanor for soliciting the offence. *Ry. 475.*


But felons admit of accessories, but the law is silent as to them. *Dech.* 164.

2 *Haw.* 447.

And it is a general rule that all persons who are present where a felony is committed and do not endeavor to prevent it to the extent of their power are guilty of a misdemeanor. How the law does not require a man to expose himself to imminent danger.

It must appear to the jury that they were competent to prevent it, in order to make them liable.

Exception in case of infants, they are not liable in such cases, as they are not liable for crimes of omission which I have before observed.


"Accessory after the fact is one who receives, withers, comforts or assista a felon knowing him to be such."
This definition of literally construed would take in many cases which are not accessory. It must be such assistance as tends to prevent him from being brought to justice. To becoming charity over to Peter, and even knowing him to be such does not make one an accessory if it is not done with an intent to prevent him from being brought to justice. 1 Thess. 4:14. 1 Pet. 4:7. 486, 35.

The buying and receiving stolen goods of a Peter did not make an accessory at common law. But once by that they are made accessory after the fact, one that makes them principals. The person buying must know them to have been stolen. 2 Thess. 4:5. 1 Pet. 4:8. 35.

But of leastest of theft.

But we have to constitute an accessory after the fact the crime must be completed before the assistance rendered. 2 Thess. 4:5. 1 Pet. 4:8. 42.

But a married woman is excused by deserting her husband to escape and the reason of this is she is supposed to act under his coercion. But no other relation except parent cannot assist his child, nor child his parents, nor of master and servant.

Neither can a husband assist his wife. 2 Thess. 4:5. 1 Pet. 4:8. 35.

In the prosecution of an accessory it has been decided that when one has been indicted to have been accessory to two principals, proof that he was accessory to one is sufficient to support the prosecution. 2 Thess. 4:5. 1 Pet. 4:8. 35.

I think I should show the principle of this rule.
Criminal law.

It is a general rule of law that an accessory shall suffer the same punishment as the principal.

But benefit of clergy is allowed to accessories after the fact by Pak. 4K. 609.

It was formerly held that an accessory could not be tried till after the principal had been convicted. But the rule is now relaxed. The accessory may be tried at the same time with the principal, and the law now stands that an accessory shall not be tried so long as the principal remains liable to be tried hereafter.

1. Wardro 158. 455. Leach 18. 4B 6 40. 328.

In England there are two acts providing that an accessory in certain cases may be tried even though the principal has not been attainted or even tried. He is liable to be tried only for a misstatement and not as an accessory under these. That is the rule of common law still prevailing. 2 Wardro 453. 4B 6 328. Leach 167.

If the principal is tried and acquitted, the accessory must of course be discharged, and this rule is pursued up through all its consequences.

So if judgment is reversed against the principal it is impossible for the accessory to be reversed as against accusing. 2 Wardro 452.

The death or pardon of the principal after attainted at common law does not avail the accessory.

But in common the death of the
principal after conviction but before attainture or pleader. Thus the acquittal, for there is no certainty of guilt till judgment is passed. 2 Marsh. 453. 4 B. & C. 323. But the case laid in R. 2. 4. is now altered by Stat. of Anne. 2 Marsh. 469. sect. 11.

If a person has been acquitted on an indictment for accessory he may be afterwards indicted as principal both before and after the fact.

But if one has been acquitted as principal whether he can be indicted as accessory before the fact is not settled. But if after the fact he is settled he can. 2 Marsh. 322. Rolle 25. 4 B. & C. 40. Porter 361. 2 Marsh. 29. 2 Black 747.

In an indictment against an accessory it is not necessary to allege that the principal committed the offense. It is sufficient to allege that he has been convicted. 7 T. R. 165.

2 North 274.

But the accessory cannot be tried till the attainture of the principal yet this attainture of principal is not conclusive against the accessory and not even against the principal, for he may have been convicted contrary to law. 2 North 1456. Porter 121. 365. 2 North 464. 96. 115.

And the same indulgence is allowed to accessory when both are tried together.

I have thus far treated of cases in general. I now
to consider particular crimes, and 1st of felony. Felony is any
offence which occasions at law, law a total forfeiture of goods or lands
or both. The law Felony is general, it does not specify any
particular offence. 1888 466.

It seems this term originally denoted the penal consequence
of a crime, hence it has been used to denote the forfeiture. Reason
is strictly a Felony because it works a forfeiture. But it has long
been dropped as a crime by itself, it is not called a Felony.

231, 15. 486 466.

According to this description of Felony, capital punishment
indicates of course a consequence of felony, but it is almost always
excluded. And on the other hand there are capital offences
which are no felonies by Felony, standing alone to which were
punished with death the there was no forfeiture either of goods
or lands. 231, 146. 486 495. 277. 2 206 19. 190. 1972. 208.

All felonies which are capital punishment work a forfeiture
of all goods and lands, and those which are not capital punishment
occasion only a forfeiture of goods. Reason of this seems
to be that attainer is necessary to work a forfeiture of lands.

192. 486 497. 297. 287. 357. 387.

By general usage Felony is now made up of to mean a cap-
itive offence or crime, as capital punishment was almost always
Terror law.

Suprasadda.

Terror includes all capital crimes below high treason. It is a flat enacted that any given act shall amount to a felony; it is understood that the offense shall be punished with death.

To also of a flat enacted that any given crime shall be capitally punished that crime or offense is a felony. Mark 16:8.


Crimes which in Eng are called Felonies are called Felonies here in screen. No those in Engafores, Tater, Robbery and Burglaring so are called Felonies here, but they occasion no forfeiture. belong to Felonies are those in which the benefit of Bleggy is allowed. It is a species of pardon which exempts Felon and those convicted to death from capital punishment, but it does not prevent the forfeiture of goods.

For a more particular account of this subject of benefit of Bleggy see the Elementary writer. This title is wholly unknown to the laws of screen, and I believe to all the States.

Homicide.

Homicide is the killing of any human creature or his own killing. There are three kinds of Homicide—justifiable, excusable, and felonious. Any species of homicide consists in the killing of some human creature.
Homicide

Homicide is then in not excusable criminal, is of justifiable homicide. The law annexes no degree of guilt and no excusable homicide. The law affixes very little punishment. There appears to be only a nominal difference between justifiable and excusable homicide. Porter 258. 2 Wash. 537. 539. 100. 105.

Justifiable homicide is of several kinds. It is justifiable when occasioned by necessity. A sheriff or his deputy is justified in executing a criminal sentenced to death for the acts under the authority of law, he is a mere agent of the law.

Harland 105.

To make a justification in such case the law must require the act to be done and the person to do it and no other person than the law requires as the sheriff or his deputy can do it.

336 178. 2 Bax. 67. 1 Harne 106.

And the officer whose duty it is to execute the sentence of the law must do it in pursuance of that sentence and inflict the punishment in that mode in which the law points out, and if the class of in any other way he is guilty of murder.

An officer cannot behind a criminal sentenced to be hanged.

1359. 1 Harne 106. 1 Hale 571. 4 Bax. 179.

And in the manner of executing the officer the sentence must be passed by a competent jurisdiction so if he not the officer and the court would be guilty of murder and even the the person.
Parricide

was guilty of a capital crime, for here it concerns justice.

10 to 17: 5 to 106. 1 Stow 105: 130. 462: 471.

But if the court which have competent jurisdiction pro-
tence of death where the offence does not amount to a capital
crime, the judges are guilty of murder only and not the sheriff, for
he acts under the direction of the law and the subject matter is
within the cognizance of the court. 1 Stow 106, loc. cit. 99. 3 Stow 674.

Secondly, Parricide is justifiable when committed for the advance-
ment of public justice, i.e. if an officer is resisted in making a
peaceful arrest. He may use all necessary force and violence to take the
person and if he cannot take him alive, he must take him dead.

So if an officer attempt to seize a riot and meets with op-
osition, he may use all necessary force and violence and if neces-
sary take the life of the persons resisting him, and this he may do
also, he has no warrant for the purpose, in which case he acts
more under the permission than by the command of the law.

1 Stow 106. 9 to 68. 184: 474. 2 Stow 550. 570.

If a felon resist or flee from his pursuers if they act without
a warrant, they may take his life if necessary. This must be an
actual felon, not a suspicious. 1 Stow 106. 404: 271.

This rule proceeds upon the ground that he is the duty and right
duty of every member of society to take a felon.

An officer having a warrant may use all necessary force and vi-
Punishment is not liable.

But if a private man or officer attempts to arrest an innocent man on suspicion and takes his life, he is liable. The act on suspicion acts at his peril. So they are justified or not according to the event when they act on suspicion. Porter 318, 2 March 572.

When a person is acting under authority of law, civil processes are justifiable as criminal process.

In either case if the person cannot be taken alive he must be taken dead. [Book 147.

There are many particular cases which fall within this rule.

[Strength 499, 2 March 566, Porter 293.]

Punishment is justifiable when he does or commits to prevent any atrocious and forcible crime. In a general rule that where a crime is not committed is endeavoured to be committed by force, it is lawful to repel that force by the death of the party attempting.

But this rule does not extend to those cases not accompanied with force. The law considers every crime as accompanied with force, yet there is a distinction between actual force and the want of it. The person is justified by taking the life of a person attempting to trick his pocket unless he has done with force. So also if a person attempts to break open a house in the day time it is not justifiable to take his life. So also if one attempts to commit a robbery, his
Homicide

He cannot be taken even the he done with force. But it will justify a killing in a civil action. *Proct. 271, 275. *Reading 137.

If a licit attempt is made on the person of another and the person is killed, the party so killed may justify it on the ground of self-defense. This is not justifiable but excusable. *Proct. 489.

*Reading 272. *March 139.

A woman may lawfully kill a man who attempts to violate her chastity and a husband or parent is excused in doing the same thing to any third person interfere, and if he commits homicide he is justified on the ground that he has a right to prevent a crime which would be capital punishment. *Proct. 274.

*Reading 137. March 139. March 138.

According to old opinions justifiable might be specially pleaded in the last cases it must be given in evidence under the general issue, and now seems to be held that a man cannot be convicted only on the general issue, and as the justification is a denial of the material allegation. *Reading 137, *March 475, *March 465.

Justifiable homicide is not punished at all, the only lesser offense is that the party is not guilty.

Excusable homicide.

There is a very small distinction between this and justifiable homicide. The one is lawful, the other criminal. If one there is no degree of guilt in the latter only a small degree of it.
Homicide

Homicide is of two kinds. 1st. Homicide by misadventure. 2nd. Homicide by murder.

