The Litchfield Historical Society.

1896
Of actions founded on Contracts.

Those actions which are founded on contract consist of Assumpsit, Debt, Covenant, and Detinue, and these will be considered in their order.

Assumpsit.

Promises which have a foundation for an action are of two kinds viz. 1st express and implied. 1st express promise is one where the terms of the contract are clearly stated and agreed upon through the time of making.

This promise may be oral or in writing, and the form of action is the same in both cases, even if it is required by statute it may be in writing, you need not declare as such, though you clearly may do it. You may give it in evidence under the general issue.
In short, contracts are in some ways black.

We deliver here to be such as reason and instinct dictate, and which the law therefore recognizes that every man undertakes to do.

In this it is otherwise expressed when the terms of the contract have not been carried into execution and the subject matter is such that a contract may be made out of it, this is not an express but an implied promise.

The implied promise reaches a vast variety of cases and may be a foundation for an action when the idea of a contract or point of fact is established or in the case of money paid or where a man turns his eye to doors.

This is not found in whose to seek a contract but when the possibility that rises his idea in the law says he ought to do.

These promises, by the foundation for an action of promissory, which is divided into two kinds, express and implied.

In hearing of his action I shall first consider when the express and implied a promises are
concurrent. And when only one can be brought
or none. There is an express contract to pay
a certain sum they are concurrent.
Indeed, there always creates a contract, because
it exists; it thus, consequently you act here
on either the express or implied contract. But
and it is the best way to try both in the
same declaration, or when you sue on the
express contract alone, if the witness does
not remember you fail.

But if on the implied alone although you
may give in evidence the express contract
to support the implied one, yet you are
not bound to do it but may choose to refer
testimony the fact of indebtedness to the
same amount and recover accord and
satisfaction.

In this case debt may also be brought. Debt
is a sum of money due by contract or agreement,
the sum being fixed, and depending on no
subsequent valuation to settle it.
This action is generally discontinued as the
Debt is committed to cause his law. To prevent
this the action of attachment is brought and
the allegation - That he fraudulently aid
If money be taken by fraud, an action lies on the former or an action of assumpsit.

There are some few cases in which similar assumpsit only will lie.

When the consideration happens to fail, this is the only action — as, A sells land to B, supposing it to be his land, and receives the money; but it happens not to own the land. This action only lies — so in the case of money found or paid by mistake. This action generally lies when one has the money of another and cannot be accounted for.

This is this bond — it requires some qualification. When money is in the hands of A, which he ought not in good conscience to retain, A assumpsit will lie if no fraud or delusion of policy. Styles in to prevent this. Money lost at gambling tables cannot be recovered.
costs from assigning A way, the money to D, and D to C, now C's liability to B is not gone—he must pay him, but the question arises, whether he could recover it out of D, the innocent attorney, from C he could recover, but he is not to be bound. Here the court inclined to the opinion that D was liable.

When an agent recovers money for the principal, and pays it over to him, the principal having the right, you cannot go against the agent, but you must go against the principal. But when the authority is absolute, you may recover out of him, who acts under it. These however the question arising, what is a void authority? Authorities on this subject can be clash, take note, etc.

Lecture C. 1. 2

The principal laid down is this, 'When its authority given is a complete one, that authority is not void. Let this administration were granted, no will being found, afterwards a will was discovered. The
It seems to have been a principle in the English law, that this action would not lie to recover money of a person, because all his property is forfeited. This is now done away or evaded by an action for converting the property and 

If money is embazled and paid over to a person, it cannot be recovered back because it is the circulating medium and it would be dangerous to allow a recovery, not so with any other species of property as are bow. horse. But had the money been paid over on an illegal contract, this action would lie to recover it back.

Indebitatus a sumptu a sumptu will lie to recover money which has been paid on a judgment, which has been reversed. No other action will lie.

Attempts have been made to subject the heir in trespass as guilty of a wrong, but they have been fruitless. The trespass will not lie for money paid on a judgment reversed by a
In the status of a plaintiff he is to recover money had on a judgment of a court of competent jurisdiction, on the ground that the defendant ought not to keep the money in justice, for a reason that the plaintiff could not avail himself of at the time the judgment was rendered.

However, the judgment of one court goes to implicate the judgment of another, in a collateral way, inconsistent. But where the judgment is not attacked, collaterally, and this money is unjustly retained—judgment and no difference it may be removed to the Supreme Court.

A judgment cannot be attacked ridiculously. This case the party could have proved his covenant, and the court could have taken cognizance of it, they would not have supported a jurisdiction—but would have held him to his action on the contract.

Whenever a such a jurisdiction is brought it is brought for the mere fulfillment of the contract. When an action is brought—
on the implied promise, it is on the ground of no action at all it waives the contract entirely.

An action is a sum set to recover money made on an illegal contract when the law does not place both parties in pari delicto. As money made to a lottery insurer may be recovered. So where both parties are in pari delicto, yet the law was made to protect one and not the other.

The former may recover back the money made in consequence of such illegal agreement.

An action lies to recover feoffees to By law b 60 & 61.

This action lies also to recover fees of office, and also to recover money on an award. A & B agree to submit a controversy and the award is, that A is to pay B £ 20. Here the action of debt, as well as indenitaries, if a suit, and if no express agreement is made to abide an award, express a suit, with tie. The agreement to submit to an award made by a foundation for a promise. Suppose instead of a mere agreement, to abide
The award, it has been a covenant—Can you have one in a covenant? It is said by some that you must one in covenant for it is a higher remedy, which takes away the lower one. All allow this; however, that it does not.

On this subject he says the rule is this, where a remedy of a lower nature, by any subsequent matter between the parties introduced to a remedy of a higher nature, resort is to be had to that remedy as in case of bond for book debt.

But when a party enters into a covenant to perform a collateral act, an action on the covenant or for non performance of the contract will lie. The covenant did not grow out of the award.

So if a party enter into a bond for $100 if he about build a house and agrees that he will.

It is true that when there is a contract of a higher nature, no recovery can be had in an lower one.

Money won at play cannot be recovered if it has been paid over to the winner. This is allowed in law to be recovered back.
A thumbprint is brought for labour done by men in the three professions as lawyers, for money loaned, and goods.

This is the action upon it paid comptabili and here you cannot enquire into the items unless one can put his finger upon anyone and say it is a mistake.

When money has been paid to an agent which ought not to have been paid, and the agent has bona fide paid it over to the principal, the agent is not liable, but if he is guilty of any fraud, or wrong he is liable, and must look to the principal for remuneration.

Lecture No. 3.

Thumbsit upon sales either express or implied. If the vendor has no title the vendor must sue on the warranty or on an action to recover the money. If the vendor wishes to recover the price of the articles, a thumbprint is the action. If the vendor has money
have agreed and the tenderer makes a deposit and then finds that the title is hazardous, in this case he may set the tender on the deposit and recover that only, but he cannot recover any damages. There the contract was only of fire and bonds by the current, but property is not transferred in the tenor.

228.  When the property is transferred you can come only on the warranty.

Sales at Auction

The printed terms are always to govern whatever the auctioneer may say at the time of the sale.

If goods are not sold with the auctioneer, they may be re-set up again and if they sell for a less sum, that at the first sale the first purchaser is bound to make up the deficiency.

But when the produce is ceded in the tenure he must stand to his bargain, and recover damages for fraud, and if there is none on
If the fact is conditional the parties must agree as they make the contract.

Singular case in Douglass v. Weston vs. Downs. — The law does not require in such a case that the property be returned before you bring the action.

But a separate contract between the parties may make it necessary.

To rest property it is not necessary that actual

During a delivery should be made, if there is no impediment to taking it, it amounts to a delivery. Sometimes the vendor is obliged to deliver, and then if he fails, and damages accrue he must bear the loss. The vendor will be in favor of vendor as vendor.

If a vendor sells an article and a payment is to be made at a certain future day, the bargain is clear. It is now settled that if a man backs a auctioneers he may retract before the hammer is knocked down.

If the vendor of the purchase, makes a deposit and then refuses to perform his agreement, the goods
are sold by order of the creditors, according to the direction of the directors. This is not
settled at law. I happen to have a note that the action would not lie.

A covenant to sell at auction is a contract with all mankind; consequently, it is
lawful to bid under the goods at an uncertain price. It is a contract with all mankind
that the highest bidder shall have the

It is settled that if the employer tells the
auctioneer not to strike off the goods until
at a certain price, and the auctioneer does
sell for less, he is not liable to his employer.

When an auctioneer sells goods, he may bring
an action in his own name to recover the pay-
for he has a special contract to sell them.

Thumps in case of Wedgros.

It is a received opinion in Connecticut
that no action lies to recover a wager.

There are many kinds of wagers recognized
by the common law.

To lay a foundation for a wager, the vent must
be uncertain...not in point of fact.

Thus whether a decree of the court of chancery would be reviewed in the house of lords or cow. 34

Wagers to perform an illegal act, to introduce sublecent behavior, or to introduce incorrect testimony, or to short with the feelings of cow. 34

Third persons not concerned in said Wagers which militate against the public morality or public policy are void.

The action on a wager is ex injuria semper.

By a Stat. action of assumpsit it is brought to recover rent upon a lease — and the agreement between the parties is what is to be given is the rule of damages.

In Connecticut there is no such Stat. the action is a quantum meruit or a quantum meruit as against a tenant at will.

An action holding is not a subject of this O. 34

In Connecticut if a promise be in writing you must declare on it as in writing, con-
Lecture No. 11.

If a contract of any kind whatever bond, lease or covenant is joint, the suit must be brought against all the contracting parties. If not it may be pleaded in abatement but no other way. If the Deft. pleads any other way he waives the non-jurisdiction.

If the contract is joint and severable the action may be brought against one or all of them, but not against part of them—i.e. it must be all joint or all severable.

When you sue on such a contract you need not state that the obligation was joint.

1. 3476
2. 519

It is disputed whether if you sue one and insert the names of others, the declaration is good.

It is now settled that this mode is good.

I have before observed that a lower contract is often destroyed by a higher one, as a promise to pay a bond but it is said if the promise to pay is founded on a new consideration an
a claim may be brought upon it in this case.

C. has a bond against B. and calls on him
for the payment. B. says produce the bond
and I promise to pay it here an action
may be brought upon the promise because
there is a new consideration viz the trouble
of getting it.

Judge Reew says the damages nominal
and that the amount of the bond could
not be recovered except on the bond.

C. more voluntary entry will not without an
action. But in the thing be in its nature an
custom yet if the person was led into it by the
Bul. in Prl. or be request of the other party, it will be 1930-15-9
left to the jury to determine whether there
shall be a recovery.

Upon Principles of mercantile law a recovery
can be had for a voluntary endorsee. C. draws a
draft of exchange in favor of B. to whom C. and
the drawer refuses to pay at the time. D. pays
upon protest for the honour of the drawer,
C. in action of indorsement against D. in
favour against C. yet it is a mere
On the knowledge of the world's affairs, indeed, the ignorant
and the wise, the wise and the ignorant, differ as much as
the sun and the moon with the stars. For, as the wise
are convinced that they do not know all, so also
the ignorant know not that they know nothing. But
the wise man is not ashamed to confess that he
knows nothing, and the ignorant do not think
that they know nothing. But the wise man is
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When a man does an illegal act, however, and he does not act knowing that it was illegal, and there was no reason to think that it was a promise of indeminity, it is good, i.e. A person arrests another and in a Hat. 5-6 void his case, and gets a third person to keep him, and gives a bond of indemnity to secure him from harm, that is good.

If one promises to pay a certain sum, to do what he is bound by law to do, or ought to do - the promise is not binding, and if money has been paid in consideration of such a promise, it may be recovered in A moist, e.g. a sheriff makes a promise, and later money is taken into a breach, here the money may be recovered.

This action is never supported in law when the claim is unconsentaneous, any more than in commercial law.

Trivial considerations are not foundations for this action. What is trivial cannot be defined.
When the question is indeterminate, involves a question of right, which cannot be tried in
rem, the action does not lie as if
battle are taken damage, servant, and a common
is claimed in the land where the cattle are
taken - the owner pays the damage, takes
the cattle and then brings an action to
get back the money he'd action'd cattle.

It is a general rule that, the person to

But it is now settled in England as well as here that the person for whose benefit
it was made, may bring it as estoppel because

Servants always bid their employers ask
as their employers give them authority, this
is to be determined from the nature of
their business.

In these cases the servants themselves are
not bound unless they make an express
contract or agreement to that effect.
Where there are a number of partners all must be joined. If not it is impossible to abate an action.

To this rule there are two exceptions. 1st. Where there has been such a severance by transactions between the parties, that there is no ground of claim against them all, but against one only — as where there are three partners, two sign — two pay, but the third is not. He may be freed and the action sustained.

2nd. Where one partner dies, all the real property which he held in common goes to the Executor, but the right of suing and being sued go to the survivor, and if the money cannot be recovered from the survivor you must then sue the Executor.

A parol agreement before breach, may be discharged by parol, without consideration, but if after breach, there must be consideration or there is no valid discharge.
A contract may also be discharged by another inconsistent deed, it is a Promise to marry 18 in three months, and afterwards in four months.
Cession of Debt.

Lecture 1st, March 17th, Mr. Gould.

The legal acceptance of debt is a form of money, "pays by certain and express contract." It should be noted, however, that this definition is subject to exceptions, as in the case of 3 B.C. c. 134, which deals with the expression in some instances, being considered as a debt. This will be for want of a certain, 3 B.C. c. 134, as is clear in the case of debt. But in some cases, it is

His opinion is Blackstone that debt will be 3 B.C. c. 135 on parol contracts, at the price is fixed, 

That it will lie not only in cases uncertain, In cases uncertain, the distinction taken by Blackstone is not against one according to Lord Mansfield, and Court of common pleas. This action has been in relation for his opinion. That the debt of the 3 B.C. c. 134, whole sum, demand, must be recovered according to the rules of contracts. But this rule is now out of use. The 3 B.C. may recover a smaller sum.
This is a non-mm note on sight. A contract with it would be against law. The reason for this distinction does not exist. It was that they could not exist in their usual sense. They are not in such private circumstances. They have been limited in a strictly commercial sense.

Before the date prom. notes were but the original of contract. Therefore they could not be assumed as the bases of the action. The reason for it is the opinion that debt will not lie on prom. notes.

According to the common law they were only evidence of contract.

The opinion is that debt will not lie on promissory note, although it is different in some other.

When a verbal promise to pay a determinate

3. Ear. 1886 min. debt will not always lie.

Dec 2.

Chitty 220 'where one agrees to pay a certain sum for his own use, or for service performed for him it will lie.'
If one promises to pay a debt in consideration of a security given by the receiver of the debt will not be
but Debtor would have lain against the original
debtor. Against the person promising must be
a special action on the case.

But when the original debitor or intervener
is when the person making the promise for the debt
of a third person debt is the last person to he in the
debtor, and the 3d person for whom benefit the
security was made not being liable at all to the
Debtor. Thus if A. should tell B. to deliver to
1. His goods, and I will see you twice, Debtor will lie
against A. in favor of B.

When a similar promise is made Debtor will not fall in
lie of the person of a bill of exchange against the cedent
but will lie against the drawer to layge. The
acceptor becomes liable for another many debt, he en-
gages to pay the debt of the drawer to the drawee.

Nothing questions this lies, but without authorities to refer.

If the promise is that of the bill is made to
Drawer and also Layge to drawer

Plainly if the debt needs drawer, he must have nothing
asserted by the original not more
7.2.4

Debt in the absence of an implied contract: where the contract is implied but the sum certain.

In certain cases where there is no express contract to borrow or buy, debt will lie on what he has done in the course of the contract. Thus, it will lie in a real estate where no pecuniary action is described by the deed, the expenditure of debt on the land is the basis of action to recover the money, as freely elected as rent.
The action is founded on this idea. The party who
in common, it promises to pay, may demand a
sum to be paid when he is lawfully in his
possession. It is merely civil in all its parts but,
in its consequence, is it civil in form or action
and in effect and treatment in general. There has been
a distinct controversy in Connecticut, but it does
in clearly civil and not criminal. The plaintiffs
are amenable to it.

Under our law no cause of a criminal nature
is appealable from the Court of Common Pleas to the
Superior Court—Debt is appealable under 870, 1294462
A question whether to Debt, or Clause that 19th351
Plea not guilty is good has been made. Just.
Bulter thinks it is "No debt" is the proper idea

not guilty is not a civil plea. I should think
that in point of form it was not good.

Lecture March 19th

The action Debt necessary to recover damages
as in one of a breach of covenant it will not the pleader
because the action on the damages is in a case 301
of pecuniary and voluntary. After damages 292, 455
have been recovered. Debt rule to oblige.
24th A.

on the judgment, because the document is uncertain. This \( \frac{1}{2} \) A. was to recover $100. in that last Action (2) debt would be

Judgment then converts damages into debt.

Debt will lie on an amount of arbitrations that one party, from a certain duty, cannot set aside, it is not the subject of a judgment. Action of debt will not lie when the debt is in our custody, where the execution for the titles of the body is deemed in law a satisfaction of judgment. The title of the Deft. has been in our custody and has been discharged by P's consent, this action cannot afterwards be supported. Now if the Deft. is discharged by consent of the parties, and by an agreement to pay the judgment within a limited time, with this action lie.

26th A.

Shall require concerning the time to bring the action for judgment both in Eng. and this state. In Eng. execution cannot issue but within a year and a day after judgment. The Deft. only within this time is entitled, but by debts on judgment. The theory is that it is presumed the execution has been satisfied.
The stat. Wash., gave the Pff a vicinaria to make the debt—how cause the execution has not been when judgment after the time has expired. This is a judicial writ. The rule as now received in Eng. is that all the value of time, the debt cannot have execution. 6 Geo. 3, 364. 16 Geo. 3, 889. The execution has been suspended by writ once. 6 Geo. 3, 268. 18 Geo. 3, 283-4. After the final judgment, the Pff has a right. 43 Bacc. 362.

There has been a doubt raised in Eng. whether Debt—would lie within the year and day. There is no-whether for it. But I think according the Ex. 1 Bacc, 321. If I practice the Pff has a right to the section. It is said by the Editor of a late edition of Bacon that debt on judgment it is in the nature of a dispensation for the Pff must pay the former judgment—and that the Pff may compel payment without the expense of litigation. I find at Case in Broun's Bench at Debt brought in Easter three months after the land term, when the original judgment was obtained. 12 Geo. 3, 687.

The rule of the common law reflecting a year under a day is not recognized in this state—there is limited time.
Debt on judgment will not rest for long unless execution can be taken out and the same beneficially obtained. It would be called execution.

When execution cannot be taken out for some cause debt on judgment will lie as if a Justice died or is removed after judgment and before execution. The Pll has 6 years to bring his action of debt on judgment. If the amount does not exceed $500 it may be brought before another Justice but of greater before the County Court.

There is a rule that a Pll may have this action when through the lapse of time it would be impossible to sue executory. This rule is indefinite as it gives no precise time. There has been one case where debt on judgment was brought after ten years and sustained. The Pll however is not confined to this action, he may have relief from another court.