1st. Homicide by misadventure is when one is doing a lawful act without any intent of mischief involuntarily kills another. It is necessary that the act be lawful, as when a man is at work with an ax, and the head flies off and kills a by-stander. If it is riding and B strikes, the horse involuntarily by which means the horse runs over another man and kills him, here at the side is guilty of homicide by misadventure. If no principle in this case, for the side is not the agent but certainly is reckless. Parker 253.

Reading 49. 1 Samuel 11. 4 36 182.

If a Parent in correcting his child in a lawful manner should kill him, he is excusable on the ground of the unavoidableness of the act.

So of master and servant and master and prisoner.

But this rule does not extend to those cases where the teaching is outrageous, nor where the punishment is inflicted with an instrument endangering the life of the person. In such case it would be murder. So when a Blacksmith charred his apprentice with a bier of iron by which means he died, this was held to be murder.
But if death accidentally ensues in consequence of an unlawful act, the author is guilty of manslaughter at least; and in some cases of murder. According to authorities, this unlawful act must be material and not mere provocation. Thereafter are no cases contrary to this rule.

If the unlawful act is a trespas, the homicide is manslaughter but if it is felonious, the homicide is murder. Proct 255. 272. Reeding 147. Part 134. 136. 112.

If one intentionally kills another in the execution of a malicious and deliberate design, with intention to do him bodily harm, he is guilty of murder and not manslaughter, for the law here deems it to be intentional. 186. 117. 105. 117. Reeding 117. Part 134. 117. 117.

And in general, if homicide ensues upon any unlawful act which commonly tends to bloodshed, the act is manslaughter, or murder.

E.g. in case of a boxing party, and if one in doing a mere idle act without intention to kill, if the tendency of the act is to occasion bloodshed, it is manslaughter of death ensues. 185. 185. 185.

But if death was occasioned in consequence of lawful sport or pastime, it would be homicide by misadventure, since the act is lawful but in the former case it was unlawful. Proct 260. 186. 117. 117.

4. 5. 183.

Homicide by Self Defence. This happens where one is in a
Homicide.

Homicide.

Homicide.

Homicide.

Homicide.

Homicide.

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Homicide.
This rule may be frequently apt to mislead, but I know of no better
according to some old authorities opinion is immaterial whether the
party injuring or the party injured commits the offense. But it is
now settled that the party making the first attack cannot excuse
himself if he kills his antagonist during the affray. 3 H.8 pp. 657
If the assault is made with intent to kill, but the plaintiff
is beaten and flees and is pursued by the party, and then turns
on him and kills him, i.e. the plaintiff asplaited he cannot excuse
himself. 1 Buck 113. 123. Reading 55. 128.
If two persons agree beforehand to fight and one is injured by the
other and kills him, the murder is murder on account of homicide settled
vice. 1 Buck 122. 112. 1 H.4 p. 473. 1779. Reading 147. 151.
To be understood that this rule extends to those cases where
the agreement to fight and the actual fighting is done at one
and the same time, executed immediately there is no set of punish-
ment, but it only extends to those cases where the agreement
is made at one time, and executed afterwards. Reading 147.
1 Buck 125. 112.
It may here be observed that in a duel the seconds of the party
killing the guilty of murder, but the second of the party slaying
is guilty of a high misdemeanor at least. 4 B. & C 1779. 1 Buck 126. 1 H.4 p. 58.
Homicide.

This excuse of self defense extends to the chief and natural in civil relations. Thus a husband is excused for killing one who assaults his wife. A master and servant, or any stranger may take the life of the attendant, if there is danger of a capital crime being committed. 1st Hale 454-456. Bellin 237. 1338-1356.

The killing of an officer who is attempting to arrest a man will not excuse the person killing, and this is true if the person of the arrest is illegal if the legal good and good on the face of it.

An officer is justified in obeying any officer which is valid on the face of it. 7th N. 455. 2d Mark 488. 506.

The excuse of self-defense must always be given in evidence under the general plea. 1st Hale 455. 1st Mark 165. 1st Mark 283.

רכה homicide is said to have been annually punished with death but this is changed by modern authorities. 2d Mark 143. 313.

Brantly it was punished with forfeiture of goods and chattels.
486 188. 17th Mark 115.

It has always been held that the party convicted of murderable homicide is entitled to advice and of right to pardon and exculpation of goods. And in leg. the judges generally direct the jury to acquit. Postle 233. Bellin 58. 1st Mark 15. Postle 288. It does not admit of acquittal because it is not felonious. 2d Mark 447. 1st Hale 615.
FELONIES

The third species of "FELONIES" is called "felonious homicide." Felonious homicide is the killing any human being without justification or excuse. This definition follows from the division of homicide.

Felonious homicide may be committed by destroying one's own life or the life of another. He who ends his own life is called a "felo de se." A "felo de se" is one who deliberately puts an end to his own existence or commits any unlawful malicious act, the consequences of which is his own death. [R.S. 1997, Title 12, Part 102, Title 102. 1 Thess. 102.]

If one person request another to kill himself and he does, the latter is called a "murder" and the former is called a "felo de se." [1 Thess. 102.]

Every person in order to be a "felo de se" must be of sound mind and in his senses, else he is an "insane." [1 Thess. 102.]

Self-murder admits of accomplices before the fact, but none after. As in other forms of murder another who conspires another to kill himself is an accomplice. [R.S. 1997, Title 12, Part 102, Title 102. 1 Thess. 102. 1 Thess. 102. 1 Thess. 102. 1 Thess. 102.]

The second kind of felonious homicide consists in killing some other person without justification or excuse, and is either with or without malice, and the circumstance makes the division of manslaughter and murder, and the specific offence is that the former is without
Parricide.


Manslaughter is the unlawful killing another without malice except in self-defense, and may be either voluntary or involuntary. [Psalms 45:6.

There can be no accomplices in this crime before the fact—because to not premeditate; but there may be after the fact. [Psalms 115:48. 66:191.

1st. As to voluntary manslaughter.

If two persons upon a sudden quarrel by fight, and one kills the other, the offence is voluntary manslaughter.

If upon a challenge given by one party and accepted by the other, they go immediately and fight and one is killed, it is voluntary manslaughter.

But if after the challenge was given, the parties do not fight immediately, so that it is not an immediate act of passion in this case if one should be afterwards killed in consequence of such challenge—offence would be murder. [Psalms 197. Joel 1:6. Ezekiel 15:15.

2 Thessalonians 3:5-6.

If a person in attempting to beat two persons who are fighting is killed by one of the parties, the offence is manslaughter provided that the party had notice, that he interfered to quell the affray, but if he had no such notice, the offence is manslaughter. [Psalms 115:48. Joel 1:6. Ezekiel 15:15.

If a person is greatly provoked by the misconduct—nature of
another, as by pulling his nose, or spitting in his face, and by such
deadly words the wrong does, the killing is manslaughter. This is
really revenge, and does not proceed from malice aforethought.
But if there be sufficient time elapse for the passions to subside
and be subdued then kill the wrong done, the offence would be murder
February 27th. 96. 376.

The above rule is not universal for the he executes his revenge imme-
diately but still with a manifest intent to kill a so great bodily
harm, the offense is murder. So tying a boy to the last of a horse by
means of which the boy was killed this was murder, for there then
was a manifest and deliberate intent to kill. Hale 474. 1763.
Ruling 176. March 176.

If a husband kills a man in adultery with his wife and imme-
diately kills him it is manslaughter, but if he delays it for a time
sufficient for the passions to abate and then kills him, the offence
is murder. Hale 486. May 212. 1788. 1791. Ruling —

It is to be observed that bare words, or insulting gestures, or breach
of engagement, or trespass on land is mere a sufficient provocation
for a sudden killing, and in such case the offence is murder.
But if on the other hand when a provocation of this kind takes
place and the party abuses another, the other said in such a man-
ner or it is apparent that he meant nothing more than char-
Homicide

Terror and ill-temper, the essence is manslaughter. 1 Beale 124.
Roeing 130. Porter 316. 4 B. C. 200. Roeing 53. 60. 64.

To take down generally in Roeing that if upon a sudden affray between A and B, the friend of A suddenly interposes, and kills B, it is manslaughter. This rule I think is to be understood with some restrictions, for if he should interpose in such a manner as indicates an intention to kill, I presume it would be murder. Roeing 366. 61. 12. 697.
Porter 315.

Translational on a sudden provocation differs from excusable homicide or self-defense in this, that in one case there is an apparent necessity for self-preservation to kill the aggressor, and in the other no necessity at all, it being a sudden act of revenge. 486. 192. 148.

Involuntary manslaughter.
This is the term is always unintentional, but occurs upon some unlawful act which it is said by many writers must be unlawful. 2 cent. 930. Porter 255. 261. 452. 192.

If one occasions the death of another by an act which is unlawful, but not prohibited, the act is the same as if it was not prohibited at all, but lawful. 2 Black 558. Porter 259. 1 Beale 495.

If one accidentally kills another in idle and dangerous sport, it is manslaughter as such, sport is unlawful. 1 Beale 472. Porter 251. 292. Porter 136. 1 Beale 112.

But if the act is lawful in itself, if done in an unlawful manner and death ensues it is manslaughter by throwing down a piece of
Homicide

homicide from a building in a large city, Things 1.81. Porter 2.63.

But the involuntary homicide occurs after the doing of some un-

But the involuntary homicide occurs after the doing of some un-
terful act, let it not be understood that homicide occurring after

the consequences of every unlawful act is manslaughter.

If it be in the prosecution of a felonious intent, or in its consequen-
ces naturally tending to bloodshed it will be murder. If more

more intended than a civil breach it will be manslaughter.

1 B 6 741 B. 1 Wrayk 1.66. Poeling 117. 9679. 89. 4597.

Manslaughter is a felony but a chargeable one, the the offender suffer-

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A forfeiture of goods and chattels, and by way of commutation some

A forfeiture of goods and chattels, and by way of commutation some

corporal punishment, as turning in the hand, whipping &c.

1 B 6 178. 381. 387.

As to the manner of allowing death, the science Premium it in open court.

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killeth any reasonable creature in being and under the King's
Homicide

peace with malice aforethought either expressly or implied

This definition of latter contains superfluous parts which are entirely unnecessary. I should define murder to be "the unlawful killing of any reasonable creature with malice aforethought either expressly or implied."

I suppose this to be a complete definition.

But in treating of this subject I shall pursue the definition as laid down by Sir B. Coke.

1. When a "person of sound memory and discretion" so fatal there is no need of these words for they are always implied, every offender must be of sound memory and discretion. 4 Bl. 28.

2. "By unlawfully kills another." The unlawfulness of the act arises from the killing without warrant or excuse. The killing must be an actual killing - an assault with intent to kill is not murder but a high misdemeanor. 1 Dall 425. 4 Bl. 176.

The act of directly taking away the life of another is not only within the rule but also any act of which the probable consequence is death is within the definition. So killing a man with poison is within it. The modes are indefinitely various and the rule is made to extend to all. 1 Tract 133. Wm. 884. 1 Tract 141. 19 B. 176.

So also the case of a son who carried out this sick father against his will in a very cold morning which caused his death - this was a killing within the definition.

So whereas a woman left her child in
Homicide

The road to plance to death and to war killed by a hilti, she was guilty of murder. [Peace 431. 4 B. C. 197. 1 Thess. 118.

Another case is that when Parish officers carried a child from Parish to Parish, by means of which it died. (Exod. 14.)

to if a factor breaching a prisoner to have an infectious disease into another prisoner in the same room with him, by which he, the act is deemed a killing within the definition.


If a person has a servant, beast who is accustomed to desirability and he permits him to go at large and he kills a person, the owner is guilty of manslaughter but if he knows him not designed to do purpose he is guilty of murder. (Peace 430. 1 Thess. 118. 4 B. C. 197.

285 A person may be deemed to be guilty of the killing the immediate act is done by another as when a person directs a madman to kill another. (Peace 3. 118.

It is not settled whether bearing false witness against another with an express, premeditated design to take away his life, so as the innocent person be condemned and executed be murder, as noted. 4 B. C. 196. Peace 139. Deut. 44. 1 Thess. 119.

In connect to provided by that that whereoever shall bear false witness against another and on purpose to take away his life, he shall be punished with death, even the the innocent person
is not condemned once convicted. Stc 132.
If a physician or surgeon administer a potion or plaster which
occasioning the death of the patient be homicide by this definition.
But it has been said if a person had thus administered he would
be guilty of manslaughter—the this is now enacted into the law.
Stc 132. Bc 664. 486 197.
A person can be adjudged to have killed another unless the death
happens within a year and a day after the injury is done. In com-
pleting this time the whole day on which the injury is done is the
first 1965. Bc 664. 486 197.

But if the party dies within the time he no excuse for the prisoner
to say that the deceased might have recovered if he had had
better medical aid.

But if one gives another a wound not mortal and the person is killed
by medical application, the one who gave the wound is not guilty

A person indicted for one species of killing cannot be convicted by
evidence of a totally different species.
But when the mode of proof varies only in circumstances the
evidence will support the indictment. 2 Bc 26. 96 67. 486 196.

If it is indicted as Principal in the first degree and B as Prin-
cipal in the 2d and on trial if should appear that A was prin-
cipal in the first and C in the second the indictment can be
Homicide.

It's laid down as a general rule in law, that the intention must
make that the person gave the deceased a mortal wound or worse.
But I suppose this can only be true when there is force used, and
not in those cases where there is no force as in stabbing.

Leash 95.

The next part of the definition is a reasonable creature
in being and under the King's protection. No alien and outlaw are
therefore within the rule. Indeed the killing of any person but
an alien enemy in time of war is a killing within the rule.

Leash 197. 1 Thess. 2:13.

"In being" now no person can be killed unless in being, so killing an
unborn child is not murder, for it is not in use for this purpose. It
is not considered as many other persons as a deserter. But killing
an unborn infant is a great treachery. 1 Thess. 2:13.

But if the child in the case supposed is born alive and dies
of the wound received in its mother's womb he is murder. 3 Thess. 197.

1 Thess. 2:13. 1 Thess. 197. And in 1 Thess. 483.

But the death in the case above must happen within a year and
day from the time of the injury done.

A reasonable creature" by reasonable is then meant human
for a demon has no reason, yet it is not lawful to kill one.

If one counsels another to kill a child unborn and the child is
Homicide.

Killed after it is born is presumed of this request he is an accessory.

1 Thes. 126. 1 Thes. 127. 1 Thes. 129. 133.

One species of murder created by 1 that distinct from the other in the rule of evidence. It is proved by 2 that of Jus. 3 that of the mother of an illegitimate child endeavours to conceal its death by burying it secretly. She shall be guilty of murder unless she can prove by one witness that the child was born dead. But this law being pretty severe the court generally require some presumptive evidence that the child was born alive, before the other presumption is admitted to convict the prisoner. 3 Bille 665. 2 Bille 619. Bille 82. 400. 178.

We have a law in Connecticut which provides that in such cases the woman shall not upon the gallows with a rope around her neck, for a certain length of time. New Stat. of Connecticut 382.

The next clause of the definition is "with malice aforethought." This phrase is not in any general term, as it is generally termed malice aforethought is the grand criterion which distinguishes murder from all other species of homicide. This malice in combination of law is any evil design, the dictate of a wicked, depraved, and malignant heart, to exert spite and ill will merely. 4 Bille 178. Porter 236. Bille 126.

It is frequently laid down in the books that the court and not the jury are judges of malice. But the meaning of this is that the court are to determine from the facts found by the jury, what
Homicide

amounts to malice, or what in law constitutes malice.

The jury are to find whether the facts exist before which the court
is to determine whether there is malice or not. 2 Dob 478.
2 Strange 773, 1 Bem 396, 474, 2 Dce 937, 2 Tract 574.

This malice is either express or implied. It is said to be express when
one with a deliberate and formed design to kill or injure any in-
dividual, does kill that individual in pursuance of that design.
He is guilty of murder by malice express.

It is said also to be express when one kills another by any act which
indicates an enmity to all mankind, so if a person should discharge
a ball among a crowd of people. 4 Al & Qd. Foster 260. 1 Tract 121.

Neely 129.

Again if one kills another in a deliberate duel to murder by
express malice. 1 Tract 122. 1 Bubbt 36. Neely 129.

In a duel, to be excused for the party killing to say he accepted
the challenge reluctantly, or that he was first attacked, for here
is a deliberate and formed design to kill or do great-bod-
ily harm, constitutes excus. Authority supra.

So also the second of the person who kills another in a duel is
guilty of murder by malice express. 1 Tract 124. 1 Wade 453, 454.

Giving a challenge to fight a duel is made a high misdemeanor in
Engt, and in Connect. to a misdemeanor by Stat. 3 East 55.

If a person upon no provocation at all is upon a very slight
Homicide

one attacks the other and kills him, he is guilty of murder by
malice aforethought. [Facts 255, 1 Cranch 124.

Blackstone calls the above instance malice aforethought and Hawkins
express, which last is correct.

So also if one upon a sudden and great provocation kills the
party provoking but in a very sordid and cruel manner he is
guilty of murder by malice express. So tying a hog to a horse's
hind leg. 1 Cranch 126. [Forking 124, 1 Cranch 154, 473.

So also if upon a sudden quarrel or affray one kills his adversary
but when master of this passion, he is guilty of murder by malice
express, and not of manslaughter. [Forking 55, 1 Cranch 125.

2d. Malice is implied when the killing is in consequence of some
unlawful act— which was intended entirely or principally for some
other purpose, kills the party. Thus, a person discharges
a ball at a foal with intent to kill and slay it, and kills A.
2 Cranch 122, 126. 4 B. & 8 Cranch 111, 117.

The unlawful act in this case must be a felony in order to constitute
it murder. I should define express malice to be that which in
point of fact concurs with the act of killing the party slain.
And implied malice to be that which concurs with the act of
killing only by implication of law, or by a legal fiction, and not in
point of fact. 2 Cranch 126, 96 81, 1 Park 436, 491, 146, 2 Park 261.
Homicide.

If one kills an officer in a struggle to escape arrest, he is guilty of murder by turbid malice. Leach 113. Porter 29. 135. 368.

And in the last case to no excuse to the slayer that the force was used, nor to the officer obliged to inform him for what cause he is about to arrest him: so there is no excuse.

A public officer is never bound to show his warrant, but in case of a private officer or one specially authorized, the case is different, for he should show his warrant. 1 Bush 129. 9 Sel. 66. 68. 6 Porter 137.

And it has been lately decided in Court of King's Bench that when oneew un a slayer is endeavoring to make an arrest, the prosecutor is not bound to prove that he was an officer otherwise than he was acting as such. 4 B. R. 366. 2 Marsh 358.

All homicide is prima facie malicious, if there is anything in the circumstances of the case which mitigates the offence, the accused must take the burden of proof on himself to show this mitigation. It is not incumbent on the prosecutor to prove anything but death. 2 Wash. 546. Feiling 27. Porter 255.

It follows then that all homicide is malicious, and of course amounts to murder unless justified by command or permission of law or law. Exculded on account of accident or self-preservation or 2dly, mitigating into manslaughter by being either the involuntary consequence of some unlawful act, or if voluntary,
Homicide.

The punishment of murder is death. This was formerly a clergy-
able offence but now by 3 Eng. Hats clause is taken away from
murders, their abettor, procurers, and accessories. But these
Hats do not extend to accessories after the fact. 4 B. C. 201.

2 Hale 188, 631. 1 Hale 450.

The punishment is the same in common law. 3 Co. 320.

Sentence of the court in case of murder and most capital felo-
dies is that the prisoner be hanged by the neck till he be dead.

If a woman is condemned while pregnant, execution shall be stayed
till after she is delivered. Then she may be brought to plead by
may receive sentence. 4 B. C. 374. 2 Hale 658. Finch 478.

The execution of a condemned woman is never complete till he is
dead. 4 B. C. 466. 2 Hale 412.

There is a species of murder more highly atrocious than ordinary
murder which is called Petit treason, because it involves a violation
of private allegiance. Petit treason is nothing more than murder in
its most obvious form. 4 B. C. 212. Poth. 107. 324. 336.

At common law many offences were called Petit treason which are not so
now. But nothing is Petit treason but murder, for by Stat. of Edw. no of-
ence can be Petit treason only in these cases, by a servant killing his master,
a wife her husband, or an Ecclesiastic his Superior. 5 B. C. 144. 3 B. C. 203.
Remarque

This killing must be murder would make it murder in any other case. Mark 12:1, 2; Mark 15:9.

Yet heaven always includes murder but murder does not always include "hemt fekert." Matt 3:8; Mark 1:25; Luke 4:23.

If a wife procures a stranger to murder her husband she is guilty of murder as accessory. Luke 14:31; Mark 13:12.

The murder of one's master or a master's wife is "hemt fekert." Mark 13:12.


"Also the murder of a master by one who was formerly a servant is "hemt fekert" if the charge was formed while a servant of the master. Deut. 16:9; 4:20; 23:16; Num. 26:1.

But the murder of a Father by a child is not "hemt fekert" unless the child is by reasonable construction of law the servant of the Father.

If the child is emancipated or is 21 years of age the murder will not be "hemt fekert" unless he makes a new contract with his father to serve him. Deut 23:20; Mark 13:17.

"Hemt fekert" was formerly a capital offense but its coronation away, and also from necessity after the fact, Mark 13:2; 4:16; 20:4.