Another rule is where the full benefit of the judgment cannot be obtained by an execution on execution on judgment write to it as to recover judgment against B. B. and Co. Besides property in the hands of B. and Co. money will not reach this property, and the

shall have debt on judgment.
The P.I.P. must show the precise facts in his declaration.

Again if judgment is rendered in another state and debt-makers in to this this action lies.

Where judgment was rendered long unsatisfied and the P.I.P. cannot take interest on judgment. The general opinion is that this action lies to recover the interest. Even courts as well as those of England Term. 455 allow interest on liquidated debts, but in this absent 211 case they are liquidated by the highest authority. But execution follows judgment, and of course another action must be brought. This principle has never been decided by the Supreme Ct. 1 Rout. 176

An erroneous judgment—without debt on judgment, a void judgment—will not.

The defect in the former case lies power to get the judgment reversed by writ of error. In the latter the judgment is an absolute nullity.

Lecture March 19th 1810

The action of debt may be supported on foreign judgment.

Case on New Issue. Case is as to every other state as respects this action. A New Issue takes away to every question
Art. 4 Sec. 1

The ultimate according to the constitution is to be given to the judgments of every State.

There has been much dispute whether the defeat in an action brought in one State, after judgment in another, is at liberty to show the original ground of action. The Supreme Court must decide that he is at liberty.

I doubt whether this is the meaning of the constitution, if it scarcely intende that the record proves itself, it would be an idle article. If it however, the general opinion (the not-decided) that the original contract cannot be brought into view.

Foreign judgments are not considered as records according to the common law. It is known from their evidence of a right of demand. Supreme Court in the place the judgments of the other State courts on the same footing. If a judgment were rendered in Scotland, and the action were brought in England, it would not be considered as record, and the Deft might show that no cause of action existed.
Debt, title to foreign judgment, which are rendered in the nature of private contracts, being inferences, to be offset against, but may be admitted.

The Plaintiff need not state in declaring the case, that he had a judgment, but the original cause of action. But it is for the defendant to notice a distinction, which is, that a foreign judgment is admissible only in those cases, where he who claims the benefit of the judgment, applies to the court to have it enforced. Which application is made by bringing the action. But when a foreign judgment is plead in bar to an action, no inquiry can ever be made into the merits of the judgment. The reason of this is, that when a defendant applies to have a foreign judgment enforced, he voluntarily submits the judgment, which he has obtained, to the examination of the court. But in case of a defense made by this judgment, this reason does not exist.

The idea of "nil debet" is bad, for this does not deny the cause of action, and the plaintiff cannot rest on it as a record. The proper plea is "nil debet" but it does not vitiate the
On the cases on foreign judgment it may be necessary to prove the foreign laws. They are proved in the manner of deeds for the common witnesses. They are writings but not records.

There was a cause before the adoption of our Constitution in this State on judgment in 

This part of the judgment is not correct. They treated the judgment as sacredly than at Common Law. They ought to have said either that debt would not lie or that the original cause of action need not appear.

In debt a foreign judgment against with debt on a foreign judgment. The judgment is insufficient consideration. On debt a foreign judgment interest is to be added.

There are many cases where debt was included.
...in a great measure, overcome, as the exact. Indeed, a pump will lie to recover money laid on a mistake, debt will not.

It is not universally true that indebilitas will lie where debt will lie in case of personal fraud. I conclude that in this instance it would not lie, as it has never been brought. In this state there has been one decision that indeed a pump will lie to remedy fraud by personal statutes.

The rule that debt will lie where indebitas will is in general correct. It is to be understood as true in case of express promises and in cases implied implied from actual contracts. (S. 162, 530) If one purchases goods with or without specifying price they are concurren...

If a judgment is obtained by fraud in the proceedings, such action it is void, and the action...
exact & justified need. The frank must be in the place next. The man of his judg-
ment by substitution of having, it will not be void, but if I keep the defendant-
from having opportunity of being heard-
with 341, collection of cases on this subject. Also in
23 845 in Warren's theory. Still vacat-

18th 509. The original process is in nine cases void, or
the whole proceedings are in that case void
without for they depend on the process.

Sometimes raised on the ground of irregularity.

C 1742 if not before a single justice not having
jurisdiction, so he dies than 1300 dollars. It void.

It has been show that debt will not lie in
this State in judgment obtained an suit
of foreign attachment. Judge Revere sup-
posed it not different to. 12, Gaudo inclined to
different opinions. It is to recover effects out
of the hands of guarantors.

Lecture, March 21.

A notion of debt will lie on a promissory note
or simple bill. Indeed this is the purpose and
the only common law rationale of such contracts.
If is the proper action on one common law title. The general method has been to bring in this
state action of indebtedness. These debt titles are
sufficiently single title. The better practice is to
seek an order such as an act such a time. But are mere acknowledgments of indebtedness. I
would always recommend the action of debt on
due title. It is not lawful to take a debt.  
although it would so much longer. One bill is
at much deeds as other office. When an action
ment does not in the time of payment it is
payable at the time of the date of

There has been a case of this kind. The conditional
a bond was that the bond was to be void if he died. 369
not pay - The court held this to be an instrument
and considered it in the same right as the the
condition had been properly inserted.

If a penal bond is given for the performance of a
collateral act, there is sometimes no remedy by
chancery. Rule is that where the object of the
chancery appears to be the performance of collateral act, and law gives no remedy except
in damages, chancery will decree performance of the collateral act.
There has been a question whether or not action on a small claim for an amount to recover the penalty of the bond. It has been decided that the bond, if it is recorded as debt, cannot avoid the penalty, but if the unpaid, the detainer. This is a contradiction of opinion on this subject, as per in his...
This is the report against an accused who has eluded justice in his official capacity for an individual. The collection implies a contract to pay it over, and the collecting of the money from the defendant as liability to the officer.

Debt will not lie against the sheriff for collat. 2 Bac 14
real articles, and not sold, nor deeded to tenant.

At will may be issued to compel the sale. 517

The debt on land contract, the Stat. of limitations on a release may be given in evidence under the general issue. No this could not be done in the debt when bond, or such evidence would be inconsistent with the idea of honest labor. 262

The general issue to debt on land contract is "debt" general issue to debt on land is "non est action" and an judgment "null and null=" record. The real personal judgment general issue is not debt to such judgment is the same as a simple contract.
The action of debt and detinue may be joined in the same declaration, but it is controversial whether the latter is that suit and contract should be joined.

...In addition, with a liberty to retract to deliver or with indubitable detinue lies. In case of binding there is an implied contract to deliver to the owner and it will be sustained.

Detinue will never lie for money lent for it was never to be restored prospectively.

The action of "truce" is concurrent with detinue in all cases, but not "e contrario." Truce will lie for conversion of a chattel when the original possession was unlawful, not so with detinue.

This fact one reason why detinue could not lie is that originally an unlawful taking took. Det. D. convicted the owner of his larceny. This is entirely incorrect. The true reason has been stated. It is founded on contract.

This action has long been disused as account of the wages of law, and of the statute made...
very particular description of which was necessary.

There was a difficulty prevailing between the 1st and 2nd terms on this account of the admission of the wages of Dec.

From hence entirely separate his action.
Covenant:

Covenants, contracts, and agreements are often used synonymously
words, but they clearly are not so. Contract is a generic
includes all agreements and covenants. Neither is covenant synonymous with agreement — agreement creates all executory contracts.

A covenant is a contract written and sealed — therefore is not a proper
description to say a "partial covenant" — this is sometimes used in the books.

This written contract may be by indenture or deed. Bull. 1 Dam. 244. oil. 97. B. 742. 1825 96.

But the a covenant is by indenture insufficient to support an
action ag. the covenantor if he failure it; whether the covenant be
sealed or no. 9 E. 912. 6 P. 266.

The usual remedy for a breach of covenant is an action at law
for the recovery of damages — however where the damages are
reduced to a certainty debt will lie upon the covenant as well as
there is a single bill. So if covenants with B to pay him $100 on
a certain event — debt will lie to recover it. So debt will lie for a
penalty, this is in a covenant, as well as the it was in a bond — but
where the damages are non-existent, debt will not lie. 1059. 33, 2187.
Covenant.

But where a covenant is to do some specific act, as to make a conveyance, &c. the most proper remedy for a breach of such covenant is by a bill in Chancery for specific performance.

This does not mean by this that an action at law will not lie in such cases to a general rule that you cannot obtain relief in Chancery unless you can recover damages at Law. 10 M. & C. 371. 1556.

But if a party brings a bill in Chancery, and can only show that damages alone could be recovered, the bill cannot be sustained, for a court of law could do this, and further, Chancery cannot ascertain damages his for the jury to do this. 10 M. & C. 370. 1556. 2 Moore 341. 10 M. & C. 279.

Even in these latter cases, where damages only can be recovered if the relief prayed is consequential or collateral to a ground of relief properly cognizable in Chancery, the bill will be sustained. Hence if maker of bond is mixed with the damages, equity may retain the bill till the relief his in damages only.

Thus if A owes B in covenant broken at law—B files a bill for an injunction, etc. This suit on the ground of fraud—may move the court below bill in equity for a breach of the covenant, and if no fraud is found then equitable will give damages and covenantee will have his relief by a decree of damages, and in Eng. an issue in law may be tried to ascertain the amount of the damages. 2 Moore 346.
Covenant.

17th June A.D. 1869. 69. 526.

The practice in covenant is different from the English, here a court of equity will enquire itself into the amount of damages, or adjourn a committee for that purpose.

Covenants are divided into two kinds—1st covenant by deed and 2nd covenant in law. A covenant by deed is an express covenant, i.e., a covenant in fact, being expressly set forth in writing. So if A has a house he B for one year and B covenants to pay at 20 rent. This is express. 4. 66.

Covenants in law are such as are raised or implied by law. They are then implied covenants. Thus if A demises land to B for a certain time, the law raises a covenant that the lessee shall quietly enjoy it during that time, and also that the lessee had a right to make the lease. 1 Inst. 384. 81. 266.

Now here is no covenant in form. Covenants in law therefore arise from the nature and form of the agreement.

Covenants are either real or personal.

A covenant real is one by which a person binds himself to keep or agree things real, as lands or tenements. Thus covenant of lease in bargain and sale is a covenant real, and so is covenant of warranty. 1 Inst. 139. 3d. 348. 81. 294.
In the other hand a covenant is called personal where the agreement is annexed to the person or concerns the personality only. Thus a covenant to perform work for B. his personal- as if to pay money.

If a carpenter covenant to build a house.

This division is derived from a reference to the object or subject-maker of the Contract or Covenant. 5 to 16. Ves. B. 140.

Covenant indeed is an express covenant. But to make an express covenant, no precise form of words is necessary, any words having a concurrence of the parties in the agreement will be sufficient. Therefore the word covenant nor the word agreement need not be used for it may be by a promise. As if A leases a house to B reserving a chamber and a passage to it. Now this is a covenant on the part of B the lease that A shall have the house therefore it's a safe rule that any words importing an agreement being a sealed instrument may amount to a covenant.

1Bom. 190. ibid. 518. 2 mod. 86. 1 cent. 10.

Again if A leases lands to B and in the deed of lease there are these expressions viz. reserving so much rent or B paying so much rent and B accepts it is an express covenant on his part to pay the rent, and if he does not exercise will be against him. But it makes no difference whether the deed is Poll
A covenant may be as to something present, past, or future — generally as to the future, but not always. So of course, a man may bind himself that he has performed a certain act. A covenant of warranty is of the present kind and a warranty of the future. Pugsley 325.

Covenants in law differ from covenants in assumpsit. That covenants in law are founded upon the words used in the deed. But covenants in assumpsit are not implied from the words used, but from the nature of the contract or agreement itself. 4 Er. 8; 5 De Gresley, 89, 234. 217. But all covenants in law may be restrained by an express covenant in the deed. Ged. 175, 263, 273.

When there is a covenant for quiet enjoyment, this shall not extend to the tenant's ejectment or eviction by a stranger for before may have his action against the stranger for this. But if the lessor be ejector or upon himself, then tenant may have action of covenant.

エ, 214, 248.

A executant in a deed of a former agreement will create a covenant. Thus if in deed between A and B to said that "whereas it has been agreed between A and B" or "whereas it has hitherto been agreed that B shall pay a sum of money," by how this executant creates a covenant for this executant confirms the original agreement. 3 Ed. 463. Ideos. 122. No technical words are not necessary to create a covenant, yet there must be words which without an agreement,
to constitute a covenant. Hence where an estate, before covenants to repair during the term bounded the lessor will finish timber, it is this provision is a covenant, condition precedent to the lessor's obligation to repair. Here this provision is not a covenant which will bind the lessor. Whenever it has been thus viz. that he fenced and agreed that he would finish timber. This is a covenant and binds the lessee, here is an agreement. (Ball et al. 1852, 2. 505; 60, 277-278).

But by this it is not meant that a covenant cannot be created in favour of a partition, in it may be created in any form, if an intention is manifest to be bound thereby. Thus where a lease was made for 50 years, provided lessor died within 20 years his executor shall have the lease the remaining time. Here this is a covenant. (1635; 2. 505; 60, 475, 277-278).

If party to a deed creates a bond conditional for performance of covenants contained in the deed — this extends to both covenants in deed and covenants in law. Thus if the deed by words "dedi et accepti" which merely a half fold covenant — and then makes a bond for performance of these covenants — this bond will extend to both these covenants. (1635).

But whenever a stipulation is in the nature of a defeasance, it does not amount to a covenant in law. Thus if covenants to say 5 Y to do by a certain time on condition that and provided B does a certain act before that time, then this is not a covenant to bind B to a more defeasance. (1635; 163; 60; 505).

(1635; 60; 505; 277-278).
Ecclesiast.

We have thus far considered how a covenant may be created.

Next, rules as to construction of covenants.

It is a general rule that covenants are to be construed literally, according to the true intent of the parties, and not so strictly as to grants executed, for here the construction is strict. 1 Sam. 4:10. 2 Sam. 4:15. 18. Ac. 3:39.

Hence it is that often a literal performance of covenants will not secure the covenanter an action, for it may be an evasion of the true intent of the parties. As where A covenanted to deliver up a box to B which he held ag. him at a certain day, but before that time he sold the bond and collected it and at the day appointed he delivered it up. Here he was liable for breach of covenant, for it was not the intention of the party that it should be sold.


As on the other hand where covenanter does all that was intended to be done, he is deemed to have done all, the fact that he has not done that which the covenant required in itself was not a literal performance. 2 Sam. 6:2. A covenant to leave timber on land, but he cut it down, and then left it. Still covenant was broken. Job 46:10. Deut. 2:76. 2 Sam. 3:1. 18. Ac. 4:29. 242.

There has arisen at this point of construction a question viz., whether 50 pounds are def. weight in a cattle article was what was meant by 50. decided that it meant money. 11. Deut. 15:1.

Another rule is that when the words of the covenant are ambiguous
Covenant.

They are to be taken most strongly for Covenantor and most beneficently for Covenantee. This rule applies to all contracts—those executed as well as executory. Thus where A covenantor to pay off $500 in case of his son marrying his daughter and no time fixed—here it was held that covenantor should pay it during the life of covenantee. 12 Geo. 3 8th. 5th. 380 539.

Now cases, an exception may amount to a covenant, and in some cases, it will not. The restriction is material. Rule is, where the lease is of a given subject, except a certain part of the subject, this exception is not a covenant. A lease of a manor except a certain lot, now here is no covenant on the part of B that he will not enter on morally the land.

But on the other hand, where the exception is of some thing or some right to be derived out of the thing demised, the exception is a covenant. So it leaves to B a farm of land except a right to keep on it in right of way—now here is a covenant on part of lessee that he will not disturb lessee in going across the land.

To again of lease to house to B excepting a room, and a passage to it—now this right of passage is a covenant, for this is derived out of the thing demised. Geo. E. 6th. 10th. 49. 11th. 53. 6th. 93.

7th. 19th. 12th. 228. And there is an important distinction between the execution of express and implied contract covenant.

Express covenants are enforced more strictly than implied covenants. Thus when one expressly covenant to perform a voyage by or
Covenant 8.

At a certain time, the tenant shall be liable when his covenant over, the to be
executed by cause, by him unrecoverable, as by temporary.) 8 March 1839.
8 May 28th. 9 Feb 1849.

But if before he had given a valid bond, conditioned that he would go the
voyage at a certain time, and he should be prevented by unavoidable
causality, he would not be liable to the penalty, for there was no ex-
cept agreement.

The maxim that no person shall be liable for a loss occasioned
by the act of God, applies only in those cases where the law makes the con-
tract for it does not apply to an express contract.

If the covenants absolutely to pay rent for a house during a certain
time, and the house is destroyed by fire, while the rent must pay continuing
the whole time for which the lease was made. 2 P. 763. T. 764. 1477.

But in case of unfulfilled covenants, inevitable accident will excuse
the covenantor. A tenant for life, 20 years unfulfil'd covenants, that he
will not commit waste, now if those should beoccasioned by the act
of God, or inevitable accident, or by tempest—he will be excused.

If in express covenants to be independent of the parties, that the co-
venantor shall become absolved of all these events, but he otherwise in-
cluded covenants. 1 N. 366. T. 392.

General rule is that a performance of an express covenant is not
discharged by any collateral matter, so agreeing to pay rent during
a certain time for a house, and the house is burned before the time
Covenant.

1st. Where covenants to do a thing which at the time of making the covenant was lawful to be done, but which by a subsequent statute made unlawful, the covenant is discharged, and the covenant is annulled.

2nd. Covenants to expect from the estate to be in good and agreeable condition, which is afterwards forbidden to be expected by statute, the covenant is annulled. 1st P. 198.

As to this rule a question has been suggested viz. whether under the combination of the 2 rules this rule can exist, for that says the obligation of the contract shall be impaired. But I conceive, as says, that the combination does not affect this rule of contradiction, for it does not operate immediately on the contract but of general policy and relating to its terms to any contract which may have been made, does not impair the obligation of the contract.

Another exception. If the covenants to do a thing which a subsequent statute makes it his duty to do, the covenant is annulled, and the covenantor discharged. 1st P. 198. But if it should enter into a contract with S to have him 10 years, and not to leave his service during that time, and a subsequent statute should require all young men to go into the service of their country, here the covenant would be annulled, and the covenantor discharged.

Covenanting to do an unlawful act, and covenanting to do an in

-which act are in judgment of law the same thing. 1st P. 198.
But if one covenant not to do an unlawful act, a subsequent act making the act lawful, does not annul the covenant. Post, 145.

General rule that covenants are confined to operation to the subject matter of that which is in being at the time of executing the covenant.

Suppose before covenants to pay all the taxes of demised demesne - note this extends only to such taxes, or to taxes of such a kind as are in being at the execution of the covenant, and not to those of a different kind that may be created afterwards. So if there is only a lead tax at time of executing the covenant, and afterwards a tax is created on malt - lessee is not bound to pay this last tax.