The punishment is capital as in case of murder. Mark 13:12, 4:16; 20:4.

In an indictment for "hemt fekert" he may be acquitted and then convicted for murder. Deut 4:9.
[Handwritten text]


Not only the dwelling-house merely but all outhouses which are part of it, and are outhouses the carriage are subject of arson. 41:22.

[Handwritten text]

And it seems that a corn house filled with corn is subject of arson, so this would not be within the definition, but a stack of corn is not a subject of arson. 1 Sam. 18:26.

The burning the frames of a house is not arson because it is not within the meaning of the word, house. 1 Sam. 28:9. 1 Sam. 18:6.

A planche house is a subject of arson. This is a dwelling house, it must be described to belong to the corporation to which it does belong.

[Handwritten text]

It is said in most all the books in this subject that arson may be committed by burning one's own house or another house is burnt in consequence of it. But to clear that the burning of one's own house is not arson, the offence in this case consists in the burning of another's house, whatever it means are used. Co. Bar 327. 43:22.

[Handwritten text]

That the burning of one's own house cannot be arson not only appears upon principle, but from authority which is quoted, to be clear of one's mind in the supposed case, not a year of a house burns it, 43:22.
not burn nor endanger any other house, but his, he is not guilty of
arson. [citable: Deut. 16:18, Exod. 22:16].
And I also take it to be clearly settled that if one burns of a house
in sea or shipwrech, in a year in a city turns it with intent to burn
another house, but in fact burns his own only, he is not guilty of
But the meaner cases go still further. So if one is in possession of a house
under a lease agreement for a lease for years, the he having lease, and
he wilfully and maliciously burns it, he is not guilty of arson.
58:18 of a tenant from year to year. [citable: Deut. 22:21].
But the firing one own house in a town or city is a high misdemeanor.
On the other hand if a landlord burns a house in which he sees the
occupant, but in which another dwells, he is guilty of arson, for the
house is not owned by him but by particular tenant. [citable: Exod. 18:
1, Ps. 22:1.]
In criminal this offence is regulated by Hal. but in much the
same as at common law except that by Hal, the wilful and malicious
burning of any house, out house or barn is arson. Hal. 182.
For Hal punishes arson in the same way that it does the burning
of any ship or vessel. the the burning of a ship is not arson.
A man.

But I must frame the definition as to the "burning". In many instances, it is not a case of intent to burn, nor an actual attempt to burn. Only, the house is burned in arson. But the actual burning of any house, however small, is arson, if it is a wilful and malicious burning.

1 Thess. 11:29, 2 Thess. 3:6, 2 Macc. 15.

So the burning of a single thistle on the roof is arson.

But this burning must be a wilful and malicious one. If then one burns the house of another through negligence or accident, he is not guilty of arson, but is liable to criminal only. Prove 6:25, 1 Thess. 4:16.

1 Thess. 5:6.

There is a case also being punishable with death; it is not a

clayable offence and was not at common law. 4 K. 7:12, 2 Macc. 4:3, 5:3.

Benefit of clergy is also denied to accessory before the fact, but

not to those after.

Under our Statutes of Limitations, if a person of 16 years of age or

over commits arson, he is punished with death if prejudice or harm

happens to the life of any person. This is too severe a disposition and I

should doubt whether our Courts would give any construction at all to it

until the party received some great corporal harm or injury.

1 Thess. 15:2.

If a person of a person under the age of 16 commits arson, and

there is no prejudice or harm to the life of any person, he would be

sentenced to a higher misdemeanour.
Par. 8th.

Par. 8th. In the opinion of any male person of 16 years of age or over, committed arson and no prejudice or hardship happen to the life of any person - the offender shall be imprisoned in irons and gate for a term not exceeding 7 years. But if a female, she is to be imprisoned in a workhouse or jail. But cannot 18th. 5th 5th.

Par. 9th. As to the age of females in these cases, but I suppose it must be the same as that of males.

Burglary.

Burglary is the offence of breaking into the dwelling house of another in the night season with intent to commit a felony. In this definition should be included a church and the walls of a town, which are now subjects of Burglary. 4 B. & C. 224. 2 March 60. 1 March 1559.

As to the subject of Burglary therefore, the act necessary that it be a mansion house, a church, and the walls of a town are now within the definition. So when the building is a private one, foregoing the word arson is necessary. But a church or wall of a city is likewise not necessary.

The term, mansion house includes all out buildings which are bound of it or within the homestead or entailed. 4 B. & C. 225. 5th 27. 4th 52. 51. 2 March 320.

The entailed is that portion of ground which is enclosed within
the common house by one continued, or is connected with it by a
A single room may be considered as a trauma house if the owner
does not lodge in it and enter at a different outside door from the
person who occupies the room.
But if the owner does lodge in it and enter at the same door, it is

230-278. It seems that a trauma house is one in which four person
sheds or lodges, and the lodging makes it this dwelling and lodging
is necessary to make it a trauma house. For the purpose of Bunglary,
look 178. Hence an uninhabited house cannot be a subject of bunglary.
If the owner leaves a house to B within the encloage and B
does not lodge in it, it is not a subject of Bunglary at all, for
the owner has no right to it and the owner does not lodge in it.
But if B does lodge in it it is a subject of Bunglary. Mark 164.
Psal. 555. 486 225.

It is not necessary however to make a house a subject of Bung-
lary that some be actually in the house at the time the offence
is committed, to if it is a house in which a family ordinarily
resides, the they have left it for a time still it is a trauma-
house and a subject of Bunglary.
Burglary.


The house of a corporation is within the definition, provided any other
officer live in it, or any other person been teach by. 167. 28.
Nor were settled that a house which are has signed, and has moved
out of his goods, but not his family, is a subject of Burglary.

168. 28. 167. 6. 166. 4. 167. 28. 167.

But a boat or booth is not a subject of Burglary even the a famil-
ily reside in it, for to not a house. 166. 28. 167. 6. 168. 28.

167. The in concern has extended the subjects of Burglary.

Under one. At Burglary may be committed in any house where
goods, money, and merchandise are deposited, the two person lodge in it, or
ever did. Now upon the construction of the expansion our courts
have gone to great extents. It has been here decided that breaking
open a shop house also the freest of a boat and a corporus shop
was Burglary. Now I conceive there are not subjects of Burglary,
going after this construction you may make the breaking of a house
which has clothing but a want in it Burglary. Navy goods, care
so it recent or I conceive such as are inhabited for false or fake,
you ought to be and in the same in which merchants are those terms.

166. 28. 167. 6. 168. 28.

The absolute definition requires that the house be a
common house, therefore you must wherein the source of the house.
In the indictment, scroll 213.

This is one of the subjects of burglary.

In the right season. If this formerly had been that from the time the sun went down till it arose again was right season. But it was neither the time between the evening and morning twilight, and if there is no moon or daylight that one can clearly distinguish the continuance of that right season. Lab 1 March 160. Note 350.

2 March 160. 226.

Defence is to prevent the entering the house as well as the breaking therein, entry without breaking, and breaking without entry is not within the definition, but it is not necessary that the breaking and entry be at one and the same time. Reading by: book 342. 468. 226.

Now the breaking may not only be by thrusting open the door, but also by lifting a latch, flicking a lock, or removing any fastening whatever is a breaking within the definition. Art 1 by: Reading by.

1 Book 160.

And it's settled, that an entry through a chimney is a breaking within the definition, for this is as much closed as the nature of the thing will admit of, distinctly open.

But the breaking of chests, safes, boxes within the house is not burglary. Porter 108. Reading 31.

But the breaking of an inner door is burglary. 2 Book 160. Reading by.
Burglary.

In a night, break open a house with intent to rob it, and the owner opens the door to drive him away and he enters. The breaking to Burglary because the opening was occasioned by his felonious intent. [Mark 16:1. 186.226. Deut. 4:3. 2 Hancock 682. 1 Boc 338.]

Whether the breaking out of a house is within the definition is not settled by Com law. But in equity it is of that sort as is declared to be within the definition. We have no such Act in Canada.

[Mark 16:1. 1 Mal. 534. 1 Boc 337.]

An entry secured by fraud is Burglary as much as an actual forcible entry. If one is let into a house under pretense of business and acts, it is Burglary. [Hancock 64. Deut. 4:3. Boc 338.]

In an inner door cannot be opened to settle that if a servant enters the room of his master, or any other person enters the room of a lodger in the same house with intent to steal his property. [Hancock 68. 2 Hancock 682.]

If a servant conspires with a stranger to enter a house and the lets him in, they are both guilty of Burglary. [Hancock 64. 1 Boc 337. Deut. 4:3. 2 Hancock 682. 3 Boc 381.]

The least entry with the whole or part of the body, or with a hook to take out articles, or with a weapon of...
Burglary.

defence to Burglary. Video 123. 1 Thack 161. Reading 97.

and in consequence of this rule, if one puts a key into a door and
locks it and then runs away to Burglary for this is both a breaking
and entry. But I presume this is not law. As a similar case of being
into a Cowen's Leach 342. 1 Town 162 note.

If on an indictment for breaking entering and stealing, he is
acquitted for the breaking and entering, he may be convicted on the
same indictment for the theft. Leach 89.

"With intent to commit a felony." They say there must be a felonious
intent and if none it is a trespass only.

As there must be a felonious intent to constitute this crime, it has been
determined that when a servant who had ran away from his master
returned in the night and broke then his master house in order to
get his own money which he had left, that he was not guilty of
Burglary. As a person may enter to beat a man or to take his own
property. Wal 556. Reading 80. by 1 March 164.

It does not make any difference whether it is a theft or a felonious felony.

Ryge 431. 485 223. Bac 386.

It is not necessary that this felonious intent be expressed, a breaking
and entry with a felonious intent is sufficient. Note 107. Thack 157.

1 Thack 547.
Burglary.

When one has been acquitted in an indictment for breaking the house and stealing the money of A, and indicted for the same breaking and stealing the money of B, the indictment cannot be maintained for stealing the money, is not burglary. It is true to say to presentment for stealing the money of A. Seeing 36 52. 2 Hare 527.

Burglary is a felony at common law, but it was a chargeable one. But since it has now taken away and also from accessory before the fact. 1436 225. 1 How 165.

To commit the punishment for the 1st offence is by imprisonment in Newgate not exceeding 3 years, for the 2nd offence not exceeding 5 years, and for the third during life. 1560 184.

The above is the punishment in common cases. But if the person in committing a burglary is guilty of any personal force, abuse or violence, or is armed with a dangerous weapon, so as shall for the first offence be sent to Newgate for life. This is too vague a rule of punishment.

It has been decided that an indictment for Burglary need not be counted on the Stat. 1847.