1 Lev 68; Bent 218; Pat 117; 336; 377.

at covenant contrary to law and good policy is void, are so of all contracts.

3 Hen. 22: 315. 1 Co 34: 172. 3 Sta 17. 1 P 123 164. 776.

As to the rule that a performance of an express covenant is not discharged by any collateral matter:

has been made a question where a lessee has covenanted absolutely to pay rent for a certain time, and the house is destroyed before the term is out, whether the lessee can be relieved by a court of chancery.

1 Chaunc. 38. 3 Am. 634. This question is not settled by authority.

1 Scot 66. 366. In Smith v. Langue it was held that equity cannot give relief in such a case. Is it agreed on all hands that it was the original intention of the parties to pay rent at all events - and if it was, a court of Chanc cannot relieve against it.
An assignment of a share in action of titre de droit, amounts to consent by the assignor that the assignee shall have the benefit of the obligation. If then the assignee receive the money or releases the obligor, he is liable on this covenant to assignee. 2 Ky. 689

In this case, noted that choses are negotiable at law, so they are not, but the covenant in this case binds the covenantor. In cont. to usual to sue the covenantor for fraud, for receiving the money, requiring a release. In this, it is customary to make him on the covenant of the assignee in a banknote, assignment may go against the assignor for receiving the release in chancery. But in Connecticut, nothing active on the case ag the obligor for fraud in receiving the release.

An assignment of a share in action need not be by deed, nor in writing, for equity to hand assignment will be protected this is not a covenant but a sale. 43 Ch. 690.

A covenant by a creditor not to sue his debtor within a
Certain time is no bar to an action brought within that time, but if the
laws are void within the time, he is liable in the covenant. Co. 682, 123, 124.

But if such a covenant makes a part of the instrument, and upon, as if by
words or by any clause, it prevents a right of action till the
time expires. But still it is not in nature of a bar. The true ground
is that the covenant is part of the instrument, and as it
must then be taken into view as the construction of the instrument is
the same as if it were incorporated in the body of the instrument.
8 Ta. 482. 626, 637, 638, 1220, 152.

But on the other hand a covenant by a creditor never to sue his
debtor is a perfect bar, it operates as a release and may be pleaded
as such. 8 Ta. 170. 289, 289, 289, 1704, 440.

The object of this rule is to prevent a multiplicity of suits, which would
ultimately produce the same effect. Co. 352, 372, 472.

A covenant by any person to give a legal claim against another that
he will not prosecute the claim at a court of particular jurisdiction
which has cognizance of the claim, is void. But a covenant not
to sue in a foreign country is good bar to a suit in a foreign country,
this however is only a local release to not a total one. 2 Hale. 608.

A covenant not to sue at all one of two joint and several obligors is no bar to the other. 8 Ta. 188. 28, 97, 626. 1132, 254, 444, 444,
284, 72. But suppose the obligation is a joint one and there is a co-
covenant not to sue one of them.
Covenant.

If the grantor to a patent that the grantee not be sued before such a day and if he is he may show this instrument as an acquittal. This is a conditional release. This is different from a conveyance for to a nature of defensiveness or conditional release. Earth 64. 810. Holt. Eng. 1884. 939.

Thew 46. 390. 390.

There are certain covenants used in conveyance as a common observance which deserve more particular notice.

In all deeds of conveyance except quit claims there are two covenants. 1st. that the grantor has a title to estate to make conveyance. If the conveyance is a freehold to a covenant of seisin, if the latter than freehold, is a covenant that grantor has title.

2nd. covenant is here called covenant of warranty and in England a covenant of quiet enjoyment. Now the very not to excepted. All they are implied from the words of deed as in rep. 1884. 599. 320. 41. 80. 21. 5092. In a quit claim deed these covenants are not contained.

In a covenant of seisin grantee may sue before eviction, indeed he may sue as soon as the deed is acknowledged, for if grantor was not in seisin his title the moment the deed is acknowledged.

But on covenants of warranty grantee cannot sue till he has been evicted. This covenant cannot be broken till he has lost his seisin. 1889. 170. 9 to 80. 89. 199. 311. 597. 8917.

In an action on covenant of seisin it is sufficient to state that
Covenant.

Grantee was not seised - it was unnecessary to take the word used
formally, Col 369. 9 dds, Col 170. 22d, 14 dds 1/2.

After grantees has alleged that grantor was not seised to in-
undate on grantor to show that he was seised. Indent supra.

A covenant of seisin is broken by an existing incumbrance on land
unless that incumbrance is excepted, he should specially except it.
8 East 491. 

Grantee in case of covenant of seisin only must allege an eviction,
and that the eviction was under claim of title, and also that the
eviction was under good and elder title. This latter branch indefensible.
4 Ch 804 110d 29r. Col 9 r. 305 46 A 677. 70a 263. 6. 36. 277. 2 Em 677.

It has been decided, however, that where it appears on the face of
the declaration that the eviction of Off was under elder title, his good
law there is no formal recitation of it. 49A 617. 87r 275 92 Ch 32.

But it is not necessary to state what that elder title was, or in what
manner he came by it, or under what title the evictor claimed.
2 Deo 32. 42 R 64 r. 1 Lang 177.

Covenant of seisin only does not extend to the tortious acts of another
therefore it is necessary to state that the eviction was under a claim
of title by the Party evicting. 1 Deo 418 619. No 15r 34. 38a 584.

It is sufficient for Off to allege that he was evicted by suit
under a law, so there may have been collusion between the parties.
see 8917. But no may enjoin covenant against the tortious
act of the persons of the lessor, and in such case there is no action of fatty conviction. Eph. 3:73.

But the a general covenant of warranty does not extend to the tortious act of a stranger, yet a covenant of warranty against the act of particular persons extends even to tortious act committed by them. Holt 73. Per. 431. 20. 217. 200. 400.

But this covenant does not extend to the tortious act of the grantor himself, provided he does not under claim of title, or by such act as to be an act of fraud. 1936. 21. This rule holds for the cases where the covenant extends to all lawful acts.

Eph. 3:73.

Rule is of grantor exist his grantee under claim of title would be liable. The rule extends to all persons involved in the covenant is exec. of minion and heir. 1802. 21. 20:360. 20:361.

It has been said that a covenant by an exec. as much as to quiet enjoyment, or his act in terms against all persons whatever, yet to by contract action restrained to himself and all persons claiming under him. 1802. 20. 334. 20:360. 334. 360. 361.

Let not see how this exec. can be taken out of the same rule. I should think it would extend to any person who tortiously acts the grantor. In covenant there is an established difference between the rule of covenants in covenant of recovery, and that of warranty, and to the latter our rule is different from the book.

Eph 2 when covenant of seizure, the All 2 covers the consideration.
and the interest. As to the rule of damages in case of warranty, I find no rule as adopted in England. I suppose however it would be the actual damage which aff results.

In Alabama, the off in a covenant of seisin conveys his consideration and interest, the same as in England. But on his covenant of warranty he recovers the value of the land at the time of the eviction and the damages which he has sustained in consequence of the eviction. Hence in this State it has been deemed proper to make a difference between title of warranty in case of covenant of seisin and that of covenant of warranty. Ridd. 2 R. 146. 294.

There is another essential difference between the incidents of the two different kinds of covenants as it respects the assignees. In a covenant of seisin the assignee of the grantee can maintain an action against the first grantor, whereas in covenant of warranty is broken at the moment of the eviction, when grantor had not lited, therefore that moment the right of action a comes to grantee, and a right of action cannot be assigned, his must a mere chose in action - this right of a chose is a personal right of the grantee and cannot be assigned. Bob. 158 558 298. But on covenant of warranty, eithe is otherwise - for this covenant is even to defend the title, (after a covenant of warranty has been broken it cant be assigned.) But if the grantee assign his assignee is vested, he may recover on the warranty against the grantor for this eviction. Bob. 158 138 298. When aaction of ejectment is defiver
Covenant.

It is brought against grantee to enjoin in covenant to notify grantor of the
encumbrance of the land, that he may come and defend, and if he neglects
his called vouching or the grantor. 1st ed. 385. P. 86.

In covenant it has been said that if grantee does not notify the grantor
to come and defend, he cannot ousting his defendant recover the special
tort, which occurred in consequence of the eviction but only the value
of the land. I see no reason in this case to say ole.

Another rule. If grantor is not vouched in, he is not concluded by the
judgment ag. his grantor, but if he is vouched in he is then concluded
by the judgment. The mode of vouching grantor or vouching by a
plea of summons called a writ of vouch: Doe paid by the court
in which the action is depending.

Just claim deeds or deeds of release do not contain these covenants of
which I have been treating. It is said however that a quit-claim
may be made liable for defect of title and this in an action
on the case for fraud. This is not founded on principle says Mr. Gid
but an action cannot be maintained according to the common law of
Eng. 3, 128. This case exemplifies that rule, the it said this deci
sion has been bested in that by the 5 judges late in court.

If in an action of covenant ag. two the def. obtains judgment by
default or otherwise ag. one and is afterwards turned as to the other,
by a special plea in bar or by general plea, judgment cannot go ag.
either of them, for he is sued so on a joint covenant, and there is no
joint covenant.
The rule is different in case of trusts for both are not joint. 1 Cre 1247, 1 Phili 361, Pell 234, R. & N. 188. In notes and bonds and all contracts for payment of money, it is frequently stipulated to pay the money by installments. This subject is treated very confusedly in the books. This confusion has arisen from various causes. One cause is the Bodine statue no difference between different forms of contracts, whether the trust or bill. Neither do they make any distinction whether the sums to be paid are aggregated or not. I take it now that the law is well settled on the subject.

1st, in a bill with condition for payment of an aggregate sum at different times, debt will lie for the first breach i.e. for non-payment of the first installment. This rule is laid down distinctly contrary by Loke in the bill, and in his Reports. The rule laid down by Loke applies only to single bills. 1 Stnt 118, 106 80, 1 Stnt 5 814, & N. 168.

But if a single bill is given for payment of an aggregate sum at different times, action of debt will not lie till the last installment falls due. 1 Stnt 4 82 106 128, 1 Stnt 6 5 1848, & N. 168.

Now the difference between these instruments will be manifest if we consider the nature of the two. In single bill the debt is one, entire, indivisible debt. But in plural bonds, non-performance of the condition the whole penalty is perfected at common law.

We have notes on this subject i.e. as to penal bonds and the court is allowed to choose down the bond. Yet, civil actions.

But as to rent, it is always demandable and an
Covenant

Action will lie at the respective times when it becomes due, whether there is any bond or bill in the case — and the prescription may be by hand or by deed. The rent is considered as the prescription of the years of the lands, and is not due till the day of payment arrives, and then is not due till the day of payment arrives.

Covenants and Promissory notes fall under different rules. One covenant to pay an aggregate sum by installment an action of covenant will lie when the first installment becomes due, but only will lie upon the covenant till the last installment falls due. Rule is the same as in promissory notes. (S. 212. contra (S. 176, 3. 22, 104, 23, 47. 39, 47.)

There is a difference between a contract to pay an aggregate sum by installments and to pay a sum by installment without any aggregate sum.

Where there is no aggregate sum in the case, an action will lie to recover as the installment falls due. (S. 212. contra (S. 176, 3. 22, 104, 23, 47. 39, 47.)

There a sum of payable by installments with a clause that on non-payment of one installment the whole shall immediately become due, is a good clause and will lie. (S. 212.

This is not in the nature of an onerous consideration. (S. 212, 39, 47.) You will perceive that where a covenant to pay money by installment, there may be a number of breaches. Now is a rule of pleading that on an action of covenant broken the off may allege as many breaches as there has been. So if money is to be paid at four different installments,
and the action is not brought till after the fraud is stated, it has come in. The party must allege four breaches.

But if a verbal bond is given for the payment of money by misstatement, the rule is the reverse; for in case only allege one breach, on principles of privity, for the breach was a part of the whole penalty, it would therefore be impracticable if he alleged more than one. 1 Barn 197. Emb 297. 3 Eliz 105. 2 Eliz 293.

But in rule of pleading as to verbal bonds is the same as the English rule in case of covenant, for one counts chancery down the bond to the damages actually sustained. Not ten, but two actions; Here indeed in Eng. by statute 48 Hen. VIII, a party may assign as many breaches as he pleases in case of bonds as well as in covenant. 1 Bac. 544. 2 Sib 377. 2 Bl. 106. 111. 2 B. N. 320. 8 Eliz 126. But this at law law you can only, allege one breach, yet the

in matter of law only and can be taken advantage of only by special

remover. Emb 297. 4 Bac. 185.

Next who are bound by covenants? The personal representations of the covenantor are always implied in himself, and if he is bound by a covenant, they are also bound the not named. 1 Nicoll 185. 1 Del. 179. 2 Del. 179.

Exception to this rule where the contract is fiduciary. In case of the

contract of apprenticeship is clear, otherwise he is not bound to teach the apprentice. The instruction was to be performed by covenantor himself. 6 Co. 353. 1 Del. 216. 1 Del. 128. 519. 2 Del. 267. But even in these

last cases, where the covenant is fiduciary, there is a material
Covenant.

Difference between the duty of a personal representative to perform the covenant himself, and his liability for a non-performance by the covenantor. In the personal representatives are liable for a breach of covenant committed by the covenantor during his lifetime. 22 Geo. 1, 398.

So also an ancestor seized in a way at law law bind his heir by a covenant. This is at risk in fee covenants to convey to B, and dies before the conveyance is made the heir of A may be compelled to convey it to B, and consideration money, with generally go to the Executors.

2 Geo. 1, 385, 325. 398.

So also a real covenant will bind the heir of the covenantor. In that case, suppose B had died and the heir of A may compel it to convey. 2 Geo. 1, 385, 385, 325. And as to covenants in deeds executed, of the covenant was with the land, and therefore designed to continue after the covenantor’s death, his heir may sue upon it, even the not bound. 2 Geo. 1, 385, 325, 325, 325.

The rule as to the liability of the heir as such is not very different from what they are at law (2 Geo. 1, 385, 325). It has been held in Connect that the heir as such having benefit by covenant, is liable at law on his ancestor’s covenant of seisin. This decision is not correct, I think, says Mr. G. This is good claim against the Executor, not against the heir. In Connect the heir may be liable on his ancestor’s warranty under certain circumstances.
What covenants run with the land, and what do not.

And 1st., the liability of a pledge on covenant of his assignee.

The assignee of a landlord is liable for breaches of his covenant: the tie is not named, provided the covenant runs with the land.

Giver's rule: if the thing covenanted to be done, or concerning which something is covenanted to be done is in use at the time of the covenant being executed, and hance of thing demised, the covenant is said to run with the land. Element of covenant runs with the land. The assignee is bound to put named. Suppose A lease lands, and buildings to B and B covenants to repair the building, and to keep the lease, now the assignee is bound to put named. So buildings are part of the thing demised, and tie in use at the time of covenant being executed - so it runs with the land. The notion of covenants that run with the land is this, that the thing to be done is considered as assigned to the assignee demised and follows it.

5.7.24.6.26.6.6.45.4.630. To also covenants to pay rent during the term is a covenant which runs with the land for the rent is potentially in use for rent is the price or rent of the land. E. 333

2d. i. 159. 125. Reg. 152. 3. 159. 52. On the other hand a covenant by lessor to build a wall be more, or erect a house on the land, does not run with the land and will not bind the assignee unless he is named.

This is a collateral covenant, the wall is not in use.
OCCURS.

If not parcel of the thing demised. 5 to 16. 185. 2. 38. 1274, 39. 2998.

If also a covenant is said to run with the land if it goes to the
substance of the thing demised - but this rule supposes the thing
right at the time of executing the covenant.

Of lesee covenants to leave so many acres unfloughed, this
runs with the land, and will bind the assignee the not named.
5 to 17. 12, 125. 312, 233. 2094, 309. 214. 1228, 282.

But when assignee of lesee is named as by word "assigns".
Then he is bound to perform all the covenants whether they run
with the land or not. 5 to 16. 189, 534.

But to bring a case within this rule, the thing covenanted to
be done must be something related or annexed to the thing
demised or premises, otherwise it will not bind the assignee the named.
If lesee covenant to build a house on land which is not the
demised - then his assignee will not be bound the named, for
this covenant does not relate to the demised premises. This is
a collateral covenant i.e. the act to be done is collateral to the
demised, and cannot be assigned. 5 to 16. 189. 252. 409.

When the assignee is bound according to the distinctions already
taken, he is so bound only for rent incurred, a covenant broken during
his possession.
Covenant.

If the covenant is broken by lessee to one assignee, the assignee is not liable for such breach. The assignee is bound when bound at all, on the ground of his possession, or by reasons of priority of estate between him and lessee. 1 Deo. 83:6. Nett. 177. 34th 199. 38th 522. Drog. 448. 21st 137.

The right of action against lessee in case above, can be transferred, and this is a further reason why assignee is not liable when the breach was committed before assignment.

On the other hand the assignee is not liable at law for any breach of covenant by himself, after he has assigned, for hi priority of estate is gone the moment of the assignment. Hence as a rule, if assignee assigns to second assignee even the very day before rent becomes due, he is not liable for any part of it, for there can be no appropriation of rent 177. Drog. 438. 38th 22. Dalk. 81.

1 Dott. 350. Ar. No. 137.

And the rule is same even the assignee should assign to beggar, provided it was not a voluntary assignment as in last. It is said that when assignee assigns before rent day— the lessee may alledge hand in lessee, and recover on that ground, but this is not law. Nett. 177. 161. 1221. 34th 485. Brod. 22. Contra. 1974. Drog. 329. 338.

Rule is the same if assignee assigns even to a former co-tenant. Drog. 435.

Reason of this rule is similar to the reason of the former rule.
Covenant

when the estate is parted with, his liability is gone—he is liable on ground of estate, the lessee is liable on ground of contract of estate 3 to 22. But if a assignee does assign to a beggar and for the purpose of avoiding rent, Chan't will commisch him or account for rent, while he was in possession of the land. 1 Desol. 357. 358. 1 Desol. 27. 165.

If an assignee is evicted of part of the premises occupied, the rent may be apportioned even in a court of law. App. action of debt with the against the original lessee—for this grows out of priority of estate. But his different of lessee is evicted of part—lessee cannot maintain action of covenant broken—this code not lie on lessee, cos evicted of the whole. 3 to 22. 2 Bax p75.

It has been a moot question in Eng whether a court of chancery can in any instance restrain an assignee from assigning to a beggar or a vagabond. This question is not settled. I think they cannot—no principle on which they can proceed says ch? jone.

1 Dent. 337. 1 Chit. 219. 548.

It was formerly doubted whether a covenant by a deaseree not to assign his tenant so as binding. It is now settled that such a covenant is binding. 37a 300. 11 Geo. 3. 821. 276.

If such lessee does assign after he has made such a covenant, he is liable to an action of covenant broken. And under this rule a question has arisen—whether such a covenant is broken by the lessee's
Covenant 9

being taken in execution by a creditor. But it seems settled that this does not break the covenant.

It is also settled that an under lease for part of the term does not break the covenant.

It also has been decided that such covenant is not broken by the lessee receiving such terms for this is not an actual assignment.

92 A. 571. 7 V. 22. 2 B. 91. 100. 330. 234. 2 A. 766.

The lessee always remains liable to his lessor when there is express covenant, even after assignment, and the assignee may be discharged, but lessee is not liable in debt after his assignment for his breach of estate is gone. 3 22. 3 26. 199. 192. 93. 100. Doug. 43.

118. 123. 137. 124. 93. 353.

True rule is that debt-days after lessee has acquired as in the assignment and consent to have the assignee his tenant.

92. 134.

But on the other hand the lessee has accepted the assignee as his tenant, still if there is an express covenant he may have an action of covenant broken against lessee, for breach of contract remains. 193. 194. 205. 522. D. 237. 93. 186. 174. 84. 85. 86.

But if there is no express covenant, and covenant on the part of lessee is implied by law only, and lessee accepts the assignee for his tenant, he can not maintain any action against the lessee if
Covenant.

He has not accepted him he may maintain an action of implied covenant against the lessee. This implied covenant is founded on primity of estate, and cannot be destroyed by act of lessee only but may by the concurrent act of both which is done by his accepting the assignee as his tenant. [437, 422]

[422]

Lessor may accept assignee to be tenant in a variety of ways—by accepting rent from, or joining in the assignment.

[425, 426]

In many cases lessee and assignee may both be liable, as we have seen; now when this is the case the lessee may pursue his remedy on express covenant of lessee, and an action against assignee; and he may obtain judgment against both, but there can be but one execution enforced in costs, he brought to them in both cases. If lensor found in enforcing both executing the party aggrieved may be relieved by an amotia general. [428]

By Nath. 32. Nov. 48 grants of schooner same remedy on covenants which ran with the land as the lessor himself had at common law, and by law that the lessee has the same.
Covenant.

remedy against lessee grantees, as he has at common against
lessee only. 3 B. C. 314. 12 B. C. 215, 222, 18 B. C. 279.

But grantee of lessee is liable only to such breaches as happen
during the continuance of his title.

Distinction between an assignee and a derivative lessee is under
leasant. A derivative lessee is one who takes the covenants of
heat of the residuum of the term, or who takes the whole residuum
as tenant to lessee and not as tenant to lessee.

An assignee is one who takes the whole residuum of the lease as
tenant to the lessee. 3 B. C. 314. 28 B. C. 279.

A derivative lessee is not liable at all on the covenant con-
tained in the original lease, and reason is he does not take as
lessee — no privity of contract between them, he is and lessee, 
no privity of estate. This is an important distinction.

Doug. 438, 174, 326, 284.

The same rule which holds in case of derivative lessees, holds
also as to mortgagee of the whole residuum of the term, unless
he takes hypoposis (I am speaking of mortgage made by lessee).
A mortgagee is not considered as a lessee. A mortgagee
takes hypoposis. The lessee may consider him as tenant. Doug. 438
1 East 382.
Covenant

Specific difference between assignment and a derivative lease. An assignment is a sale of the lessee's interest. A under lease is the creation of a tenancy under him. The who takes an assignment is tenant to original lessee. He who takes an under lease is tenant to original lessor.

Assignment of equitable term are liable on covenants whether the assignment is actual or whether the title is derived by devise or by inheritance, or by being executors or administrators to the deceased estate. 2 Covenants 177.

Question whether assignee of part of the premises is liable to rent or any part of the rent? The question is not yet settled. My own opinion is that he, if he is in possession, is not liable as the lessee by merely assigning the lease, ought not to discharge assignee from paying rent.

If lessee covenants for himself and assignee as long as they shall be in possession, and the assignee continues after the term, he is liable. If he shall be in possession, he shall be liable for the whole time he is in possession, and liable on his covenant. 2 Covenants 407; 2 Covenants 804.

Next how far these covenants extend to and against the heirs, executors and administrators of the parties. And I would dispose that on an action on any covenant by which the heir
Covenant 10

is bound his own interest in no defence. The covenant is not created by the
Covenantor but by the covenantee in this case. 49277.

If covenant with B, his heir, see esp. agnus for covenant grant
enjoyment and the the covenant in real case, and covenant is binding
in life time of covenantor his exec. The cotrament shall have the
action, and not his heir, the the is named. Reason is that covenantor
claim when this was reduced to a right of action during his own life-
time. Suppose B, is ejected and their, now his right of action accords
during his lifetime, and if he had died before would have had
the money, he ought therefore to have it now. 191976. 1974. 78. a. 82. 295
20. The heir can have no claim in this action because
his ancestor was ejected by elder title, and he could not be heir,
for his ancestor did not own it.

But if covenantor real is broken after covenantor's death, the heir
and not exec or is to have the action, the land has then descended
to him. 19441 1944. 158. 22. 429. 295. 295.

If covenant is broken during lifetime of covenantor, his exec or is
liable for the breach, even the covenant is real, and reason is the
right to recover damages a. covenantor accrued during his
lifetime, his personal estate would have had to answer for it, it
therefore ought not to be subjected. The exec or of covenantor is
liable for a breach of covenant happening after covenantor's death.
Comment.

He could not, however, be liable in the last case unless the covenant is express. But his inmaterial whether his executor or ship is 1st on the beach was before the covenantor's death. & Const. 568. 27th. 572. 18th. 577. 19th. 594. 128.

Exception where the covenant is fiduciary. Co. 8. 157. 24th. 857.

If executor or administrator of these comes into possession in his official capacity, he is then assignee, and is liable in that character for breaches during his possession, and he may be sued as assignee, and described as one in the declaration.

Toth. 809. 1699. 4.

The heir of covenantor is liable for breaches arising both before and after the ancestor's death provided he is named, and the proof that he has a party by descent, otherwise he is not liable, both these requisites must concour in order to subject him. 1st. 834. 3. 65. 377. 560. 578. 3. 593. 27.

2. 65. 377. 578. 3. 65. 377. 560. 578. 3. 593. 27.

Comment. The action is to be brought on death of covenantor against the executor or administrator, and not against the heir. In general, the heir is not liable as such for his ancestor's covenant. It has been held that the heir is liable if he has a party by descent on breach of covenant by his ancestor happening during his own time, i.e., before the ancestor's death.

Particular class of covenants. Covenant to save hearths.
Comment 11

It defines it as it means one by which the covenantor binds himself to use the commonalty in all its original character. This covenant is not broken by the wrongful acts of another. A covenant of quiet enjoyment is in the nature of a covenant to have harm less. It also of negligence; a covenant with his lease to have harm less from all one which does in the lease or the assignment, if the lessee's goods should be or has been foreclosed, he would not be liable. 116: A. 114: E. 21: Holt 15.

27. In certain cases a covenant to save harm less is broken by the irreparable injury of covenantee to sustain damages. As no actual damages have been sustained. Thus if there is a covenant against the peace and quietness does escape, he may immediately sue on the bond, as he has never been sued by the coddler. His mere liability is deemed to be a damnum quantum. 116: E. 21: E. 12: Holt 510.

28. The damnum quantum is merely Deed, its constructive, the escape was breach of the covenant and this was intended to be only the failure. So also if a man lets a covenant or bond of indemnification, and the principal debtor fails to pay the debt for which the surety is bound, the covenant to save harm less is immediately broken, and remedy may maintain an action on the bond. The non-payment of the bond at time it is coming due was an actual covenant broken, and this is the ground of this rule, for there has been no damage.
Covenant.

S.Buch. 234. 5 to 24° Salik 196. Root 507.

This point has been decided in Connect, both ways. The decision in that case fragment at time is a breach of covenant. 2 Litt. 15 b. Root 507. But if the action with the in these cases, the principal may be compelled to pay the creditor, although he has paid the same debt to the surety, he may be compelled to pay the debt twice. But what in this case would no doubt compel the surety to refund the money which he had received. As I have seen in decided cases as to

I should think an action at law would lie to recover this money back again, were it not for one reason which is, that in both cases the money was paid under judgment of court. Kindred upon it would not like, if it would the principal might set aside a judgment of court. But when this point there is a material distinction to be observed. If one having obligated himself to be a surety for another takes a bond of indemnity, after his liability has accrued or attached, no right of action occurs on bond of indemnity, till actual damage has been sustained. Suppose A & B execute bond to J. D. payable in six months, and after this time has elapsed the covenant is made to secure B. himself. No recovery can be had till actual damage has been sustained by B. Salik 196. 2 Litt. 234. Root 507.

Here liability never amounts to a breach only in such cases.
Covenant 12

when more ability invites a change in the circumstances of the parties.

It follows then, that if it and B execute a simple bill or note payable on demand, and a covenant to B to save harmless, now B can recover on

this covenant till he has actually been damaged, for it works no change of the parties' circumstances. But a variety often does not

take such a covenant to save harmless, and if he does not he may maintain action of indebitatus a jurisprud after he has actually paid

the debt for his principal, but not before, he is not entitled to an

action till he has actually paid. Formerly supposed that a party

in such case had no remedy whatever, but this is now exploded.

See 525 231, 164, 3261 14, 135, 49, July 139.

But if party has actually taken a covenant to save harmless, and has paid the debt, he can maintain indebitatus a jurisprud against the principal debtor for he has a higher remedy, 2911 183.

The reason why covenant is retains over corona to after an assignment.

In the assignment of bonds, notes etc. the obligee may in some instances release after assignment, and in others not—Rule is. If the instrument is not negotiable a release by the assignor is good after an assignment. But if it is a negotiable instrument the assignor can't

The assignment relieves even at law, 304 506 of exchange.

In the former case the assignor retains his power of containing it,
Covenant.

but in the latter case he does not. If a lessee after an assignment of a covenant releases to decree all covenants so that the lessee of the covenant may recover for all breaches after assignment, for the covenant runs with the land and is assignable since the Stat. 32 Hen. 7, 15, and according to some it was so at com. l.c. 4 Brac. 274. 2 L. 2 Ed. 1. Colb. 503 21 Mer. 112. 17 Mod. 315. But it said that where a lease has been assigned up to a lease, he may own the assignee of an action for breach, even after the assignment, by a release given before action brought. This rule

think is not correct. C. 325. 326. 361. 373. 2 Rob. 411. 5 Com. 285.

It general release by covenantee before the covenant is broken, all covenants does not discharge the covenant, for until the covenant is broken, there is no demand.

But a release of all covenants before the breach discharges the covenant. 3 Rob. 166. 125. 296. 2 Rob. 399. 3 Rob. 104. 2 Rob. 89. 149. 38

Release in covenant.

In this case of covenant broken the declaration must always state the covenant is by deed. Therefore there can be no such thing as a

hand covenant. 8114. 8115. 8116. 8117. 108. 209.

But there are many written executory agreements which are
Covenant.

It will not make a motion in such suit to contract, must or could, standing unenforceable.

A general rule that when a party desires to enforce a covenant, he must make a motion of it. But there are several distinctions as to the necessity of making a motion, and for these distinctions see 1st. Plow. 121.

If the deed is lost the party may declare upon it as lost by time and accident, and need not make a motion. 2nd. rule is the same if he is in the hands of the adverse party. 1st. Plow. 165. 1st. 66. 3rd. 2nd. 386. 3rd. 151. 2d. 71. 16. 263.

When the covenant is general, a general assignment of the breach is good pleading, and the most general assignment of the breach is in the words of the covenant. This is covenant of seisin. Grantor covenants that he is seisin of the premises, how to sufficient to aver that the grantor was not well seized. 50 Tulk. 178. 139. 1st. 176. 3d. day. 478. 96. 60. 80. 9. 976.

A further rule is that the breach should be so assigned as to appear to be clearly within the covenant. Thus of lease covenants not to cut any more timber than what is necessary for repairs, and the tenant should allege that he had cut timber to amount of $100. This is not good assignment for it cannot appear to the court specially how much timber was cut. All should allege that he did cut more than was necessary. 534. 159. 263. 98. 297.
If the new building is not commenced within ten years, the tenant shall not be required to continue to pay the rent as it is fixed by the subsequent rents. An allegation that the tenant is guilty of the breach is that he has committed a breach of the covenant in a subsequent event. If the covenant is not breached to take notice of it, the leaseholder is held to have taken notice of it.

Reason why the tenant is not bound to notice it is that he is a subservient tenant, of which he must take notice.

But the rule is different when there is an exception in the body of the covenant. This constitutes part of the covenant itself, to be considered in the body of it. J. May 65, Sept. 30.

If the tenant is not bound to notice it, as it is a subservient tenant, of which he must take notice.

If the tenant is not bound to notice it, as it is a subservient tenant, of which he must take notice.

If the tenant is not bound to notice it, as it is a subservient tenant, of which he must take notice.

The tenant is held to have taken notice of it, as it is a subservient tenant, of which he must take notice.
As is not in the alternative, and an allegation that he has not
had it sufficient. Page 229.

If the Deff has accomplished to pay money on the event of one of two
contingencies, an averment that one has happened is sufficient with
not saying that it was the first which happened. Page 132.

If the covenant is that an act shall be done by the covenantee or his
agents, and an action is brought against the assignee, the breach
must be alleged in the rejoinder viz. that the act has not been
done by the covenantee nor by the assignee.

But this rule does not hold where the action is against the
covenantee, for then the presumption is that he has not assigned.
Page 228. But in a covenant to do an act in favour of the coven-
antee or his assignee, an averment in the action brought by co-
covenant that the act has not been done to him is sufficient.

I presumed that there has been no assignment. But I suppose
in the figures if he covenant should bring the action, he should and
that the act has not been done to the original covenantees, nor
to himself. Thistle 440. 5 m. 2. 133. 1st ed. 139.

In an action on a covenant for a sum certain there can be no affir-
mation of the demand, and if the breach laid requires an affirmation
that it is not well assigned. So if covenant is to give it 100 for 10
many lbs. of goods assigned, and breach assigned to many tons.
The covenant taken in the hundred—this is not well assigned—it indicates the assignment of the breach. But if the covenant has been to pay at the rate of £10 per ton, then you may show non-payment for the fractional part of £10. Allen v. 226, 124.

Where however the duty arises as in the first case viz., a breach for money this can be hindered by way of cragg, and take payment for the said. s. 665. 765. 374. 832. 366.

When the covenant is to do some act precedent to his own right of action, he must allege a performance of that act. Holmbl. 217.

And the rule is the same where the precedent act is to be performed by a third person. And in all these cases the declaration is radically bad, and can't be cured by verdict until performance is given.


But when the covenants are mutual i.e., defendant the not necessary for the plaintiff to own a performance on his part in an action of covenant broken. So if he brings a bill in Hand for a specific performance, he must then aver a performance on his part. Holt 38.


Measure of a party of the bill.

So to the general plea that he has not broken the covenant, this is not good in context for it throws questions of law to the jury, and his case resolved by our courts. s. 857. 761. 1260. 1382. 1382. 269. 150.
But would not then be good if the declaration concluded, and the debt has broken his covenant? It would then form a direct issue, but is the covenant quiale. 2 Bl. 1 R. 212. It is laid down as a rule that, when all the covenants are affirmative, they sufficient for debt to lead performance generally. Prat 303 5 Em 83. 4 B. & C. 91. I cannot but think that this rule is not correct as a general rule one. The most general rule is directly the reverse — because whether as a general special rule, it certainly relates to those cases where the things to be done are in some measure indefinite, either in kind, in number &c. Of covenants to convey to B all his lands, a plea of general performance is good.

But if definitely the covenants to return all rents received to him, a plea of general performance is good. So if he should covenant to perform all the duties of his office, plea of general performance is good. 5 Em 236. 4 B. & C. 91. The reason why general performance is allowed to be a plea is to avoid proximity. c. 574; 916. 1007. 138. 643.

Another rule — when the debt has covenanted affirmatively to perform several specific acts he must lead performance the covenants performance of each act. This rule is well settled, and under the same general rule as laid down in Books is unanswerable as I have explained, is totally inconsistent with this rule. c. 574. 916. 1007. 138. 643.
And if it be agreed in compliance in Eng. that a plan of performance otherwise than in the words of the covenant is ill a general manner—meaning is that he ought to those specially how he has performed. 

Bomg. Pol. 455. And where there are affirmative covenants which are very numerous, this general appeal of hechtor in the copulation is Goff. 894. 459. 1 Pint. 482. 1305 York. 61. 1 Doug. 209. contra.

But where some of the covenants are negative, the debt can't obtain performance specially, but he must plead that he has not performed the acts which he covenanted to do. If debt pleads performance in negative covenants he had only his special demurrer—this makes of form only. 

Ler. 8299. 691. 1 Post. 302. 4 632 82. 91.

If a deed contains negative covenants some of which are void, the debt is not bound to take any notice of them. Holt 13. Barr. 117 note. 

Com. 35. 236. But this same rule I suppose will apply to affirmative covenants which are void or some of which are void.

Where the covenants are in the description the debt must show which of the two acts he has performed. 1 Post. 365. 3 138. 10 2 237. 1 Chalm. 117. 321.
Covenant 15.

To also if the covenant is to do an act which must appear of record, Deft.
must plead specially in venue because the performance must appear
by the record and the record must be tried by the court. Deft. covenant
must to save himself the Deft. may sometimes plead general non damnum
facit in. That Deft. has not been damaged and in some cases he must plead
specifically that he has saved the Deft. harm and there how he has done
it. Milius to distinguish if the covenant or bond to save harm self from
any particular thing ascertained in the instrument, the plea of non-
damnum facit is not good. To here Deft. must show that he has saved the
Deft. harm self and then how he did it. Case 874. 860. 684. 854. 640. 247.

And to also we must show if the covenant is to save the Deft. harm self
in general terms i.e. which are not ascertained if he is to save harm self
of any particular act ascertained to be done - non damnum facit is
not good - performance must be pleaded specially and quo in do.

Case 975. 860. 830. 830. But if the covenant is general to save harm self
from all costs, charges, damages, &c. and the specific mode of doing it is
described in covenant - a plea of non damnum facit is good plea.

Case 974. 3 and 252. 5 and 244.

But even in this case where the covenant is this general yet if the
Deft. will take upon himself to plead affirmatively he must plead
the same. Case 260. 6. 8. 910. 854. 854.

However if he plea affirmatively he does not plead quo in do, his
A joint contract is one by which two or more persons bind themselves jointly and severally.

A general contract is one by which an individual binds himself alone. It is a rule that if three persons covenant severally and jointly, all may be sued together, either may be sued alone, or each may be sued in a separate distinct action. But he cannot sue more than one in one action, unless he recovers all - he must treat them either as joint or several, and not partly so. Yeha 16:2; 32:8; 33:6; 69:38; 70:782.

But if the covenant is joint only, all the co-venturers must be sued together. Aha 3:5; 2:6; 99.

In the other hand there are two or more joint co-venturers, obligors, or promisors, all must join in the suit - they must be joined.
29a. 282; 2n 1146:56. 8186.

But if one of two joint co-venturers or obligors is dead his executor cannot join in suit with the surviving co-venturer - the right of action accrues to the remaining co-venturer. East 497; 180:4; 4:445.