The same distinction between males and females is shown here as in case of arson.

Lacing.

This is the most important title in criminal law to a person who...
Larceny

Larceny is that which in common parlance are call theft. It is of two kinds. It is of two kinds, simple & grand. Simple larceny is plain theft unaccompanied with any legal aggravation. Grand larceny includes in it the stealing from one house or person. 4th Ed. 229. 1 March 1341.

1st of simple larceny. This is the felonious taking and carrying away the personal goods of another. 4th Ed. 229.

Simple larceny is also divided into two species Grand and Petit larceny. By rule of law, all the goods stolen are over the value of 12 pence, the stealing is grand larceny, if of that value or under it is Petit 1st Hal. 504. Inst. 133 Ed. 1 March 1451.

The only difference therefore between grand and petit larceny consists in the value of the goods stolen. Hence all rules that depend on the general nature will apply to both; they however differ in their punishment.

If goods are stolen by several persons over the value of 12 pence they are all guilty of grand larceny i.e. there can be no division made of it to reduce it to Petit larceny.

So on the other hand if one person steals under that value at any number of times on the same day and from the same person it can never be made grand larceny but is petit only. Deadv 25-51.
Landing.

1 Bech. 143, 1 Hale 531, 2 Hale 424.

To pursue the definition 1. There must be a taking, and this taking must be from the possession of another, either actual or constructive, and be laid down as a general rule that every landing includes a trespass, therefore if he does, not commit a trespass in the taking he cannot be guilty of landing. 1 Bech. 144, ruling 2431. 4 36, 230.

I will here remark that this rule is not law as I intend to throw presently by a Decision late decided which is directly adverse to it.

A constructive possession is a neglect of personal possession. If my goods are in the hands of a depository, I have a constructive possession.

1 3 R. 430, 448, 449. 7 Perg.

If one finds goods, and converts them, to his own use or embarks them, he is not guilty of landing, the he hasanus juris, for there is no taking, i.e. no trespass. 1 Bech. 230. 1 March 1841.

This example is not law according to later decisions, so as to example. 1 Hale 204, 2 Bac. 472.

But it has always been that if one obtains goods of another with intent to steal and does embarks them, he is guilty of landing. In obtaining a bill of exchange under pretence of getting it discounted, and then keeping it.

The presumption in this case is to more fraud upon the land
Burglary.

which will not be suffered. 1759, 135. 265. 242. 266.

g. 231. 231. 335.

The possession in this case is considered as sole residing in the owner
but this for the purpose of lawing only. But if one applies to
another to purchase goods with an intent of never paying for
them and the owner sells them to him, and he runs away with
them, he is not guilty of lawing, Deed g. 331. 40.

Now the difference between bailment obtained with intent to steal
and the purchasing goods with an intent to embezzle them, is
that in the latter case, the owner parted with both the legal
and actual possession, whereas in the former case he did not.

If one obtains goods under a repousse with an intent to
steal them he is guilty of lawing. And if goods are taken by an
execution which was enforced on a judgment obtained by a fraud prac-
ticed on the court he is guilty of lawing here the Repousse's
judgment are both void. Pack 276. 436. 138. 136.

The cases I have mentioned are made lawing under the general
three rule. But modern cases seem to abrogate that rule as to
the hypoth or taking.

I take the general rule to be this—that when the delivery of
goods is for a certain special purpose, and one countenanced
able by the owner that he has a constructive possession, and
Lancing.

Therefore, that the embezzling the goods is lancing. There are many cases in support of this rule. It was decided at Old Bailey in 1779, that a coalmaker to whom a watch was delivered to clean and repair, and he never returned it, was guilty of lancing. Again, where a man denied death to a coalmaker and the man away with them, he was guilty of lancing. But in another case it delivered a quantity of ginners to B to exchange them for other money, and B ran away with them, he was held guilty of lancing. [Record 135. note.]

All and this case where goods were delivered for safe custody, if the person to whom they were delivered embezzled them, read 144, 142, 349, 2345, 586.

It will clearly be seen from the rule I have laid down, the authorities in support of it, that all those examples which do not amount to lancing by the old rule, are made so by this except the case of finders goods; and I conceive this case of lending and embezzling is lancing under the rule I have laid down.

The case of the carrier under the old rule is not guilty of lancing. But this is exactly the same case as that of the watchmaker and the watchwoman.

But it was always considered under the old rule that if a carrier opens a bail of goods and takes some of them out, or
draws liquor from a cask that he is guilty of larceny. 488. 230.
March 135. Feeding 89.

But 'tis perfectly clear upon either principle that if the carrier having conveyed the goods to the place of destination and then takes them again, without he is guilty of larceny.

Also if the Bailee should take the goods to a different place from that to which he was ordered to carry them, and should confound them, he would be guilty of larceny. For here the Bailee is a stranger to the bailement; he is not bailee to go to Hartford when sent to New Haven. Feeding 83. 1 Hale 574. 488. 230.
March 136. Lead 389.

If one sells a house or any other personal property to another and the latter or a deliverer runs away with them and confounds them, he is not guilty of larceny, and the reason is that there is no property remaining in the vendor, for according to the terms of the contract he parted with all possession both actual and constructive. Lecch 401. 2 Manch 392.

Also if one lets a house to another and he immediately rides away with him and converts him to his own use, he is not guilty of larceny. If, however, there was an original intent to steal in this case, he would be guilty of larceny. Now there is in this case no right of countenancing in the carrier like the toine has
lapsed for which he let his farm. Therefore, there is no constructive
receipion in the Bailor during the time.

Exch. 355. 40. JO pg. 2 March 592. 486236.

As to these cases of bailement we seem to infer the following rules from
what has been already said.

1st. When according to the terms of the bailment the Bailor
has no power to countermand at the time of the conversion the
emphasing or conversion is not a taking within the definition
unless there was originally an intent to steal. Thus in the case of
hiring a horse and converting him to his own use during the
time for which he hired him—here is no larceny.

2d. Rule is that if the Bailor had according to the terms of the Bail-
ment a right to countermand the delivery at the time of the
conversion, the taking is larceny. Now in the latter case there is
a constructive possession in the Bailor at the time of conversion.

3d. Rule is that if the Bailment was obtained with intent to steal
a subsequent taking by the Baillee is a taking within the defini-
tion and this is true whether there was a right to countermand in
the owner or not. The original felonious intent is sufficient.

The bare non-delivery of goods by Baillee to Bailor is not of course
larceny. It is not of itself a taking, but it may be evidence
of a felonious intent. 4 B. & C. 236.
There is a distinction taken at common law between a servant of common death. By common law, if a servant run away with goods entrusted to his care, he is not guilty of larceny, for he considered as a mere civil injury or breach of trust. But by that the servant is made guilty of larceny in such cases, if the goods amount to 40 shillings, and the servant be of the age of 15 years. 1 Hale 564. 4 B. & C. 280. 1 Black 59, 138.

But since these ancient decisions which I have mentioned, I presume the court would decide it to be larceny at common law for this is precisely the case of the washerwoman.

But at common law if a servant has not got the possession but only the care and oversight of his master's goods and he embezzles them it is a taking within all definitions and is with a felonious intent to larceny. 4 P. & H. 34, 1 Dea's 505, 1 Marsh 136.

If goods are stolen by one man and are afterwards stolen from him, the latter is guilty of a taking, and a taking from the true owner, for the first thief had not right to them. 1 Marsh 136, 2 Wall 589. If one steals goods in the county of A and carries them into the county of B, he is guilty of a felonious taking in both and may be prosecuted in either. 1 Marsh 136, 2 B. & C. 478, 1 Reel 69.

But this rule cannot obtain where the goods are taken in a
Geographical Digitization

Foreign State and carried into another, as United States. The
one state is not supposed to know what the criminal law of
another state is, and also that which might amount to a felony in
one state might only be a trespass in another.

In Connecticut however the Superior court have decided to the con-
tary, and have held and sent persons to other States, who stole in
another State. But I conceive if a case come to go to the court
of Errors, they would decide as I have laid down the rule.

Judge Paterson administered in this District about 4 years ago.

If the wife of the owner of goods deliver them secretly to a 3d
person, he is not guilty of larceny, an action will only lie
against heir, and the wife cannot specially be guilty.

But this is the only domestic relation which will excuse the
recovery. leech.

Your fear of the taking.

The word also be a "carrying away" and as to this, it is settled that
the least removal from the place in which they are found is a

ranging away.

In putting an carrying out of a ladys ear, and it fell and
caught in her hair was decided to be a taking away.

Mark 14:46 T text 287 R text 189. In this 31. text 225. 297.

But it has been decided that raising a bail of goods so that
it called over, was not a taking away because they were not moved from their place. Leach 227.

The taking must be a felonious one or a taking in mind, a felonious intent is essential to taking, its manifest therefore that a person destitute of understanding cannot commit taking.

When it is not felonious to a bare thefts and may be accompanied with a breach of the peace.

Here whether the intent is felonious or not must always be determined from the circumstances of the case. So if a servant should take his master's horse without his licence & should return it again, he would not be guilty of taking. Dodo 5 sqq. 486 232.

The taking and carrying away privately is usually evidence of a felonious intent. But this will not always be conclusive, as it is a sufficient presumption which must be rebutted.

And here it may be remarked that if a person takes the personal goods of another without his consent the law will presume a felonious intent, and this presumption must be rebutted by prima facie evidence is conclusive unless rebutted.

Leach 228.

The next clause of the definition relates to the subject of taking which is the "personal goods" of another.
Dancing.

Things real or those which are of the realty are not subjects of dancing. Hence the produce of land while growing is not with-in the definition, they adhere to the soil, and are not personal property till they are severed and suffer to remain in inspection of the owner.

If they are forced and carried away by one continued act the produce has now become the personal goods of another.


But if things of this kind as apples, grapes, grains are forced at one time and are afterwards carried away they are then subjects of dancing and it makes no difference whether the owner or the thief covered them. 1 Macc. 14:1. 1 Mace 5:70. 5 Part 109. 436. 233.

It was settled that the wool the latter that wool from a sheep and taking milk from a cow is dancing i.e. wool and milk are subjects of dancing when taken from the animal. Deut. 18:1.

2 Mace 573.

The reason given why things farrowing of realty are not subjects of dancing is that they are not so easily removed as personal, therefore less danger of being taken. 2 Bach 469. 1 Macc. 14:2. 436. 232.

By our laws charters of lands are not subjects of dancing because
But I conceive the reason why deeds of land are not subjects of
lifting to be the same as why choses in action are not.
The goods taken must have some intrinsic value in themselves
and for this reason choses in action are not subjects of lifting for
they have no intrinsic value in law. 1 Bla. 335. 1 Hams. 142. 2 Bac. 470.
Contr. 1 Hams. 66.