But in some cases where the covenant is with two joint co-venturers in form, yet each may have a separate action, and in some cases they must join.

Rule is this, the the co-venturers in open joint and several, yet if the interest of the co-venturers appears to be joint all must join.
5:672. 1 East 497. Foot. 180:592.

But on the other hand - if the interest of co-venturers appears
Lev. 11.5

To be unclean, such may sue jointly. If it annex to 24.7, 10th., and when covenant to take of him, yet their interest is severable to each must sue severally. 5 to 13.19. 78, 306.4. 155.

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3d. From the distinction already taken it follows that the two or more co- obligors or co-venturers may find themselves severally for the same cause, yet two several covenants cannot have the separate and several actions. 5.419. And if it makes grant to B as a jointly and severally, the word severally is totally indiscriminate; in a joint estate only, they can't take severally only, the testator, and it descends the land, and describes which belongs to B and which to C. 5.17. If two persons covenant jointly and severally each may be sued and subjected alone for the neglect or default of the other, the the other has been guilty of no neglect, for each covenant is the other as well as for himself. 3.558.

And where persons find themselves jointly and severally, a recovery of judgment against one is no bar to an action against the other. 11.2. to 46. 223. And if one has been sued and his body taken in execution, this will not bar an action against the other unless the debt has been satisfied. If there has been a satisfaction to this rule has been satisfied. 5 to 46. 124, 151.

If one of two joint co- obligors dies his executors is not liable to
Covenant

Covenant: that when a joint and several has been made it is

(Art 400) Where the words in a joint and several covenant are
As joined, it is construed to be a joint and several covenant — to
Covenant jointly or severally — the word is is construed to mean the

(2) 822, Art 76

If several persons are bound jointly and severally and one of them
Is made forced to obligate — the obligation at law is released as to
The whole i.e. as to all... (2.186, 2.160, 1.60, 2.60) and in that
Release as to all, as to obligors representing but not as to his bad-

(2) 400, 2.160, 2.60, 2.160, 2.60, 2.160, 2.60, 2.160, 2.60, 2.160, 2.60

If an instrument begins with the words "we promise a covenant, to
Signed by one only, by his sole obligation and may be used around.


I take it to be a general rule that if two or more persons bind
Themselves together in one contract, as by a bond, note &c. that contract
Is joint or several. The words to that effect are not used, unless it be
Declared or referred to be several or words importing it to be


If a covenant, note, bond, &c. begins with words "I covenant &c."
Covenant.

This is joint and several. Reck'd on 180.

$75, 76, 80g. 12 May 544. Cock 802.
Lecture, March 13th, 1810

Action of Account. Mr. Gould.

This is founded upon an express or implied contract that one who has received the property of another to account, will render his account for it and if he does not the action lies. If he does render an account such an one as the opposite party accepts there is no need of an action of account.

This action lies against only three descriptions of persons at common law viz. Guardians in socage, 3 H. 4. 1729; and Receivers between joint merchants of whom being a receiver for the other.

By Statute 4 Anne. This action is extended in favor of joint tenant or tenant in common against another as receivers for each other.

21 Com. I. the action lay only between the original parties themselves, and not for or against their executors or administrators.

The action is supposed to be founded upon this 21 T. 1. 924 Geo. 4th, mutability of contract between the parties, 1 Com. 38, as being cognizable to the receipt of the other. In this there was one exception at common law viz. in favor of the executors of joint others to the not against their executors. But this 21 T. 1. 41 Edw. 3. and 41 Edw. 3. extended this action to executors of executors.
3.3.17

there is a distinction between Bailiff and Receiver. When the action is brought against any other person but Guardians, Bailiff, Receiver, Joint-Tenants, or Covenants and their lessees, bailiff administers.

1. 420

A Receiver alone who has received money to the use of another to account for but has no allowance for his trouble. So an Attorney who takes debts to collect is a Receiver.

2. 420

But, although it is a general rule that a Receiver has no wages yet there is an exception to this rule in case of joint Merchants. They are liable to account to each other.

3. 420

If follows then that a Bailiff cannot be charged as a Receiver. But then, a Receiver cannot be charged as a Bailiff. The reason why a Bailiff

4. 420

do not charge as a Receiver is that he...
would lose his allegiance or wages.

We also have a statute on this subject, which
account is very common in Connecticut. The
Statute not only excludes account of joint tenants
and tenants in common, but also to balance time
one to the other, and Administer of the original master. I
One to reside one legate of the Executor, and in
favour of one Executor against another, where the
former is residuary legate. Our statute does
not in the terms of it give the action against
Executor, or Bailiff and Receiver. But the action
will lie against the Executor of the original parties
and also it lies in favour of them.

This action is founded on contract express
or implied.

77 There one does not lie for a fact or it
sounds in Contract.

But there is no exception in Eng. in case of
the King, and in case of the King. In personal
the abates or lands of infant, infant, may have
action of account against him so he may
see him in treble.

The action brought against Bailiff or Receiver
the Plaintiff states that the defendant is hereby to
Bailiff or Receiver to account for any that
def. refuses to account to the court damage
so much and then demands of defendant his re-
comparable account and claimers together with costs.
To collect a debt, it will not lie where a man's account is due to him at a time of 60 to 90 days, nor have account for it, but in the absence of it, and have debt for the debt.

I see no reason for their rules and I trust if one person delivers money to another, he or she cannot be held accountable. Yet shall it be at

The sheriff or last money on an execution against an account, to be against him. So it will lie against an

money paid or collected, money, see margin.

It has been decided, that an act will lie for a

certain. Again it is laid down, that when one

account for it, the act will lie. And now I

convince this rule premises it are certain. So

money is delivered to be re-delivered, and ac-

certain event, act will lie or it.

If money has been received or for the use of B's

Act will lie by B. But Plaintiff must make from

the money was received. This is said if

I do live money to B. to be delivered at B. for my

we and A. do deliver it, I cannot maintain

action against B for it. But if a Bailee of good

a duty to deliver it absolutely.

Not will act, the account discharge for the goods.
Lecture on March 13th, 1810

Upon the ground of Brice's contract between the parties, it is a rule of law that if A's debt to B be due and payable, A cannot have an action against the debtors for there is no privity between A and the debtors.

A has his remedy against his Bailiff if, his bailiff and the bailiff may have his action against his debtors.

An action of account can never be maintained against an infant because he is supposed to be incapable of accounting.

If he who receives the money of another to his account makes a special promise to account, then concurrent with absconding a wrong will lie on that promise.

But in such cases as this, Hall says in PLT, should not go into the particulars of the case but only show the special damages sustained. This means that he would not make the accountings to be gone through with but have it often to an action of account.

But I take it that now the dictum of Lord Camp. 39 Hall is not law and that in case absconding Exp't. 59
as brought the plaintiff go into the particulars
hereof in the action.

Or also to have the defendant make up the account
1. Rob. 12. of a debt or else to account for. The
Ch. 6. 14. 1. Rob. 115. has his election to bring an action of acct.
1 Rob. 115. as it one above the covenant. The security is
Bon. 1. 7. not to bring a certain sum due upon an acct.
but to bring the debt to recede the acct.
If the doctrine of merger does not operate
here——

Action of acct. does not be against a
completer or against a Lessee or property
be there is no such brevity of contract as
his action requires.

There is one peculiar rule in this notion, viz.

In action for rent of the 1 Rob. 115. rent
are delivered two kinds of rents, the first judgment
is taken from the defendant to account 2 is called
judgment on account. This accounting is before tenant
affiliated by the court, and after the account
1 Rob. 12. is taken by the creditor it is then returned to
the court and the final judgment is rendered
thereafter in the same manner as upon a
verdict.

Under our law the former remedy was said to
costs for the trouble of the auditors.

The auditors were to make out their reasonable costs and return them with their award to the court.

Before the auditors the parties have a common right to testify but before the court they cannot testify at all. Common law proof must be adduced to the court, and in that case, the statute the parties may be compelled to testify before the auditors under oath under pain of imprisonment in case of refusal, and one party may compel the other to testify.

But if the auditors have this power over the parties when they have appeared before them, still they have no power to compel their appearance, unless they can then compel the defendant to produce his account and if defendant does not attend and or if he attends and refuses to produce his account, then the auditors may give the plaintiff his whole demand.

Now these powers are not given to the auditors at Common Law.

In connection with the Plaintiff's demand in certain cases, the auditors may not only find costs but also give him damages.
is said that a bill by the till that amount to money to be delivered over to D.S. and that he did receive it is a good plea in bar how I say, this is not a good plea in bar until it is considered as a denial that the bill was ever Bailed or Receiver that it was [illegible] on another ground, for it would throw answer to the general issue, which cannot be specially pleaded.

This plea allowing that he was once accountable his former defence before auditor. There is a difference of opinion on this subject to the auditor.

A plea that D.S. has made that as an satisfaction to plat is not a good plea in bar he was bound to account on a certain time at 667.

This is a proper plea before the auditor and again in his defence is proper matter for account. So as to say that D.S. has fully accounted is good 1. Com. 91.

So in law, one the D.S. has made his reason 1. Com. 625.

But suppose D.S. denies that D.S. has rendered his reasonable account, can D.S. then go into the account at large? So, he cannot.
Lecture 3 March 13

It is a rule that if the Deft show that he has ever been made liable to account on special plea in bar is good except a plea of fault in 113.

193. 91. 12. On 1 release. So also an answer that 92.

would release is good.

But it is obvious that other defences than these may avail the Deft but they must be made before the Auditor.

From the rules already laid down it appears that the Deft cannot plead in bar any thing but the general plea of never Build or Receive 111. 6. 4. 5. fully accounted or release on some thing entrenched to release by way of a special plea in bar. Further the defence of fully accounted and release must be specially pleaded and so must 3. 6. 8. 113. 14 any thing in the nature of a release and 2. 60. 11. 9. this rule is the same in Criminal at notwithstanding the Statute.

At the time a judgment dated 1820 made competent—

and while the action is pending before the

Auditor the parties may join issue either

in law or fact, and it is said that the issue
As also if they omit to state their reasons fully, the award will not bind as a mistake in figures or calculations.

To also if a party make a mistake in a point of law upon a given state of facts, the award may be set aside.

In Connecticut the Party objecting to the award does it in the form of a Remonstrance addressed to the Court, in which he states his ground of objection.

Where it appears from the face of the awards, it will be set aside that a mistake in law has been made. 1261, 268, 268.
Defences to Assumpsit.

Tender

Tender is a good defence in all cases where there is a debt certain to be paid, or where, uncertain, depending upon the judgment of jurors and founded in damages, tender is no defence as in case of fault and battery. But if it holds a note of £100, against B, tender is good, so where A engages to build a house for B, A tenders performance and B refuses to let him. The tender is good.

The debt need not be due in point of fact, yet if it occurs within the maximum id est certain, certain, and potest redde, tender is a good plea if it can be measured by some known standard. Occur if it cannot be measured. Tender is 180°. It generally a good plea to an action of assumpsit on reputation innocent.

Tender is an offer to take a debt or discharge
a duty. The tender must declare on what account the tender is made in to have such a debt go.

Otherwise the tender does not know what sort of debt it is designed to be allotted. This is dispensed with if there is but one debt.

To where he trusted in bags and said "here take your money," it is not good - he should have presented it he need not count the money.

It has been decided that if the tenderer comes to the tenderer and he absolutely an actual offer is not necessary and yet tender is a good plan.

It is a question not yet decided, whether a tender is necessary when the tenderer comes and the tenderee says "go off I will not treat with you.

It is however decided that an agreement to transfer an offer is a good idea - an actual transfer is not necessary, occurs formally.
The tender is not good unless the whole sum be tendered on a man not obliged to take his money by force - if more be tendered, this is due. The tender is the 1st, 3rd, 9th, 16th good. The law only requires the sum due.

Sometimes debt is to be paid in money at others in articles.

1. The debt is to be paid in articles or money, at the election of the tenderer, tender of either is good, but if at the election of the tenderer the tenderor must go prepared.

2. Money is to be tendered, a question never what money is to be tendered? The answer is that money which is made good by law.

Copper coin is good tender to make change but not to pay any considerable sum.

Current coin of the U.S. States is good tender.

No precise rule as to the quantity of change.

Exception. Whether it is in a tender money depreciated, a second tender of the same quantity i.e. of a same equal is good. It has been decided in Ireland that it is good, and
In England it has been decided in Chancery that bank notes are a tender if no objection be made to them on that account.

If tender be made in articles they must be merchantable in point of quality, and this is to be determined by the circumstances of the case.

The effect of a tender.

The effect of a tender is different in different cases. Sometimes it discharges the debt in duty.
and in their only the damages.
In all cases where a lien is created, tender discharges it — as a mortgage of land tender being made at the time the money is due discharges the land.

Whenever heavy articles are to be tendered, a tender of them discharges the debt so duty as a promise to deliver ten head of cattle, here tender of the cattle discharges the debt. The tenderor is not bound to take care of the cattle — he may let them go.

But as to small articles and money, tender only discharges the damage, the debt or duty remains — not the same duty or debt — after the tenderor the tenderor becomes bailee.

So there is no death duty on the note for non-performance. The moment the tenderor brings his money into court — judgment is in his favor if he has made good tender, and the tenderor has his costs to pay.
The tenor is a brasher, and is bound to use ordinary care.

In the law of tender it is a general principle, that whatever tender money shall receive the same advantage, as if he had paid it.

In this ground it is that the case of the depreciated annuity is reconcilable.

When a rider is once made it is the duty of the tenderer to have the money ready to pay over when called upon. That if he will be subjected to an action if he does not, but that the effect of the tenderer will be destroyed.

But it is said that the demand of the money ought to be reasonable, i.e. it ought to be made at the tenderer's house.

If the tender is made if the tenderer wishes to destroy the effect of the tender, he must make a demand at the house of the tenderer.

If demand there uncompelled with could destroy the tender. When the mortgagee tender money to the mortgagee. Tenders destroy the lion.
But in this case he will have to make an oath, in an adjustment of equity, that he has had no use of the money, i.e. the most gasp, he must account for the use of the money.

The absence of a party so that no tender could be made, renders a tender unnecessary, and all that he has to prove is that he was ready to tender at the time and place agreed upon.

Tender must be made at the time and place agreed upon, and if no place is fixed upon it must be made to the person wherever he is. This means that tender must be made at the place where he was supposed to be presumed to be.

If the party has removed and the old place has ceased to be his fixed residence, and if you know of his removal, you are subject to it. Although as a general rule he is bound to go to the place of residence, yet if he finds him
in a different place at the time, lecture to
him there is good and must be made.

It is said if the mortgagee claims to tender
and goes to some convenient place and not
for the mortgagee to receive the money.
There, the tender is good.

In England there are some exceptions to
this rule. Tenants are not obliged to go
to landlords to pay rent. Tender on the
land is sufficient.

Lecture No. 5th.

As to the tender of heavy articles, the rule
is different.

If the place be agreed upon by the tenants
the rule is the same.

But where no place is mentioned, the rule
is "deliver at the dwelling house of the tenant."

But if the tenant consent and it were no
opposite detriment to tender at the last place
of residence he is bound to tender at that
place.

If the debt is unpaid and is not yours.
must tender to the assignee, if you meet him. If you do not meet him, you must go to the assignee's house and be ready to tender to the assignee, and then it operates as a legal tender, you must not pay to the assignee.

After an action is commenced no tender is good as a defence, but if the least tender, but when the debt, interest, and cost it will pay the suit.

Suppose the place is agreed on and the time is the 1st. July or one month after, when the tender must be made, if the tender is to be found at the place on the 1st. July, it must then be made. If he is not to be found, the tender is to be made on the last day of the month, the reason is because it is at his election.

So if on or before such a day, the same principle occurs.

If made on the last day it must be on the other most convenient part of the day.

If money is to be tendered, it must be tendered, so as to be counted by day light and
47

To show no time is specified a tender at any time at the place mentioned is good. 1 Vols 8 114

Tender at an audience is good when he is a proper person to receive it. This adheres in 2 Vols 155
the circumstances of the case.

62 62

Of Pleading a Tender

In pleading a tender, the 21st must state
the day on which the tender was made or
that it was present to the court, that
the tender was made at a proper time.

He must not only state the day but he must state
it was made at the utmost convenience. 2 Am. 687
part of the day. The must state that the 984
Plll refused to accept the money, only
indeed he was absent. If the Plll was absent, show 102
he must state as before, and also that he 102
himself was at the place mentioned, and
ready to tender and that no person was there
to receive it.
of the debt or debt is not discharged by the
3rd. 7th. Placing in before directed is always sufficient.

But if the debt or debt is not discharged by the
3rd. 8th. Tender, you must say that you are standing
to tender and will do tender in court.

1st. 9th. If the debt or debt arose at the time of
3rd. 8th. The contract you must say that you have
always been ready to tender.

Concerning the by articles it is not decided
8th. 6th. whether you may bring them into court or
3rd. 8th. not to tender. Concerning some of them, there
some doubt—as cattle, horses. &c.

Defendant pleads to a plea of tender and found
5th. 29th. against the Off. the money belongs to the Off.
5th. 59th. and a verdict is given for the defendant.

4th. 14th. Defendant cannot plead man a suit as
5th. 194 to part, and tender as to part.

Nor can he plead both man a suit and
5th. 14th. tender, because the plea would be inconsistent.
Criminal controversies can never be submitted to arbitration as matters of divorce.

The private rights are arbitrable.

How are awards to be enforced? If a sum of money is awarded, debt will be if the claim is certain. By taking a bond you get only collateral security, and you may sue in debt or upon the bond.

There has been a dispute upon this point. It is said when you have a higher remedy, you cannot resort to a debt, but a bond is a specially and debt-simple contract. But when a bond is given for the performance of any collateral act, and only comes in aid, you have a right to either remedy the higher or the lower.

This is an universal Rule. In law you have only a power of attaining damages, but arbitrators decide on the specific articles of dispute.
If the solicitar or surety depose at bar, it will be no bar in any other action on the case, be it for performance or to build a house.

They have then all the powers of a court of chancery. Indeed the have more for they have a right to inquire of the parties, which they are restrained by the submission.

Various modes to enforce awards.

If there is but a bare promise to abide the decision of non-compliance, or money would be indebted to a bankruptcy or debt.

If only a bare subscription without promise, in case of money, it would be called a stamp for collateral bar action on the case.

The old method was to enter into covenants. The one now most in use in England is a bond to abide. This is a legal remedy.

Another mode is to give notes of hand as Lacrosse, and this is the usual mode in Connecticut, because we consider these as the covenants.
The submission gives power to the arbitrator or arbitrators to decide. Before award you may revoke the powers, but if bond is given it may be enforced. All powers are revocable, but it has been considered this as a joint power. If it might have been better to have it all the arbitrators must join in the award.
If a power of attorney is given to two or more executors, the rule is general. The submission may give a power to try them all to decide.

Practice has been introduced to submit to arbitrators and make their submission a rule of court. The refusal to submit would then be considered a contempt of court.

Besides, a remonstrance can be made when the award is returned to court against it if it is illegal.

Instead of considering it as a contempt, we have given power to the court to issue execution.

By principles of English law, awards may be set aside if it has internal defects, as if it rewards things illegal or things unreasonable, and so on. The facts can be proving wrong conditions not outside the award for these interests.

But in extrinsic causes, he cannot go to law, but so thencey as per partiality, ground for see
I have considered in the former lecture, the nature and force of awards in private arbitration generally. That is the manner of appointing arbiters, which is by the express agreement of the parties. The manner of their proceeding in trial, the decision, and uncontestable consequence of a good award. The manner of enforcing it.

The most usual method of presenting the arbitration or submission as a rule of court with some regulations by statute, as that if the award has been made, and the party refuses to comply, instead of being committed to prison for contempt of court, the party may then show cause for his noncompliance, and also the court may grant execution instead of committing him.

The submission is just as the parties choose either written or verbal. If made a rule of court it must be written and signed in court.

The award may be written or verbal at the
The prohibition is verbal written.
The condition or terms of the arbitration
must be the rule of the arbitrators.
And they must adhere to the rule of
arbitration in every particular in their award.
And the parties to the arbitral award, as if they agree that the award shall be
written or just receive, that the non-compliance
will not affect the award. But if they agree
that it shall be sealed and read it must
be sealed.
I will now give you the law concerning money
and the authorities.

According to the old law if money was
awarded in virtue of debt would be, but if some other
labor or act is to build a house. The award
would not be enforced. But now the party
in whose favor the collateral award is
made can have it enforced to recover the
amount of it in damages.

According to the old law if there are
intermediate consequences and any collateral
amount were not due it could not be enforced.
and it may have foundation for an action. But note the rule is entirely altered, it will support an action. At present the case 12, 248 is the same in all cases whether there are promises to aside or not. The award can always be pleaded in law to the original suit. A ground of action, or an action may be supported on the award if not complied with.

If a collateral thing is awarded an action on the case must be brought to enforce or recover damages, whether the submission was by panel or in writing.

A time should be fixed within which the arbitrators must decide, the this is a mere arbitrary thing. They may say a reasonable time.

The submission is revocable, but if there are two or one side, one cannot revoke for both. So they are joint and must coincide in the resolution. But in case of such a resolution, the cause is perfected if any is given. But what is to be done in case the bond
is objected by such a location? This sale was for a bundle of green of $1,000 where the sum in question is not more than $100, with the whole sum be for paid. there are no authorities reflecting this point. (But it has been the practice of our case. I presume, would all come to chance down the road so as to give no more than an equitable sum, with reasonable damages and costs of any have. Otherwise it would be the height of folly ever to revoke or the bond is always unconstitutional there, the term is difficult.

In Connecticut, if the admission is in writing, it revocation must be in writing. According to the ancient law if there was bond, there could be no revocation, but this has been overruled. And if the full payment was made and was revoked there could be a new remedy, but now there can be an action for damages.

The bond may lose the preference if there is
no execution - as when the facts are not to
appear or bring in his account. If nothing
is wanting that - the parties' attendance. They may
make an award but in some cases the judge may
prevent an award's being made. Then in those
cases have a dispute about the expenses of
hiring to the West Indies and if went on the
ship and has all the papers, and with expenses
now if he refuses to appear and bring in this
bill he may prevent the award's being made.
In such cases the rule is that if either party
fails into the award's being made be shall for-
sake his bond.

We will next enquire who can submit and be
bound by an award?

The persons can submit who can make and be
bound by a contract. Wise - idiots, lunatics
and Infants cannot submit. The infants can
contract for necessaries and will be bound for
them, yet they cannot submit to arbitration
according to the elementary writers. But
The arbitration involves a new contract to
with the intent cannot become a party.

But the old law of another was bound to submit

C.4.4.18 to the ward's absolute necessity. Had he not taken

out of his bond - Weyse doctrine. But now he is

bound to fulfill - A guarnier can give

court, much to suit to land

when he comes of age, and if the ward does

refuse to sue title to land, the bond will

under.918 be perfected.

It was formerly said, that an administrator

could not submit - but now the law is entirely

different - he may submit -

Can one of two parties in trade submit and bind

the other thereby - the submission must be

joint.

For an attorney knows to submit by a rule of

court for his client? he can in court - Can he

out of court? no. If the attorney begins his

issue as attorney, who is liable? The client.

If the attorney begins his name as attorney

without authority and the client is displeased

with it - the attorney is liable.
In Type 25: there is a question of great importance. Stated, where there were a great number of claimants, to a prizeship, as the owners, which was submitted to arbitration, and two of the claimants signed a bond to abide the award in the name of the rest, the decision was that the money should have a large sum to the signers of the bond be the benefit of the rest. If was contended that the award was illegal that they would not award money to one man to pay to a third, but the court decided that it was a good award.

Where two submit on one side and two bonds are given you can recover your full demand, but not from either, but not your full demand from each.

A wife cannot submit, but the husband may for her and she will be bound, if the property is such as she could dispose of; he cannot submit respecting real property.

Robbe has a strange doctrine, he says if the wife
 Arbitration generally begins on the fact that it ends the original cause of action.

Lecture March 26th.

All personal matters with respect to contracts or torts are arbitrable, except the following class of cases. These were formerly considered as not subject to arbitration, but by giving bond they may be, but you cannot recover the award. It does not destroy the original cause of action. The cases are Debt on bond, Debt on covenant under seal, and damages by judgment of court.

If there is a condition to the bond, on which the bond is defendant, and that is broken, it is subject to arbitration, but when debt grows from the bond, it will not discharge it. Depends on this principle: that a clear contract must terminate on that with the contract. Covenant under seal, must have clear seals.
Wherever this principle is not binding upon the court in all cases.
In some states it is admitted by the court, that the owner have broken in upon it.
It is said the same is restrained by law, and of course there is nothing for award to
operate upon. This is a singular argument. 1 W. 292
6. 422
6. S. 799
6. 997

Rule with respect to real property.

The law is that a man may submit a dispute on real property, but the award is in effect, without bond, covenant, &c., on which the
party may rely. The reason is award gives no title. They cannot deliver deeds in Eng.,
or escrows, but it may be, and is, done here.
In Eng. they may give leases for years as escrows.
Difference of opinion on this subject.

If the dispute is concerning land, the award ought to be, not that the title is in J. Hills,
but that it be conveyed to him.
Who may be arbitrators.

Persons of sound mind, clear and dumb, wanting legal discretion, as in case of a minor, persons under the dominion or control of either of the parties as slaves, and married women cannot be arbitrators. A man will leave his dispute to his antagonist; it has been decided he is a good arbitrator. There is a case where the Attorney General had a dispute with the Bishop containing a deed and was agreed to leave it to the Bishop, who decided in his own favor and it was held to be good.

An arbitrator in the last resort is called an umpire. The dispute is sometimes left by
The parties to C. Big C. and if not decided by them then to D. Sometimes it is left to the arbitrators to arbitrate the case; if so they cannot form an award.

There is a great deal of loose learning and jargon on this subject. Cases are here it was left to A to B and if they did not decide within a limited time; then to C. The old idea was that it was a void point. 

Modern opinion is that of the arbitrators do not make an award, and cannot; an award made by umpire within the limited time is good.

The other question was whether when nomination was left to the arbitrators, they could nominate until their own time was expired. They finally decided they might. It was however held that he could not award like the authority of the arbitrators was at an end.

The other question was whether arbitrators having nominated one, and he having refused, they could
The time limited in award can be made without extension of time by the parties, ten days at least to elapse.

A rule was that no award could be made unless both parties were present, or an ex-parte hearing. The arbitrators may decide on those things that they have proof sufficient for.

An arbitrator does not decide part of the controversy, he leaves the rest to the umpire. Books say they cannot. Practice is entirely different.

Common provides now in the submission that the umpire may decide on all the whole or on the remainder.

The award of two of the three is a good award, if the third is warranted and it is done fairly.

After award it was a question whether the award
must be notified to the parties? It is said in case of bond given, notice must be given. He is now settled that in all cases, let the bond, notice must be given.

Common practice in submission is that the award must be made in by such a time. Decide whether it must be in writing or oral. It may be by partial.

Another dispute is whether on different controversies submitted they may award on one, one day, and another another, so that all is within the limited time. Decide the whole award must be made at once.

An arbitrator can never reserve beyond his time any thing of a judicial nature for it may entirely change the award.

The reservation to do a more important act may
be good as to a dispute concerning land it was
awarded to the $10 per acre, and there was
not sufficient time before the authority of the
celebrators would expire to measure the
land and hence it was annexed to the award
that the land should be surveyed such a

March 27.

Lecture March 27.

It is a rule that the celebrator cannot alter
their authority. They must either agree
advanced a ministerial act to be performed by
another, or bond, having control.

They must act as agents the substance of the
thing to be done, and by some other person.

There was a question whether an award that in
former award was good was voided to a discretion
this good.

When an award is void, I do not advise
more that it is so totally, but it may be in the
in kind it justice the real good. Sometimes of a party is willing to submit to an award. If the parties will, it will be good.

First rule is that an award must be according to submission, to this there are various branches. Thereafter must never extend to those things not within the submission.

Suppose they submit all controversies, an award made concerning all the existing disputes. But of this has grown a question, whether the arbitrator can give an award to dispose upon things not within the dispute, as to deliver a bond in favourment or in collateral theme, not in dispute. Elementary reason make it a question. I think there can be done. There is no case which says expressly that they can, or cannot. Such awards have been made and not disputed.
Then it would not stand, C and B had no guarantee of it to be carried out, and they decided that both sides be counted by D, and B be done with him and then settle it. But D did not go to settle, but sued on the original contract, and the award was plead effectively in bar. Nothing was objected on the ground of its being a collateral act.

It was decided by arbitrators, that C should ask pardon of B. The award to be changed so that it was set aside as unreasonable and not as a collateral act.

Arbitrators have a right to award any pledge or security for what they award, as that the party be directed to give in hand or pay by instalments.

Of things which may happen in future cannot be submitted but an award may sometimes be made on a right to commence in future. Thus in a dispute between Craison and Hayworth concerning timber, it was decided that the Parishes should pay an annual
Our law adiors those are to be disulubfl. No advantage can be taken of the
general rule, contrary to its meaning.

Nothing must be a divided to be done to be
by a stranger, according to the old rule.

This must be taken now with great quali-
ications. Take it to be the modern law,
that if it can be shown to be a reasonable
but it is good. Case 2 where upon dispute
between cty B that (and should be conveyed
to C. There is no reason in it; it is not within
the rule.

If there is a dispute between cty B, and
awards that c pay to B a consignee of C.
£ 20; because a bargain (within the knowledge
of the consignor) had been made between
cty B, that what he retained from this £
£ 123

and C had given bond to B to pay him
a certain sum, and have a dispute about.
Brochures. Award that A pay so much and B to much, it is good, although to be

back to a stranger.

Suppose the award is that something be done by a stranger. It is always unreasonable. Suppose the award is that B give a hand to C, and get John thers to sign it. It is void for B cannot make J. Others sign it he has no power.

Particular.

If B have a controversy and submit it. The award is a general release. It must be shown that there were other disputes existing.

Award must be of all things submit a not the part. This rule must be taken with allowance. To set aside the award it must be shown not only that the arbitrators did not decide on all disputes but that they refused to even laid before them.

Bro. 95.
Lecture March 28th

There are several actions especially named and all placed before the arbitrators, and a trouble that amount in the service of all these; then if the amount is of part only, it is not good according to the old law.

But the situation submitted, that is the distress especially named, as a party known, and the like, they could be a good upon part, as when the plaintiff alone according to the old rule, but according to reason it is very questionable whether if submitted specially without a knowing the amount or part would be good. Thus suppose A have an action against B for battery and B an action against A for assault and battery and they agree to submit the two cases, now it would be unreasonable for the arbitrator to say that B should pay 40 to the other and say nothing about the assault.

This is a rule that where there is a labor division between two persons on the one hand
and one on the other shall dispute between them. The award is not to be made dis-
tributively. Thus suppose A & B agree to submit all disputes they have with C, now
the Arbitrators cannot award on any dis-
tpute between A & C separately from B, nor
t of any demands which A has against C
separate from A.

Thus much as to submission—

An award must not be contrary to law
it stands on the same footing with contracts,
in this point.

The old rule was that if the parties sub-
mitted any disputes to arbitration which
were not actionable the award would be
void. But the modern law is different—
common lying is not actionable—but if A
calls B a liar and then agrees to submit it to
a trial, to say what shall be the damage the
court will not set it aside.

If an unenforceable act is awarded to be done
it is void — they have no right to award
But suppose they award that B pay to A $1000. B is not willing to
pay in this case they may award that
he shall give a bond to pay it in 4 years
and if he refuses he may be committed to
prison till he will — all this is good.

But physical impossibilities are void.
In this case the award was that B shall
get four young devils with black heads
by such a time, and deliver to B this is
void of course.

A contract to be valid must be reasonable
so also must an award. An award that
one man shall serve another as a slave is
void because of his nature man may not prize
and cherish of a man's liberty. So also an award
that A shall get B after to sign a bond
void, it may be impossible, therefore unrea-
donable but if the party has a right and
will compel a third person to perform the
must do it. But no real injury must occur
do this third person by being compelled.
In award to pay money in a third part.

House was formerly held to be void, because they had the right to order a man to commit
the theft. But such award is now held to be
good, and if the steward will not
permit them to enter the house, he may
pay the money as near it as he can.

It used also to be said formerly, that if
a certain sum under seal was submitted,
they could not award part of it to be paid,
for this they said was not the thing submitted.
But now the law is the reverse.

It is also said that award must be adequate
that is, they cannot award a totally idle and
unconsequential thing as that a man shall
wash his face, or comb his hair.

A question arose whether an award that it
should marry was a good one, it was said
not because not advantageous, the true reason
is it is unreasonable.

But an important rule is that the award
To where the award was that it should go to
the lord to do some business in 8, and that he
should enter into a bond that he would go but
did not say how great a bond this was void.
To also where the award was that it should
say 30, much the basket for malt, as malt
would be sold for. This was held to be paid
for its uncertainty, but if the uncertainty
can be restored to a certainty by any known
standard - it is good. To award that of the
day, market price for wheat is good award
although the price may be uncertain at
present.

Much of the ancient subterfuge respecting
awards is relaxed. If you can ascertain
the extent of the award, or the intent of the
arbitrator, you must give it effect if there
is nothing illegal or unreasonable in it.
It was an barned a wheat, and a shot at and
alljoining the wheat on one side and a
dwellings house on the other, which he quietly occupied till he began to trade with lumber, but then he gravely resolved and proceeded
the owner of the house by building scaffolds and filling up board door as to obstruct his ancient rights. They submit the case and
the award was that the scaffolds should be pulled down and the boards removed, but they did not say who should do it.
It was contended that this award was void for its uncertainty, even the court were divided upon it, but under the
above rule no such question can arise.

The old law considered an award as a judgment to which you could not add, nor diminish from it. The new law is as in contracts, to be judged according to the meaning or intent.

The costs of an award must be assessed upon agreement.

An award is not uncertain because it is conditional, and if an award is that A shall
There is no objection to an award because the time and place are not fixed. If money or goods are awarded and no time fixed they are due immediately; a certainty may be had by averment.

But you can't ascertain a certainty by averment where no standard is to be had. Suppose the award was that @ A should pay as much as was in good conscience due; there certainty could not be had by averment for there is no standard to resort to-and the award would be void.

The old rule was that the award must state the particular thing for which the sum awarded is to be paid, but the present rule is...
The award must be final. That is as to the original cause of action not amended to suit for it generally causes one. If it does not settle the original cause of action it is no award. Suppose they award that it be transmitted in the cause in which he has lost. This does destroy the original cause of action for he may sue in the next court.

But supposing this award was that there should be no more law suits this would be applicable only to this case and the trial.

An award that it should not sue when he had sued but had not had his trial. This destroys the cause of action.

All awards must be absolute and not dependent on any condition.
Another rule mentioned in the books is that the award must be mutually mutual. The claimant seems to have been that something must be due on both sides, and no leave must be given. Mutualities is concealed by the modern laws existing in every case. There is of course no room for the rule needed be no re-lease for the award.

Occurrence qualities of awards.

This is an interesting test to acquire when awards are to be in both and when in fact.

An award to pay in satisfaction of all controversies was according to the old rule brief. Modern rule says it means only the controversies submitted.

If an award is thus to settle all controversies up to the time of the award, it would not be good according to the old laws, the submission
Was of all acts to the time of submission, not to the time of the award by modern law it is good. If release was safe to the time of the award, by the old law it was bad. They say it would release the bond of submission. Modern law holds it good.

The old law originally was that if part was sold the whole was void. The law was then changed to this, that if part was good and part void, the good stands in all cases. Modern law is that an award in part void may sometimes stand, and sometimes not.

If there is a claim against B have it to arbitrate. B is ordered to pay a sum of money, so far it is within the submission, but they are an

The rule is, if you tie with B to object yet it is willing to accept of the legal hand in satisfaction of all claims - as of arbitrator
There was a time when arbitrators had no authority to award costs—and the arbitrators did award $20 damages and $5 costs. The damages if accepted would make a good award.

Therefore the objection comes from the case of J. Miles before cited is he obliged...
An offer to do the said part enters the
undoubtedly before the date of--

There may be difficulty or in performing the said
part owing to uncertainty. Suppose that A should
have to work on the last work and days work, and
that B should pay 25 Shillings. It is not to be
for the money until the money over the given
sum, which he cannot as being uncertain.

If some thing is awarded which is absolutely
good, yet if the executability is preserved, it
is good. Thus if A's offer is accepted, let B
be directed to give the release. In the re-
lease has no effect of giving, and English

Great particularly formerly must be ob-
erved in awards but now the substance
date is required.

Where a man was directed to deliver up a
will, that the executors might proceed in
their business. The notice that occurs in
this has substantial performance, so when a
man was directed to withdraw for his wife, as directed by his attorney to be executed. This was good. Th 1d 365 1764.

or it is directed to deliver to B. the bank to which he has acknowledged the balance of the credit of the land is good. If not accepted. -

So also if it is directed to pay money as demand and he pays it before B. is due he may sue it in good performance.

Remedies

Whether the statute from be in working or not, there is no statute, but what action will be to recover the award. If money is awarded, at first it lies to recover in which A states that he had controversy with B. They submit to arbitrators. They awarded B. to pay so much which B refuses to do. But you must not state any void part of the award. This is for B. to do. But you may state as many breaches as there are of the good part and recover damages, but you can have no damages for the breach of the void part. If a colossal thing is to be done...
in the case of a bond given action on the bond is to be brought.

Preface March 30th

The security is given, action is always brought upon that bond; the methods are gone into at large. The consideration of the bond is that if arbitration made an award on the premises, and parties abide by it then it is said.