These things however are made subjects of lifting by Stat. of
11 Geo. 1°. and in common law have a similar Stat. passed a few
years since. 2 Bac. 470. Pat. Sum. 648. now Edw. 3rd.

Again nothing can be a subject of lifting unless some person has a
property in the thing stolen. There can be no lifting unless there is a
civil wrong. Besides, the law requires that it be the property of
another. Hence animals whose nature are not subjects of
lifting—No person can be said to have a property in them.
Sot. 366. 1 Hyde 541. 1 Hams. 148.

But animals which are originally wild may become the subjects
of lifting, if they are taken and confined and are of intrinsic
Lacing.

But generally wild animals are never considered valuable unless they will serve for food. Because if they are not used for food in general they are not subjects of lacing.

2 B.B. 393. 4 to 235.

But on the other hand the wild animals are reclaimed, if they are not used as food, as monkeys, foxes, etc. So they are not subjects of lacing. 1 Macc. 148. 3 Post 109. 2 B.B. 393.

But a civil action of trespass will lie for the taking a conversion of these animals. 2 B.B. 393. 4 to 235.

A tame beast is an exception to the rule as to those animals used for food, for they are considered valuable at low law. 2 B.B. 470.

1 Macc. 148. 3 Post 109.

But this rule as to valuable animals is confined to wild ones, for domestic animals the they do not serve as food are subjects of lacing as horses and mules, to those domestic animals which do serve as food a forfeiture are subjects of lacing. 1 Macc. 144.

1 Hale 571. 4 B.B. 236.

There are some domestic animals which are not considered as valuable and are not subjects of lacing as dogs, cats, etc. The an action of trespass will lie for taking them.

As all personal property are subjects of lacing at common law.

2 B.B. 393. 4 to 235.
that money is a subject of larceny.

But upon the construction of an English statute which takes away the benefit of clergy from those who steal goods, wares, and merchandize it has been determined that money is not included in that statute and therefore that where it is the subject of larceny it is a felony within the benefit of clergy. [Mark 4:5 6 234 458.]

Of another good it is said no one is the owner, at the time of taking cannot be the subject of larceny. For here the property is in nature.

It becoming clear as to their property is owned to be in a state of nature, before they are found for the king. [Hab. 5:12.]

But the goods must belong to some one, yet it is said that the owner need not be known and an indictment may be brought against a thief for stealing the goods of a person unknown. [Thee gr. 14 495 1147.]

But it is said by D. Hale that unless he found at the trial that the property is in some person it shall be esteemed to be in the larcene. This is a very good rule. [2 34 490 5 490 249 2 8 5 55.]

The goods in a church are subjects of larceny for they belong to the parish or corporation.

A horse on a road they is also a subject of larceny. [12 6 115.]

1 Waters Over the ocean 145.
Larceny.

The stealing a man today is not larceny but a high misdemeanor at our law. 21 R I 33.

But to say a man may commit larceny by taking his own goods in certain cases, i.e. if a man takes his own goods from a Bailee or from his servant with intent to unjustly them, he is guilty of larceny. Some these examples appear to me to be destitute of any principle, for I conceive the man in such case to be guilty of a great fraud only. See Esso 3 Inst 110. 11 Bank 1185.

If the goods of one man are bailied to another and a stranger steals them from the Bailee he is guilty of larceny and may be indicted, as taking them from Bailee who has a special bailment-ag. every other person but the true owner. Meaning 19. 11 Bank 1185.

There has been some question in the books whether one indicted for larceny and having a special bailment found against him as guilty of theft can have judgment rendered against him for the theft only. But to now settle that this cannot be done, and the reason is they are not two species of one genus, but one of different genera. Meaning 19.

As to the punishment of simple larceny.

All simple larceny at our law is felony. Grand larceny at our law is a capital felony. But Petit larceny larceny is not. But petit larceny is within the benefit of clergy, but taken away
in many instances by statute 4 B. & C. 95. 297. 2 B. & C. 459.

As to the punishment of Petit larceny two eminent writers differ.
Hawkins says, there is a forfeiture of all goods and chattels besides
whipping 50 but Blackstone says there is no forfeiture. I am of
opinion that Hawkins is correct and that Blackstone is wrong.

Hawkins 4 B. & C. 95. 97. on which last authority Blackstone seems
to allow the doctrine.

In cases, no punishment by that act, no distinction is made between
grand and petit larceny. Hence no larceny is a capital crime. The
act prescribes different degrees of punishment according to the
amount of the property stolen. All larceny is here punished with a
fine not exceeding 10 shillings or if the goods amount to 20 shillings
fine and whipping. If of the value of 5 shillings and under 20 to a
fine or whipping in the alternative. If under 5 shillings a fine only.

One fact enables the party injured to bring a qui tam prosecution.


When the goods stolen do not exceed the value of ten dollars the of-
ence is cognizable by a single magistrate; if over that by the county
court. There may frequently be a doubt whether the goods exceed
the value of ten dollars and generally when there is any doubt as
to their value a single magistrate may take cognizance of it.
larceny.

There is a right of appeal from the single magistrate.

Mixed larceny.

This has all the properties of simple larceny but is also accompanied with the aggravation of taking from any house or person at will.

[Page 137, Bible 239.

Larceny from the house is a mere robbery, not to be distinguished in its nature from theft.

As to larceny from the house all that can be said of it is that it's more aggravated, as well distinguished in its nature from simple larceny, 4.8.128. [Page 137.

It is said when this offence is accompanied with breaking the house then burglary. But I conceive this to be incorrect for they are separate offences and they are included in the same indictment.

Larceny from the house is excepted from benefit of clergy by several Policies, the to a clergymen offence at least two, and this is the only difference between petty and mixed larceny as to their punishment:

Petty larceny is in almost every case within the benefit of clergy.


Mixed larceny from the house is not distinguished from petty larceny.

The second kind of mixed larceny is from the "person" and this may be committed either by stealing privately from one person only, open and violent assault, the latter is called robbery and the former is generally called "pocket-burting."
Saying,

The offence of precipitately stealing from one person is a felony at common law, and there are two grades of it amid simple larceny, as to the value of the property stolen, to if above the value of 12 Bob. 6d., and if under that value not capital.

Stealing from the person precipitately or a felony and benefit of clergy is taken away from it by 4th of Eliz. if above the value of 12 pence.

'13ch. 24; 1 Walf. 529. 2 Wnch. 597. Bacch. 22. Porten. 73.'

This are violent theft from the person is called robbery, and this is essentially distinct from simple larceny.

Robbery is the felonious and forcible taking from the person of another of goods or money to any value by violence or putting him in fear.

The value is immaterial to the offence and the punishment are the same, however great or small the value may be, 4th. 242.

To constitute this offence there must be a taking from the person of another, and in the first place there must be an actual taking or attempt to rob anybody is not robbery at all; it is the theft of a minor. 12h. 147. 10h. 632.

But by 1 Act Geo. 4 an attempt to rob is made a felony not capital but punishable, the person attempting by transportation for 7 years, read 27. 351. 14. 145.

The taking must be from the person of another, but by this it is not meant from the manual possession of the man, for if one
Lack goods in the presence of the owner, with violence or by excitation fear, the taking is a taking from the person within the definition. 1 Pet. 5:3. 2 Thess. 3:6. Gal. 5:1. 1 Thess. 4:8.

It also if one through the instrumentality of fear takes goods from my servant in my presence or a taking from the person within the definition, for the possession of the servant is the possession of the master. 1 Thess. 4:8.

The law said there must be a forcible taking so yet it is not necessary that actual violence should be used in the taking, all that servant is that the goods be obtained under the influence of terror by coercion common to a forced upon the principle it has been determined that if one by terror and threatsRobbers to and they will go and bring their goods and he does go and get them and deliver them that this is a forcible taking within the definition. 1 Pet. 5:8. 1 Thess. 4:8.

But a taking which is not directly from the owner or in his presence, is not within the definition, is if a House of Robbed man of being robbed throws down his goods and runs and they are taken, this taking is not within the definition. 1 Thess. 4:8. 1 Thess. 4:8.

It is laid down as a rule in most of the books, that if several persons join to rob it and instead of robbing each one of them.
separate from the other, and rob B unbeknown to the rest, all are guilty of robbing B, because of the intent to rob. I gladly think this case can be law; it appears to me that the rest can't be guilty of robbing B for they have left the pursuit of it, and do not know of the robbing of B. For this see 1 Kings 5:33. 5:34. 2 Mach. 5:96.

The offence of robbing is consummated by the act of taking; from that moment he is a robber and if he should immediately deliver the goods still he would be guilty. 1 Pet. 4:6. 2 Pet. 3:9. 1 Thess. 4:6.

This taking must be by violence or putting in fear; it would seem that both violence and putting in fear were necessary, but either of them alone is sufficient. By violence is meant actual violence, actual force committed on the person. The violence of putting in fear is the grand criterion which distinguishes robbery from every other species of larceny. 1 Mach. 145. 2:2. 494. Deut. 22:6.

The sort violence than either is something more than the mere act of taking. The violence must also be such as is calculated to excite fear and of the sort to rob robbing. Mach 145 note. Post 128. Mach 243.

But the violence or putting in fear must be previous or simultaneous with the taking, for, if subsequent, he not robbery. The reason of this is that the violence or putting in fear must be the means to
Constitute robbery. 1 Mal. 134. 1 1Mack 148 note.

And further the violence of putting in fear must be purposely for the purpose of obtaining the property of another. 2 1Mack 597. 1Mack 148 note.

But it has been held that where a person put hands on his prisoner for the purpose of extorting her money from him that the join

or rescuity of robbery. De 261. 2 1Mack 597.

he to the putting in fear to a settled rule that so many gestures or threatening gestures as may reasonably excite an apprehension of danger, is a putting in fear within the definition.

But a fear altogether groundless is not a putting in fear within the definition. To achieve there is a hypocrisis, physical impossibility of

De 261. 1 1Mack 597.

Again such threatening as is likely according to common experience to excite an apprehension of danger to one character, good name, is a fear within the definition De 261. 254. 1 1Mack 597.

But for the purpose of exciting fear there is no necessity for actual violence or actual threatening, for it may be done by mere

signs only, as by presenting a weapon, &c.
There is a rule laid down in Fielding which says that taking property under legal process without a colour of right is robbery. But I should rather think it was simple larceny. Fielding 184.

I have already observed that it was not necessary that both violence and putting in fear be used to constitute this offence, to put necessary therefore to insert in the indictment that the act was committed by putting in fear. It is sufficient to insert that it was done by violence alone. Fielding 184.

And where the offence is laid to have been committed by putting in fear it is not necessary to prove actual putting in fear for such circumstances of violence are calculated to excite fear are sufficient. Field 128. 206. 266. 184.

Whether openly taking the goods of another person without violence or putting in fear is larceny of any kind is not fully settled. According to Hawkins, theft is that be larceny of any
And it has been determined that the fraudulent making of a bill of exchange on unsealed paper is forgery for every man may not know what the true on this subject is, and is therefore liable to accept one. 2 Pet. 2:10. 2 Thess. 3:10. 2 Thess. 3:7.

But now by a variety of Sages, Sages almost every species of writing is made a subject of forgery, and out of the benefit of decay. 1 Pet. 3:17. 2 Thess. 3:10.

2 Thess. 3:10 includes all private writings in general. Mat. 15:4.

Thus far as to the subject of forgery.

The offence consists in the fraudulent making or altering.

How very little need be said as to the making alteration of writings. The words themselves are a sufficient explanation as to this part of the definition. 1 Thess. 3:16.

If one employed to write a will insert false legacies, he is guilty of forgery. 1 Thess. 3:36. 2 Bar. 5:67. 2 Bar. 5:67. 1 Thess. 3:16. 2 Bar. 5:67.

In the case above however it must be supposed that the forger signs the name.

So also if one should write an obligation or release over another name, which he should find, he is guilty of forgery.

1 Thess. 3:36. 2 Bar. 5:67. 2 Bar. 5:67.

Fraudulently subscribing another man's name to an instrument—already drawn is forgery, say, if one makes a mark for another...
Forgery,

with a fraudulent intent to forge. 169, 171.

It is not necessary to constitute forgery that the writing should be

made or the deed be effectual if it were genuine. If one should

make a will for another, he is guilty of forgery before the Testator

dies, at which time the will is to take effect. 1 Cor. 13:8, 2116 483.

If one insults in an indictment, the name of a person whom the

grand jury did not present, to if in an indictment against a

miller of persons, the name of an innocent is inserted, it's a for-
gery. 1 Vaughan 236, 3 and 192. 320, 122. 423.

In a general rule that the fraudulent altering of a writing in a

material point is forgery, or in other words, a fraudulent alteration

in a material part, is an alteration within the definition.

1 Vaughan 236. 2 Bacop. 60. 1100.

But the distinction is not well taken in the Books between the

alteration of a part-material, and a part immaterial.

So that one may be guilty of forgery by making and execu-
ting a deed in his own name, and let after having given a

deed of a piece of land to B, and afterwards deed the same piece

to B by substituting the deed. 1 Vaughan 236. 2 Bacop. 60. 1101.

contrad. 112. 238.

If one having found a bill of exchange forgery an

indorsement in order to get it discounted, is it guilty of forgery.
 Forgery.

But the act of making a will is a forgery, yet if one writes an instrument in another name and signs and seals it in the later presence and by his consent and direction, he is not guilty of forgery. And if it were done in his absence, it would not be forgery provided it were done by his direction. 1 Macc. 337.

The making and alteration of a writing must be fraudulent to constitute forgery. There are many cases which, from their nature, are not forgeries, as if, where a bond should alter pounds into shillings, it would not be forgery, so also if the Promiser of a note should be the same. The rule in Blackstone is that this is a tenement, but I do not see upon what principle it is, contrary to a principle of justice. 1 Macc. 337, 344, 345; Matt. 24.

But the alteration in the above cases would not be forgery still. The bond or note will be void. Deut. 16. 26. 27. 28.

How far an unintentional alteration is considered as a forgery I shall not take notice of at present, as that is involved in the question which I gave you for discussion.

Known a mere non-punishment cannot regularly amount to forgery, the act being fraudulent, so if a lessee should omit to insert a legacy in a will, it would not be forgery.
 Forgery.
As a general rule the making or alteration must be a positive act. But if a person employed to make a will was directed to transfer an estate to B after the determination of a particular estate for life, and he should not create this particular estate but give it to B to commence instantaneously it would be forgery. May 101, March 337, Monroe 766.

It appears to me that in the forgery example that making was a positive act, the law deems it an omission.

This fraudulent making and altering is required to be by the prejudice of another's right. But by this I do not mean that an injury should actually be done, it is sufficient if the act in itself tends to the prejudice of another - thus if it forces a note against B it is unnecessary that this note be put in suit to constitute forgery.

The forgery is completed when the instrument is written. Ibid. 195. 21 May 1467. 1466. 1807 757.

But the a fraudulent intent is necessary to constitute the offence, yet it is sufficient to aver the intent generally without pointing out the particular mode by which the particular fraud was to take effect. Ibid. 76.

It is not necessary that forged instruments should be published, or that any claim should be made upon them in order to support a prosecution. Ibid. 1467. 1469. Monroe 769.

It has formerly been a question whether forging an instrument in
The name of a fictitious person was forged or not. But to prove it is lived that it is. Leech 83. 182. 216.

The rules of pleading require that in the indictment the forged instrument must be set out in words and figures precisely as it was originally written. And to a general rule that the least variance between the original forged instrument and the recital of it in the indictment is fatal.

This rule however is not literally true, for where there was a variance in the writing of a word which did not alter the meaning it was not fatal. Leech 83. Leech 186. Stone 787. 108th 566.

As to variance (East 186 note) Leech 76. 146.

When the indictment describes the instrument as purporting to be an instrument of such a description, the indictment will not be supported unless when produced it does purport to be such an one on the face of it. East 186. Leech 205. Doug 287. 502.

At common law forgery is not a felony and is punished by fine and imprisonment. But by Stat 182 almost in every case punished with death and it is rarely ever the case that one is pardoned. 413 247.

In Connecticut this offence is punished in the same manner as burglary and the injured party has double damages. The offender is also rendered incapable of being a juror or a witness.
Djuries.

Fathers of Cornell 1810.

I think that in Cornell the making of any writing is not for gray matter when done to prevent justice and equity. This however does not differ materially from our law definition.

The word altering is not used in our law, however, the word making includes it, and I suppose in strictness of language the altering is a making.

Our law also prohibits altering as Dgeries, the altering & publishing a forged instrument knowing it to be false.

Dgeries.

Dgeries is defined to be a crime committed when a lawful oath is administered in some judicial proceeding to a person whoswears willfully, absolutely, and falsely in a matter material to the issue or point in question. 4 B.B. 137. 3 Post. 161.

Darious 318.

The false swearing must then be willful i.e. intentional and with some degree of deliberation. The word willful here seems to have the same meaning as the word intentional. 1 Wash. 319. Dallis 78. 4 B.B. 137.

This swearing must be in some judicial proceeding i.e. false testimony must be given under oath and in court or before some officer authorized to administer it, and in some proceeding relative to a suit or prosecution. 1 Wash. 319. 3 Wash. 163. Post 62.
As material to whether the court is a court of record or not, in which false testimony is given. Co 8207, 607. 2 B 1189. Leach 578.
12 Co 101. 1 B 1189.
In Connecticut all our courts are courts of record.
But the oath must be taken in some judicial proceeding. No voluntary extrajudicial oath is not perjury. 9 B 320.
gil 72. 3 Kas 166. 4 B 618.
But he is not disqualified that the perjury be committed in a court during a trial for his stated that perjury may be committed in an affidavit or deposition, the they are never used in court for they are relative to the proceedings 50. 170 310.
Again perjury is required to such public oath as does or affirms some matter of fact to be predicable upon perjury oath in oath.
But perjury is predicable upon any false oath material to the point in question, the the point may not immediatly affect the final judgment. 1 B 320. 4 9 14.
I have already observed that the violation of some perjury oath is not perjury, to a jurer who does not give in a hostile oath is not guilty of perjury. 1 B 322.
But a party in a suit when charged to take an oath may be guilty of perjury as well as any indifferent person, so if or
Perjury.

Defi. In Ch. 4. sect. 10. "To swore a false answer, to perjury, perjury."

In conseq. however Deft in Ch. 4. sect. 10. are not just under oath when they swear false answers, unless the Pei. seeks a discovery, or which case they are just under oath.

It is in ordinary cases the Deft is bound to verify his answer by proper testimony. In cases of both Deft and Dce. allowed to swear to a Book, debt, or to an account, so here they may be guilty of perjury, if they swear false. Bal 829a. 2 Pet 13. sect. 47c. 487b. 5b. 6c. 6d. 2 Thel 462.

If a witness having testified what is false corrects himself, he is not guilty of perjury, even that he intended to testify falsely, and this rule is in self extended to a supplementary answer to a Bill in Chancery. 1 Ed 413. 2 Thel 57b. 2 Mark 774.

It is said not to be at all material whether the fact is sworn to be true or false provided the witness does not know it to be true, for he is to answer to what is within his knowledge. Bal 829f. 3 Thel 222. 1 Pet 322. 6 Th 637.

This is one word in the definition which seems now to be out of the text formerly. I mean the word "absolutely" for his time hitherto that a man need not testify absolutely, in order to be guilty of perjury, so if he swears to a fact according to his best
of his recollection — or he believes it to be so, or he thinks it is so — if the fact is general knowledge, he is guilty of perjury.

2. The word "absolutely" is veryLearnable opinion. Says A.G. is not applicable. 1. Tr. 323. 2. Bac. 815. 3. 2 H. 166. In the rule see L. T. 321.

[Mark 262. 2 B. 885. Cts. 122.]

The testimony must also be material to the question and it must be to a material point. If it is a material testimony to a fact altogether unimportant to the point in issue, it is not guilty of perjury. In a legal point of view, it is not true to prevent the administration of justice. 1 B. 277. To C. 253. Robert 58.

[Mark 323.]

But if the false testimony the circumstances had not directly applicable to the point in issue, tends to aggravate or extenuate the damages by perjury. 1 B. 101. Cts. 212. 3 Bacon 815.

[Mark 323.]

If the false testimony is a point not material in itself tends to make the jury more readily believe any material point, such testimony is perjury. 1 B. 101. Cts. 212. 3 Bacon 815. 2 H. 166. Cts. 1382.

But there are many circumstances especially in cases of bet which are not material and upon which perjury is not predicate.
injury.

If a witness testifies that one sort of weapon was used in the battle when in fact another sort was used, it is not perjury. But in conceiving of testimony of this kind, it tends to exculpate or aggravate the damages, it would be perjury. [Book 323, c. 147, p. 140.]

But it is not essential to show in what degree the evidence was material, if it was circumstantial to sufficient.

[2 May 258, 889.] Now it is always incumbent on the prosecutor to prove that the evidence was material. The prisoner is never bound to prove it. [Book 325, note 305.]

It is not necessary that the record be produced to show the judicial proceeding, and the Osteria is sufficient for this purpose. It is not necessary that judgment be rendered before the record may be produced, the in ordinary case, judgment must be rendered before the record can be produced as evidence of anything. [2 Mark 463, 635.]