Generally the action is brought on the bond. The bond must be proves at large. The defendant is the bond; the bond is brought, he says under the bond and rests at the conditions, and then defendant in what manner he can, he says that he award was made if it was illegal go—this means that the award was illegal, made or that the legal made was made. The defendant in their case denies he must reply and set out the award whether written or not the fraud, breach of the bond is null. Then it will appear...
on the face of the record, whether it is good or not. The defendant then says as before, no answer. This can be treated.

Suppose the condition was that it must be made at such a time—then it will be brought up as a matter of fact whether the answer was made before that date. In this there can be no demurrer. Suppose the defendant in the progress of the trial that in fact the answer was good, may he be divest it after pleading calling it by proving reformation, the might? It wasn't not depart in pleading.

The defendant set out on all the process and proceedings is to be delivered such a day. So according to the old law it in the Abbot, now, a third decided.

Is the Off. obliged to state that the prisoner formed his part? Not rule was that he must but modern law is different. If he is to do something before the defendant, then he has no claim till he performs this.
Wherever the Chief is ordered to do some
thing in Newell's work, no matter whether it
should be in Newell's name or not, he must perform
and declare it before a Judge.

If you are asked to give an award, you
have a right to give an award, or
if you find it varied from one side
in the declaration, as to time, sum &c.
you must set out award as it was, and
declare. I know as well as any of
it matters, it is no award. Suphore will
be heard and you want to bring the sub-
ject into some kind of neat statement.
And give the particular circumstances
in this case under the general issue.
make it different. a. that the . . . third part.

The answer of referring to this is that the . . . her from either one at the other . . . evaded at hand.

This is no just of limitation to an action funded on the several states in England, or any of the states.

The civil law does not distinguish an award made but that the award is nothing else than the submission. he must show that there were other characters and that one was shown to arbitration and not decided.

Due to the fact states having prayed upon the bond. the whole award is in fact was the D.L. demand and their interpretation the strength of the award.

Noaward was ever made - it does not follow that D.L. may not recover on bond D.L. by equitable recovenation. C. T. and E.D.
A separate arbitration between two of the

Parties. The arbitrator adjourned and met the next week. If

He does not come we may break up the

Arbitration. No. It was not possible. They

should have decided on expert hearing to the

fault of the claimant. But it is not possible to

decide. If they could not be made, et may

recover.

An Arbitrator said they cannot make an

award within limited time. They intend

it by consent of the parties. Would it

be made and not performed. Can

recovery be had on the bond not altered

33. was 420 to time. It cannot by a later decision.

Suppose it is made a rule of court, may

bring an action on award. By judgment.

Based 716 but not a later date.
Lecture: March 31st

Granting an attachment for contract is not a matter of course. The deficiency will interest the court.

So if it seems a hard case when the man... 1848

Where the award is to be a collateral act, the chancellor will sometimes grant a specific remedy, and sometimes not...

Here it is made a rule of the court of equity, it will always grant a specific performance. A man was ordered to raise, and pay over $100, and the other to grant land. The money was raised and paid, and upon refusal the chancellor would decree the land to be granted.

When it has been executed on one fact then... 20 Nov 30

Equity will decree specific performance. An award was to pay $100 and receive a conveyance of property. The award was defective. The party asked if he meant to abide. He said he did, and land was
Mr. Tw	

2 Mar. 71

The mode of obtaining relief in court of law may be as before. But if the award or bond from extrinsic causes it may be set aside if it has been made a rule of court not otherwise, but you must then apply for relief to chancery. In this state the rule is different.

The time to set aside in this is limited, you must apply to chancery. For an extrinsic defect the bill may filed against arbitrators as well as party to make them set aside.
Causes of setting aside awards.

Any improper bias, or partiality will set aside award.

As where arbitrate had private machines with one of the parties, and heard ex parte evidence, two set aside.

At a court was leave of umpire in the last resort, arbitrators not agreeing, it was set aside for improperly.

City of B left to C & D to decide and they did not then to E. They did not and of course left it to E umpire. After he was chosen a steward said that B his master intended to give B £150, and it turning out so, and this sum being great and disproportionate, the award was set aside.

Case where one of the parties desired them to postpone making the award, as he was not they acceded, but immediately made an award, it was set aside.
There was a long account between 1823. Arbitrators were going back into all the accounts. The parties complained that they were not in, and requested some time to prepare. Arbitrators made out a

33rd & 38th award - was not a while -

Before the case was heard one of the Arbitrators said he meant to make the final day.

21st, 316 costs at least had awarded -

He said he cared not about fact, but he believed one had abused the other go bad -

21st. Some case - Arbitrators had made an award and their own fees, but were apprehensive that the parties against whom was the award would not pay fees. Therefore said each should pay their own fees, and award should not be given till the money was paid - one, insisting it to be against him

23d, 3d refused - the other said the whole six guineas of wood was held back -
It is not pleading as to a bond or other sealed instrument, when the debt grows from the bond itself - because award is not to high a nature as a bond & not law here - when award is pleadable it is pleadable without performance.

The rule was - If award created a new duty and extinguished the old - can be plead in bar. If it is not extinguished - cannot. This rule is now obsolete.

Sometimes a man may plead in bar an award to which he was not a party - as A brings an action against B for the possession of B's horse which had got into A's stable. Arbitrators decide A pay B $1, then after payment brings an action against C for the same act. But he can't have but one remedy - therefore may be plead in bar.

A man may engage in battery upon A - he being the master before arbitrators.
as it respects B. Each is liable on the whole - B is to pay $100. The others can plead this in bar to actions.

Com. 328. Rule

Suppose submission last made and award to be made to day - before the day of bringing action in court. Can submission be brought in bar? Old rule it could - but 1st fire rank - this is a revocation. So there is no decision to support my opinion. The bond would be forfeited.

Another rule, if award was not complied with, might resort to original cause of action. This is entirely done away. Ryd. 250. He is liable for breach of award.
Accord and Satisfaction

Lecture April 2nd

Accord is where one is under obligation to do or pay something to another, and they agree to do another thing in lieu, as for so much money to receive iron in pay.

Accord is always pleadable in bar to actions, where damages are to be recovered whether certain or uncertain. Therefore, all actions founded on contracts, accounts, breach of covenants, etc.

What care is it not pleadable in bar to?

It never can be to an action of debt, where the debt grows from the deed itself, but if there is a bond and some collateral condition annexed, on which the bond is dependent, then will be pleadable.

The old maxim comes in force because accord
is not of so high a nature as could warrant
by common law payment of money on bond
should not destroy it.

The principle in Connecticut is thrown aside
for 116. 

120. This is a good plea to a bond of 

134. 

136. When there are more A's than one, accord

96. 99.

78. 

44. 

160. 

260. 

1 Pet 266. 

it cannot convey, for conveyance must be by deed.

1st It must be in full satisfaction.

2nd It must be certain.

3rd It must be executed.

It must appear there was some consideration — no matter how little. When it appears there

was more, it is void as other contracts.

It brings action against 3 for a forcible entry
into his house and taking dead. 2nd pleading
accord was that c f should enter and 1
have the decor again. There is no con. 97

1904. 128

4. mo. 86

Case where a man owed another $25 and
accord was that $5 should be received,
then there was no consideration—
must be a consideration in point of law—
1904. 86

According to receive fifty pounds of comfort-
of money  is good—
According to enter a house from which he
had been forcibly removed, and the other
to facilitate the entrance by act of his
own— is good.

Accord must be an in nature frequently
the not actually money.
A and B had a quarrel, A asks pardon.
B accepts it, then brings action— you can
The question is pleaded as good as ass. No but it ought to be.

It must be certain.

It must be certain at the time and such as would lay the foundation for an action. At 10 o'clock was to relinquish a house, but no time was specified, according to the old rule had. But so now.

If man agreed to deliver a quantity of wheat totally uncertain.

It must be executed.

Suppose one owes another. So he tells him he wishes to pay in iron, the man tells him he will accept it if he comes with the iron, and then the other refuses. This agreement can never be laid in hand. I have no doubt it lays a foundation for an action.

No trader will answer in this contract. It is the only one where trader will not answer.
Infancy.

This is defence to all contracts except for necessity. If a bond is given for necessaries it can be recovered all because the consideration cannot be enquired into.

When a man comes of age, and then agrees to fulfill his infant contracts, he is bound by the original contracts.
Coverture

Defence generally in all contracts. With respect to personal contracts the law has in some measure been altered so as to make them liable in some cases.

She can convey her land with her husband.

Is coverture defence to lure? If her husband is with her his good defence is also if it is done by his command. Can't in these cases.
injure. The wife - different from the law as respects a master and servant. They can be united in action on tort.
Statute of Limitations

Lecture April 3rd

This is a difficult subject—it has been supposed that the decisions are contradictory. But there is actually no contradiction in the authorities. There are 2 or 3 theories why statute of limitations is a bar, and these are contradictory only one can be right. No doctrine is in English books. The Statute of Limitations declaring so extensively in most of the States. Operates more particularly in all kinds of actions. At the time of the Statute has expired it does not alter that the contract is not good. It cannot be taken out of the suit, by some subsequent transaction, as a new promise. It is the old idea referred to above, concerning taking out of suit. It is this—that length of time always creates a presumption of abandonment. That this time was uncertain, but the legislature have reduced an uncertainty to a certainty, that is have declared when this
Presumption arises but that whatever will will take it out of the
remove this presumption - this is a plan.

able by hypothesis in which I have used cannot be correct - some cases seem to go to a
point of view. Peter were Peter for a hour after
I years. He comes and demands the money

Peter says I know I owe you and will pay
you. This takes it out of the statute.

Suppose he say, I have not the money
now but will, and does pay part - takes it
out of the statute. From these principles
it follows that if you can once fix the
undoubtedly, the law fixes - takes it
promise. This won't do - it claimed only
that he owed him a sum of money he
acknowledged it but paid the debt had
run against it - how undoubtedly was ac-
knowledge, but the money could not be
recovered. Another case - Peter calls for
a debt of nine pounds. Peter, does nothing
the debt - but says that that has
run against it - but as he don't want to
cheat him he will pay him $5 as much
as he ought to have - Peter runs on this.
A man, in bankruptcy, declares the debts of a man to be paid. That if a man declares debts to be paid, they ought not to be paid again. This proves the inconceivability of the idea just mentioned.

So also in courts of law, it has been determined that if a man becomes a bankrupt and takes advantage of the bankrupt laws, and afterwards becoming rich publishes in the Gazette that he will pay all his debts; it embraces debts barred by Stat. as well as others.

But another hypothesis does not take from this a remission, but a debt bound in good conscience to be paid. Therefore when a man makes a subsequent promise this together with the prior moral obligation takes it out of the Stat.
Of this was a correct view of the subject. The action would always be brought upon the last promise, and the consideration would be set up as the consideration. But this is not the method. The it is difficult to decide whether in action of indebtedness if brought on the original contract or subsequent promise.

One man owed another a sum of money and died—debt was barred by statute. The executor, who informed him of the existence of the debt, exec. said he knew nothing about it but if he would prove it, it should be paid. If he did prove it, it was not paid. The action was brought against executor as rich and sustained but had it been found due in the subsequent promise it could not have been brought against the estate of the testator.

Late case. A man called for money owed, and named to it. He was relieved.
to use the letter that he might be dis
placed by pleading that to a just debt. If
he did not previous to plead the debt
and few not such a ground as to
refund payment. I will say it is a just
debt. This was offered in evidence as the
suit proceeded, and was admitted.

The true rule is this. There is no fre-
domotion or payment, but it is a positive
law out of police to settle disputes made
in the bill of - but if the debtor does not
choose to take advantage of it, he may
wave his the Statute by promise or any
act amounting to a waiver, and is there
deable. By waiver the old original contract
is revived and good. This will be found
a correct rule if you compare it with
the cases before cited.

According to common law the Stat. must
be plead. If Def. offers any other plea
he waives the Statute.

A creditor is entitled that a debtor
ought to be declared bankrupt, hence
The creditor, some years and to have his bankruptcy set aside, because the petitioning creditor's debt was barred by the Statute of Limitations. Court decided that debtor had waived this.

Indorsement does not take a note out of the Statute, but unless it can be proved that the indorsement was actually made with the knowledge of the Defendant.

Upon note book, left by Statute, and a subsequent promissory note, it has been held by last decisions in the Supreme Court of Oregon to be taken out of the Statute. Also in the National Court there has been a great dispute concerning this subject.

Lecture: April 3rd.

As to the time when the Statute begins to run, if nothing is made, it begins from the date of the instrument, but in cases...
Nothing said in that it will begin from the time the right of action accords.

Thereafter there is the obligation to begin the Statute of Limitations are limited by 3 years.

There have been motions made of the Statute of Limitations by Courts of Equity as if a man's claim is made, which is not to be

unusual and in some time time expires, it shall have a year after. So also

executors and administrators are entitled to

to a year.

If some person shall not be injured if
her husband does not join with her
so that she can bring her action. So of
infants. The action must be brought
within five years after the disability is removed. But suppose the Statute begins
to run before the disability. Rule is
that intervening disability will not

prevent the Statute running.
The statute is all proceed upon the ground that no action is to be brought before, within the limited time. The statute is generally plead in bar. The Courts have always gone upon this principle, yet I adhere hand the proper way is always to plead it in abatement.

Suppose a bond is given in State of N.Y., where there is no statute of limitations concerning bonds, and is sued in this State on that bond in bar, can this be a question of suit in New York, as ought not to be. The bond should be subjected to the laws of the State where it was made. But if it is plead in bar it goes to the action, therefore should be plead in abatement.

Limitation for actions founded on debts.

No such thing as taking these out of the statute. The Defendant receive it so as to indite the Plaintiff to recover in a court of Justice. There is only one way
of which it must take he received on
by subscription to publication.
If a man is slandered and that
annuity is excepted would be three
years and he not know it, it would
seem reasonable that he should not
be barred, but the general inconvenience
would more than balance it.

Limit be little or lands.

Title is not affected in any estate but
this by Stat. of 1757. Then Stat. of
England speaks of 20 years it is usual
who the right of entry what he
taken away, but the title is not affected,
he may try it. Utah. Stat. in 15 years
taken away little and know how. We don't
separate title from possession, any more
in real than personal thing. That is
legal possession. Notes when title's had
text into timber. Title may buy himself
Dures
This is a good defence to contracts in all cases. A contract ever so righteous obtained by dures will be voided. Ye

Want of Sound Understanding
In Connecticut we have a different rule from the common law. viz. That insanity is a good plea in the civil courts. This by common law must apply to chancery.

Idiocy.

Foreign attachment.
This defence was unknown to the common law except by the custom of London. The law on this subject depends on the
States of each particular State.

Defence is in this way that by writ of foreign attachment the debt has paid the debt of the to the 2/3's credit to in satisfaction of the original contract.

Suppose a debtor owes 1,000, and 2,000 abroad having property in the hands of White - White gets a writ for 2,000, but knows of white having 1,000 of a voter's property in his hands, White gets a writ of foreign attachment for 2,000, and leaves a copy with A.

While charging him as being factor, agent or trustee for voter, or as we say factorizes him, then if judgment is recovered against the abscending debtor and the garnishee refuses to pay the money a suit issues will issue against him, and bring him to court, and put him under oath concerning the property he has of voter. But suppose the P'ty way, I don't want his oath, I
can prove it by other witnesses. But while  
must be allowed to testify, he is a com-
mpliant witness, the other testimony will  
also be admitted.

The rule is, that the factor may never  
be put in a worse situation  
than he would have been, had his cred-
itor not run away, except the trouble  
of proving that he was factorised and  
did not pay his debt, which is to be done  
by the creditor. If he is to pay a debt  
the any collateral article or boot, the  
he can not be compelled to pay the money if  
factorised. The suit of foreign attache-  
must not issue forboot, as whipspin,  
handled go, but may be new judgments  
for boots, if they become debts, and  
you can't factorise for any thing but debts.
Lecture April 5th

Composition with Creditors.

A man who is a bankrupt may make a composition with his creditors, that is may pay 5/- per pound. If this is good but if an agreement is entered into to be one creditor distinct from others, it is void. As if £8.6.3d meet and agree to accept 10 per £, I agree, but receive secretly as her compensation a note to full amount; it is void, on the ground that it defrauds other creditors.

Illegality of any kind.

If there is any illegality in a contract, no matter how much it appears, it is always a good defence. The only difficulty is to get at it. If the whole contract is set forth, it will appear on the face of it.
whether it is clear or not, but in the case of a bond it is difficult to come at the consideration, as it can't be set both either by D't or D'tt.

But you may always attack the true substitute of it and prove its illegality 3Wb.341, it does not adhere on the face of it.

It was with the greatest reluctance the court adopted this practice, yet it never was doubted but that some one might be pleaded. The the general doctrine on which it was founded was deemed to be true.

Fully accounted.

Parties usually sign a writing of settlement.

Merger

As that there is a bond when a suit is brought. In some cases where the bond is only a collateral security, it can't be pleaded in law.
But in case you cannot recover sum of money due, and a bond given, it
may be pleaded in bar to action for
the money.

Former judgment.

It must be a judgment on the merits,
not for mere informality or defect in
the declaration. When the original action
there is not substance for the declaration
it is in fact on the merits, and will be
a bar. You can't shift the form of the
action and bring another. As in case
of the concurrent actions of broken, and
the other, you can't bring one after the
other.

The general rule and criterion is, If you
are obliged in the second action to
bring the same kind of evidence to
support it as in the first, the first is
always a bar.
Discharge - technically.
This means - persons throwing up a bargain before right of action has accrued. But suppose they don't throw up the bargain till after right of action - till no avail - then must in such case be a release. 6th 382.
1st 177.
299.
Release to discharge after right of action has accrued.

Payment.

By common law this could not be pleaded at hand, it may now by Statute. Must be in kind, else accord must be plead.

If you are sued upon covenants, plead generally that you have kept your covenants. When bond is given to save harm, up and sued upon, may plead "non damni fiatis."
A contract involves principles of law. The "quo modo" must be set out, but if
Release.

A partial release attended with consideration is commonly called a discharge. I refer now to release in writing; it need not be sealed. There must appear a consideration in the writing, otherwise it is a mere unde pact.

If sealed you need not state the consideration. The difference lies in this, that the seal itself supplies a consideration. Suppose the instrument contains all the consideration, and this appears to be no good consideration. Would it be good? No, it would not. The law only considers the seal as furnishing presumption that there is a good consideration. But this removes the presumption. The best and most comprehensive words in a release are “all demands and all claims.”
There is a debt not due at the time of the release. Does it discharge this? Oct. 291.

Suppose a man leases a farm with $100 rent per annum. Does a release of all claims include rent to grow after wards? No, because the enjoyment continues after the rent.

c. Another set on which release will not operate are covenants not broken, as covenants to repair house — it is not discharged. There is nothing in law to be discharged.

But discharge of all covenants will reach these.
Lecture March 22nd 1818

On notice and Request.