The scene in which the perjury was committed must be set forth in the indictment and also what he testified. [2 May 283.]

It is not necessary to constitute the offense that the false evidence should have been credited by the judge. Of course.
to not necessary that any person should be actually injured by
it. 2 Deod. 211, 230, 236. 3 Bao 875.

It has been decided in long that the word "wilfully" is not ab-
soolutely necessary to be inserted in the indictment; the words
"falsely" and "maliciously" are sufficient, 3 Dech 69.

For the purpose of convincing one of saying two a rule of law
that there must be at least two witnesses where there would be
both or oath only. 10 and 195. 1 Mack 87. 2 Deob 875.

It is now firmly well settled that sufficient to the fact
that the left has sworn to can't be admitted. This must be
proved by direct testimony, 2 Mack 47. The evidence to the
fact of the swearing is all that is required to be direct.

Saying can't be committed by 2 persons jointly, therefore there
must be two persons joined in the indictment. Change 623, 879.


But two persons may be guilty of subornation of saying and
both may be joined in the indictment. 2 Deok. 2386.

Subversion of saying is the offence of procuring another
done to commit saying.

But in this case saying must be actually committed, for
an unsuccessful attempt does not amount to subornation of perjury, but is only a tendenmous. Book 325. 486. 187. 3 and 188.
Perjury and subornation of perjury in bug are punished with fine and imprisonment and legal infamy. 486. 188.
Legal infamy is a consequence of perjury at court. 386. 303.
When the perjury is assigned upon an affidavit or deposition, the least variation between the verbal and the original deposition or affidavit will destroy the indictment. Code 229.
182. 237, P. 64. 660.

Under one that perjury and subornation of perjury is punished by a penalty of by debt, and imprisonment in the common jail for 6 months, and if a female imprisonment in a common jail.
The legal infamy is part of the judgment also. If unable to pay the fine of by debt, he is to be set in the common jail.

Under one that the perjury must be committed in some court of record. But as there may be cases of perjury which would not come under this statute, I suppose in such cases they might be prosecuted at common law. One that also provides that the false affirmation of a Prater shall be punished as
Papry.

... If one rise up and upon false testimony procure another to be put to death: he shall suffer death himself.  [Note: Page 182.]

I shall now consider the criminal jurisdiction of the courts in this State.

The highest court of ordinary jurisdiction in this State is the Superior Court. The Superior Court has jurisdiction of all offenses which are punished with death: the theft of hides, Rancho, and the punishment which relates to Adultery of confinement in New Gate.

The Superior Court has exclusive jurisdiction as to the above except confinement in New Gate, and here the County Court have concurrent jurisdiction only in the case of horse stealing:

[Note: Page 186.]

In cases of Riot also the Superior Court have concurrent jurisdiction, and this and the case of horse stealing are the only two cases where the jurisdiction of the two courts is concurrent.

[Note: Page 361.]

The Superior Court has jurisdiction of all highway sins and misdemeanor, but here the line of distinction is not well marked out between the cognizance of the two courts, for the County
Criminal law.

Courts in many instances have cognizance of misdemeanors. But the Superior court have determined that they have exclusively the cognizance of those crimes and misdemeanors which consist in an unsuccessful attempt to commit some high crime or offence. To an unsuccessful attempt to commit murder is a misdemeanor which falls within the jurisdiction of the High Court. The High Court has also exclusive jurisdiction over the higher offenses against religion, as blasphemy, 50 & 51, 183. (footnote 75).

Courts of Common Pleas. One that prescribes that the court of common pleas shall have cognizance of all offenses inferior to those which are within the cognizance of the High Court and superior to those which do not fall within the jurisdiction of a single minister of the law.

The court therefore has cognizance in ordinary cases of misdemeanors. Statute 129.

There is no appeal in criminal cases from the county to the superior court. Kirby 267.

Single ministers of the law as Justices of the Peace and Justices have cognizance which is originally exclusive of all crimes of
which the punishment does not exceed a penalty of 7 Dols, except in case of theft over the value of 10 Dols, for then they have no jurisdiction. This penalty must be limited for of the discretion they have in jurisdiction. Not Conn. 142.

Whipping is the only corporal punishment which single magistrates can inflict. Not Conn. 143.

But the law provides that all justices of peace shall have cognizance of all breaches of the peace singly aggravated by high-handed and riotous violence in which case he is to bind the party over.
Not Conn. 336.

Single justices of the lives and accounts of inquiry in all criminal cases above their own jurisdiction. Not Conn. 142.

An appeal lies in favour of the prisoner only to the court of common pleas in all criminal cases, except those expressly prohibited by

Not Conn. 142, 155, 177, 285, 370.

In criminal cases, the jurisdiction of a justice of Peace extends through the County, in civil cases, for they lie confined to the limits of his own town. 2 Sect. 287.

All offences are triable only in the county in which they are committed. Offenders are local. Title 40. Sect. 73. Doug. 160.

I will now consider the subject of bail in criminal cases.
Bail.

I shall say very little on this subject as a great deal of the law respecting bail consists in mere formality.

When one is accused for a crime he is to be brought before a magistrate who has not the jurisdiction of the crime, who is bound to inquire into the facts charged, and see whether he ought to be bailed to trial. § B C 296.

The magistrate cannot in such cases examine the prisoner as to the fact of his guilt, the air being that is authorized by Art. § B C 28. § 296.

If upon the preliminary inquiring it appears that the offence was not been committed or that the charge against the prisoner is groundless, the magistrate is bound to discharge him.

But when there is slight or presumptive evidence against him, the magistrate is to commit for trial or admit him to bail where the offence is bailable. § B C 296. Malevol. 144.

Bailing is the delivering of the prisoner over to security, on their giving good security that he shall appear at court and take his trial. The Bail are considered as his keepers.

In those offences which are not bailable the magistrate is to commit the prisoner to remain till the sitting of the next court. All offences as a general rule below felony are bailable, unless bail
Bail.

It expressly prohibited by Statute 26 Eliz. 1d. 47, 21 Stat. 101, 102, 103.

Bail is denied in the offense of treason, and in many other cases under those Statutes.

It's a general rule that bail is taken away from all offenses where the prisoner confess or is notoriously guilty 48 Eliz. 298.

But the court of King's Bench and any one of the judges, in vacation, has power to admit any person to bail for any offense comp. 333, 1 Bl. 2179, 2 Hawk. 175, 3 Bl. 165, 4 Bl. 424, 1242.

But the court do not admit to bail in offenses which are not available only in particular cases of necessity, 122, comp. 333.

Herge 49, 543, 2 Hawk. 175, 175.

But it has been settled in bag that after a conviction of the prisoner by verdict he can be admitted to bail unless the prosecutor gives his consent to it. 1 East 159, Rook 57.

But in arrest this rule is not observed—under our laws all offenses are bailable except capital ones, and for contempt of court.

Hat Trench 420.

It is a general rule that he who has the final cognizance of the offense may in any case admit the person to Bail—most

permitting it notwithstanding.
Bail

Wherever the court of King's Bench never does, or at least contrary to statute, unless there are some special circumstances to prevent it. 1 Erich. 48. 2 Geo. 3. 420. 425.

In connect-I trust every one hopes and every one of the judges in vacation may admit any person to bail even in capital offence, the Statute forbidding it notwithstanding. But I presume they would be governed by the same rules which the Court of King's Bench adopt in such cases.

The magisterial officer who makes the arrest cannot take bail in criminal cases unless he has judicial power to do it.

The Sheriff is a bailiff officer for he has judicial power. But in connect the Sheriff has no such power and cannot procure bail.

In connect Bail is to be taken by the magistrates who first examined the Prisoner, the in capital offence he cannot take bail. But after the magistrate has prescribed bail the Sheriff may take it and even after the prisoner is committed if personally present to by the magistrate. That connect.

The bail in criminal cases in connect is taken by different magistrates according to what court has cognizance of the offence. If the crime is cognizable by the Superior court Bail is
taketh in the name of the State, being of cognizance by the court of common pleas, or is taken in the name of the county, being of cognizance by a single magistrate in the name of the town.

If any officer takes insufficient bail and the principal does not appear, the officer is liable at least. 4 B. & C. 397. 2 B. & C. 442.

The common practice in Eng'd in case of felony is to require

4 sureties, and in inferior offenses 2 only. 2 B. & C. 141. 206. 2 H. & C. 125.

Connect only two sureties are required in any case.

Refusing bail when by law it ought to be allowed, and granting it when by law it ought to be refused is a suicide. At law, law, and the person, if found, and in the former case the accused party

has his action on the case for damages. 2 B. & C. 141. 206. 2 H. & C. 146.

It has been decided by our Supreme Court in a prosecution for

buggery, that where the deft. was out on bail after trial, verdict

not to be given till he was present, and the recognizance

ought to be passed. 1 Howard 86.

I believe it to be a true rule that when corporal punishment

to be inflicted the prisoner ought to be present when verdict

given or his recognizance ought to be perfected.

But when a penalty is the punishment verdict may be given.
Fate.

When he is set on bail, March 29th.

Wherever a prisoner is prosecuted for a particular offense is acquitted, but is proved to be guilty of another offense, he is not to be discharged on the acquittal, but the court are to keep him in custody till another prosecution may be brought against him (sect. 360, 385).

Costs in Criminal Cases

In Eng. no costs are taxed on either side except by order of court, or in cases of a suit by either party in criminal cases. PA. 369. How suitable costs. 21. 125. cost. 369.

Under our laws in criminal the rule is the same as to having costs in favor of the plaintiff. The State pays no cost. But on the other hand, prisoners in criminal are not only taxed on conviction but may be on acquittal for the that requires that if the prosecution was occasioned by any unlawful and infamous conduct of the prisoner, he shall pay the cost of prosecution even the acquitted. Nat. Cour. 445.

But if this does not appear he shall pay no costs on acquittal.

When the prisoner is unable to pay costs, they are to be defrayed out of the State treasury if prosecuted in the State or county court,
Costs in Criminal Cases.

So if the prisoner is able, the State may pay them and be afterwards reimbursed out of the prisoner's pocket.

But when the prosecution is before a single magistrate, costs are to be defrayed out of the public treasury. This cannot be altered.

And on the other hand, when costs are recovered by a prisoner, those costs go into the State treasury if the trial was before the superior or county court, and into the Indian treasury if before a single magistrate.

The Statute provides that if the prisoner is unable to pay costs, he may be bound out in service till he has earned sufficient to pay them.

But the rule that the prisoner in some cases shall pay costs when acquitted does not hold when he is acquitted by a single minister of justice, acting as a court of inquiry.