It is common law a request by the offeror that the offer may be by suit. The usual form is, 'I request and demand'

It is sometimes necessary to give written notice of some fact. It is not always necessary. As to Full 51 notice, the rule is that it is always necessary to give notice to the Def. where it is necessary to complete the course of action. Where, 1st, the notice on which the offer's demand is based is as to the partner in the offer. 2nd, the notice is as to the partner in the offer. 3rd, the notice is as to the partner in the offer, 4th, the notice is as to the partner in the offer, 5th, the notice is as to the partner in the offer.

If not acted upon, will not be supported on demurrer. A purchase for $13 at the highest price that it shall bear within six months. The promise is sufficient to know the price and must state it to the Def. before his action, and make it a part of his declaration. But the rule is different if the source of information is equally open to both. J. A. promises to pay B. a sum of $5.
and money to be paid of marriage is to
be brought to the husband and to
be held in all age. A notice must be given.

Exodus XXI. 26. On a promise D. to lay him a certain sum
and C.105. on the day of his marriage with A.B. The
promises may have an the promise of information.
Any promises to deliver another a certain amount
Ex. 24. &c. if he swears the swears the parties &c.
Promise must give notice whether he does or
promise not.

1 Chron. 14:12. On a contract to account below such duties
and the promises of the: shall adjourn them
must give notice that A.B. &c. have actually
been adjourned.

Com.Dig. 7:15. That it is said in the book, that if the com-
and contracts to perform a certain deed when
the promise is performed a certain deed there is
no need of notice: I doubt this rule: it
is given as an example that the promise
is to perform when the promise is taken
to London: the man was there.

If one promise to take a name a promisee's
money a certain act be a trea as to this.
Where it is necessary to give notice it must be given within the time required by the Contract, otherwise it will not avail.

If one contracts to do an act on the performance of another act by a stranger, it is not necessary to give notice. The last is equally within the knowledge of both.

I, c. t., promise to B to lay in his farm on 1st. of June, the old asp 1.9. 81. 49.2. 1.65. 4. 230. 71. 52. 14. 0. 14. 0.

If it is not to stand if the promise is to take effect a sum of 1. 65. 4. shall become a 1. as above.

The regard to request in some cases the P.M. must have a special request. If he does 1. 11.

There must be a special request had issued in the declaration. I agree to make my farm
to 1st his own request he cannot maintain
rejection till request is actually made

If one promises to pay a collateral sum on
request—special request is necessary.

305 collateral sum I take to mean a sum not
due by Promisor but by a stranger but—
which he advances

If one promises to hold on request—make
one, as the Promisee shall demand for his
use. There must be a special request

There is no definite rule in the books on the
subject, but examine them altogether. I have thought
there might be this general rule. That—
wherever the request forms part of the con-
consideration of the promise and is thus a part
of the gift of the thing, it is reasonable there
should be a special request, but on the
contrary not necessarily, e.g., if promises
to hold a collateral sum on request, the
request is a part of the consideration of
the contract. It is a conditional contract.
This rule of course does not refer to loans
and collateral acts. There request is always
necessary.
et a natural request is not necessary when the duty
is due by a precedent or in consideration of the
3(h) 308
contract. Because the request is not the 3(h) 200
ground of action in the consideration
O. 69
In the case of a common note it is required
posed there is an indeference, and re-3(h) 308
request is not necessary. In these cases the alq. 183
legation in the declaration "the of the request" con. 2. This
is insufficient. The last rule must be the law. O. 69
understood to mean that the duty is not
raised.

A covenant thatcoffee shall repair and that corn
before find timber. It is necessary that condi. 2.10
the timber be actually demanded.

T. 69, 183
Oro. 5. 85
Can. 2. 308
request being important is desirable. This = O. 69
is never done in cases of exchange.

This is not necessary where the general fine
involves a denial of the request but in actions
Private Wrongs.

Lecture April 6th.

Slander.

I shall treat of Slander by words.
Slander is of two kinds. Words actionable by themselves and words not actionable in themselves, but by reason of some special damage. This distinction is important for the words are in themselves actionable the party need not prove any special damage. To constitute Slander of either kind the words spoken must be malicious and false. By malicious is not meant in will merely, but every thing said or done with a wrong motive. If the words are actionable in themselves, malice will be presumed, but the contrary is shown.
There are certain words actionable at common law, if spoken with regard to certain persons which would not be if spoken with regard to common persons. Proof of the words is prima facie evidence of the slander. The Def may prove them true or spoken without malice and in either case it will be no slander. Many things may be shown in mitigation of damages. There was lowness in malice in law.

Malice don't always attend all will or in the case of manslaughter, the P H J may show express malice by other words and conduct. As if a man upon a charge of poaching he may show that the Def had also charged him with a talk of want of honesty. You must take the common conversation of a man to prove his temper of mind. The rule is the greater the malice, the greater the damage.
Words that are actionable in themselves are divided into two classes.

1. Clasp. This rule is without exception.
   At charges against a man are actionable, which being or may bring corporal punishment as theft. By the old law witchcraft was punished with death, of course to charge a man with it was actionable—now the law is altered and it is not actionable.

2. A charge of fine crimes, which are not punished by the common law, but only by the ecclesiastical courts, are not actionable.

With regard to offences punished by fine. This depends very much on the state of the society. If the charge brings with it of course disgrace as well as the fine, it is actionable; not otherwise. Suppose a man is charged with having thrown ballast from an orchard.
which offence incurs a penalty of £5. But in disgrace it is not actionable.

Formerly nothing a hearstow was only actionable, but a chargeof this offence would be disgraceful and therefore actionable.

II. Words which have a direct tendency to ruin a man's business and dry up the sources of livelihood but which if spoken by any other man would not have this effect, are actionable. — To say a man is a knave is not com-
monly actionable, but suppose a man charges a lawyer with being a knave, it is actionable, not so concerning a Physician. To charge a lawyer with knavery would not be actionable, yet to charge a Clergyman with it would.

III. Words spoken detaining a man in office, concerning his official conduct are actionable. This goes on the
IV. Class. Words that tend to banish a man from society are actionable.
As some kinds of diseases, venereal disease, etc.

Of words only actionable by reason of special damage.

All words are of this description which impeach a man's moral character and produce special damage.
The Stat. of limitations only runs on words actionable in themselves.
The charge when isolated, may be actionable, but when taken in connection with others will not be. Deft may show all the conversations. An arrest was brought by a young lady for charge of theft by a young man. The accused he charged her with being a thief, but from the connection it appeared he only said she stole his heart.
The old maxim was—That words spoken in heat and passion are not anything in justification. There is nothing in this maxim; it is never a justification. Would it excuse? It may lessen damages and may not.

By the declaration the Clerk's character is put in issue. A Clerk may prove his character to be good and fair—Deft may prove it if he can to be bad.

The man that runs for a House is never obliged to look for the source from whence the how came. It would be dangerous to admit a contrary principle.

It was formerly a maxim—That words ought to be taken in military sense. This proving bad upon experience—a contrary maxim was introduced.
But words were to be taken "in severer sense". Both are now at an end.
You must place the same construction on the words as mankind in general would, or as would be placed on them out of court.

Lecture April 7th.

With respect to a charge of hearsay, it is actionable.
A general charge is to be taken in its local moral sense. But is it liable to explanation. Did he mean to charge the offence? is always the question.

Role 77.

Suppose a man charges another with murder and means it so, and it turns out the person supposed to be murdered was still alive. It is actionable but if the
Pleading is false swearing before a person who has authority to administer the oath. Suppose that an officer is charged with pleading; that is, that he has violated his oath of office—this is not actually pleading, but only a violation of duty. Therefore, would not such an action for a charge of pleading but would we doubt be actionable.

A man charged another with perjury sworn before the Bishop of Norwich. This might be in the Bishop's court and might not—it would now be actionable.

A man was charged with giving false testimony in a court of chancery. This was without according to the rule of "mitiori rei senso" because it might
have been in a point immaterial, and therefore not keeping. But according to modern laws and common sense it would be actionable.

A man was said to be deceased, and therefore not keeping. This also was to be not be foundation for an action according to modern sense. But this would be no doubt now.

There was a charge that A, the defendant, B. to swear falsely. The charge was allowed by Jett. But he relied that B. did not in fact swear falsely. It does not operate as an excuse for a man may be guilty of subterfugiae although the truth is actually told.

Forgery. In this case words that import the charge are actionable as well as others. A says B has forged. The law
If it is necessary here to inquire what is law? If he had said that he had trested in a note book and so there could be no doubt but now it must depend on the proof. Suppose it turned out that B could write like T. Hiler and for a statement had frequently wrote his name this is not an out of the act.

[Note: Proofs 114, 112, 589, 634, 331]

A man says this I charge B with being guilty of felony, by taking money out of my pocket. This was taken according to 'inipori nex', but now is un-

[Note: Appendices 51, 315, 86]
To charge a man with being a receiver or stealing goods was formerly not actionable. It is now.

In the case and same principle lately in the United States court a man was charged with having committed a crime—homicide. The defendant pleaded guilty. He had been pardoned, and that a pardon in the technical sense took away the crime—but this is not correct, it only takes away the punishment. It is not actionable.

Whenever a man is charged in an office with having corrupt views, being guilty of partiality, corrupt principles, or it is no matter what the office may be whether of profit or honor—it is actionable. If it is a lucrative office, but one by
which a man may get his living part

ability is sufficient ground of action.

But if a man that is without ability

is not a sufficient charge to be brought

an action. The real ground of the dis-

\textit{traction} is, that it tends in the first

cares to dry up the source of livelihood.

Words disgraceful to a man in his profession

are never actionable in themselves.

It has been determined that to say of a

\textit{He}gy man that he is a drunkard, is

actionable, as also that he breaches

nothing but him an old rogue, and a

contemptible fellow—rather have any

you take hay on Sunday, than to go

and hear him preach actionable

in Connecticut to charge a minister

with being a drunkard actionable.

To say a lawyer is a knave is actionable,

he must be in practice.
It has been determined that to say a person is no scholar is actionable.

To also to charge a shoemaker with being a coltan and a merchant a bankrupt.

Words actionable in themselves by reason of charging a man with infectious disease must according to the rule be in the present tense.

Lecture April 10th 1810.

Of words actionable in themselves by reason of special damage. The special damage must be laid in the declaration. In England it is not actionable to charge a man with adultery. In this State to charge a female with want of chastity, until some damage (as a lot of marriage) results is not actionable. To also to charge a man with being a brute in
his family with want of integrity, 
yea, truth &c. are not actionable, 
makes special injury results.

Other words are actionable in them-
selves may you to enhance the dam-
ager show a special damage? The
rule is, that— you may if you lay it
in your declaration. This however is
a dangerous way, because the minds
of the triers are turned from the words
to the special damage. It generally
produce, a munsuit.

Malice, you may always rebut—
malice by showing there was not
any— cases in Battles, &c. 3. &c.
A person wanted to hire a servant
and enquired her character of her
former mistress— the told her good
qualities, but says that she went too
much and nights and that she did not always sleep in her own bed. There was no malice, and the action was not unjustified.

A man tells another if he had better keep a third in the sale of a horse he advises him not to, as he apprehends he will soon become a bankrupt. No malice.

Contradictory cases.

John Nokes is put in jail a man is asked what he is in for. Why says he, I understand for stealing a horse. It is true he was put in on suspicion of this crime, but it turns out. States note it—there is no malice, and not actionable. If a goadie tells a man that Nokes is in jail for horse stealing, when in fact he is put in only for a $5 debt and the man reports it, he cannot—
he doubt, for he had every reason to disbelieve the story.

There may be malice eamman, and yet this action not be the remedy. As in the case of a man preferring a suit before a court of justice, which is false and slanderous in its allegations, must be for malicious prosecution. So if a witness swears to slander which he knows to be false.

Here a man reports slander after another.

The other reports say that if the man at the time he tells the story, gives the author he is not liable, if not, he is. This is not true. He hears a slanderous report, and the author may

Prov. 16:6 be a bankrupt.

In the books cited in the margin may be found the true rule. A man has no right to make the report at all.
It is said this has lately been questioned, 128
and Kuyper disapproves of the old
rule, but thinks if the man gives
his author, and he is able to say,
the promise will be excused. This
I apprehend is not correct. You may
recover out of every slanderer and
are not as in the law confined to
a single remedy. Suppose a man
lets a story most wantonly to
shame the reputation of another,
his saying that he got it from
John Stiles, will not excuse his
malanimus.

Concerning charging.

A man says to another, you
desire to be hanged, for stealing.
This contains the charge of the 1.

Have't you heard that such a man
stole - hoo well I don't say he has. This
implies stealing and is actionable.
For over we were talking about dealing, and one said if I was to judge I should say: Take note, stole the hay, but I was not quiet - actionable.

I was charge of an instruction to do a crime is not actionable of itself, but it is further to such as to convey any charge of the fact done to actionable, as if a man calls another a thieving rascal, this means only a disposition to theft, but a thieving rascal means he has stole.

A man said, I know what I am and I know what a rascal is - and I know that I never stole a sheep; actionable.

There are other cases where there is no doubt concerning the slander, but the difficulty is to make the allegation. As if a man says to B who has 7 brothers, one of your brothers is a horse, who is to bring the nation? can't be brought?
A says to B you or I stole and it want T. 123
this charges B. But no one he had
doubt to B unless you or I or T has
stole and it want T. who does he change?
1201 75
180 61

The rule that words are to be taken in
their obvious sense has never been al-
tered.
10 mod. 198

Camp or provincial words are to be taken
in the sense in which the words are un-
derstood where used.
1806 126
625 8205

Suppose a man slanders another in an
unknown tongue as Latin not slander
wants some one present understands it. 1806 74
the occasion is to be taken into consider-
ation. If a lawyer speaks many hard
things, but his situation is different
from most men. The may say things
material to the point, but no other.
1807 90
Suppose a man has two distinct counts
one actionable, one not, and a verdict
for Pts. Verdict according to the law.
which law must be arrested, but the
jury must be charged to bring in
on the actionable count.

The truth is always a defence. It can
not be common law to give in evi-
dence under the general issue, must
be on the face of the declaration.

If the Pllf shows other words to prove
the meaning of what Deff may prove
the truth of them under the general
issue. In cases if the Deff wishes
to give the truth in evidence, he
must give the Pllf notice before

Lecture, April 11th.

When the Deff undertakes to justify on other
grounds than that the words used true, as
that he was mistaken or lawyers, he may give
it in evidence under the general issue or
he may plead it specifically, but when he
justifies on the ground that the words
were true, he must repeat it on the record.
Concerning the declaration.

It always begins with asking out his own good character—but I suppose it would be good if he omitted to do this for the presumption that is that every man's character is good like the contrary is proved. In the case of it is the best that he has lost his good name among his neighbors— that he has suffered so much damage, which has never been held the other requested and demanded. If the action is brought for defaming a man in his office, he ought to show that he was in office. So if the charge is that he is a bankrupt, he ought to show that he was a banker, or within the scope of the bankrupt laws.

But of the collegianum in respecting the office above, it would be necessary only to show the collegianum in evidence of not to over the office in the declaration.
...the writing part of doctrine. The publication of the slander must be set out in the hearing of divers persons, to one of those publicly, not good till the verdict.

By the words are spoken in a foreign language. If one must over some one present who understood it.

next must are that the words were false and maliciously spoken. In one case the statement was that he falsely spoke, it was held good.

you must state the words. "These words and such like" is not good.

you must allege the words to be spoken of the PLL by G-kin.

If the speaking was by way of description this would not be sufficient, but it must be avered the PLL was the son of such a man, and not of and concerning the PLL.

Where the slander depends on another act that must be proved as if a man
sag of another that he is the worst
In England - it is necessary to prove
there are thieves in England.

A warrant is not necessary where the
themselves confess the certainty of the
thing. Suppose it say B murdered
Stiles; not necessary to prove the
murder of Stiles, the words import it.

Threatens are to explain not to enlarge
the conversation. A man was charged
with having burned a barn, the fact
was the barn had hay in it. Declaration
stated that he charged him with
burning Stiles' barn full of hay, this
is a charge of felony and actionable,
but to burn a barn without grain or
hay in it is not actionable.

As to special damage it must be laid
in declaration, but loss of friends, repre-
sentation &c. as special damage, his
some loss, as respects his property, or person
and it must be specifically stated.

If you claim special damage can you
How to prove a justification.

If the allegation is that the charge is a general one that he was a thief, you may prove any act of theft, but if the charge be so specific, as at a theft, proof in justification must be confined to this.

Justification admits the words, and all the malice stated in the declaration.

A Libel or Written Stander.

Stander is no offence, it is only a civil injury, but a libel is an offence and the public may prosecute, and the party injured obtain damages.

This is defined to be malicious slander in writing, saying anything which tends to expose to loss of reputation or ridicule. Every thing slander by hand, or a libel when reduced to writing.

If it is a civil injury whether the words are actionable in themselves or not.
Suppose only the initials of a name are used - it shows badly understands it - it is a libel, otherwise it does no harm.

The only enquiry is does this render him ridiculous? Suppose the thing contained in the writing is true - you can as a civil injury justify every comment on it, but as a public offense, the rule is the other way. Principle on which it is founded in this - the public prosecution is brought on the ground of its disturbing the public peace by exciting the passions - it is nothing to the public whether it is true or false. It is a libel to slander the dead. I am prepared. What the common law you may give the truth in evidence upon a charge against the government or public officials.

It must be published. The writer, the historian and the bookeller are all liable.
This action originally lay only against the tenant of the personal goods of another who converted them to his own use. Hence it is called *touer*.

This is an action unknown to the ancient common law, but derived from the Statute of West. 2nd which is the foundation of all actions on the case. The common law remedy was *dehomic*. *Touer* now lies where one person by any means is possessed of the goods of another and converts them to his own use. If one tortiously takes the goods of another it lies before the Statute of West. 2nd there was no remedy but *touer*. If one lawfully obtains goods of another but destroys them, sells them, wrongfully uses them, or wrongfully refuses to restore them, action of *touer* lies against him.

This action was never heard of till the reign of Henry 8th long after Stat. West. 2nd which was
conversion is a wrongful assuming to dispose of the goods of another as if they were one's own. - The least degree of an unlawful interference is conversion.

A conversion may consist in an unlawful taking, an unlawful use, and an unlawful detainer. These are the only three ways in which there may be a conversion. No other than these is here a conversion. It follows then that a conversion consists in a misfeasance, or nonfeasance may be evidence, but is not here a conversion.

In declaring a trespass it is never said the unlawfully converted. This would turn it into trespass.

1st. Wrongful taking. In this case the right of action is complete. There is no need of any demand. - In this case there is congruence with trespass.

2nd. Unlawful use. This presupposes the defendant's possession was lawful. Thus it is a kinder uses the goods found, he is guilty of conversion. So a Bailee in some cases.
wronging, or injuring goods lawfully in possession is a conversion. If a carrier of a box or bale opens it, it is a conversion. If a bailee or finder of goods destroy them, it is conversion—but the person is concurrence. Wherefull user will not in general support trover. Where a carrier of a cask of wine drew out part and put in water it was held a conversion of the whole, for it injured the whole.

Neglect in keeping goods of another, so that they are injured is no conversion. In a mere nonfeasance — if a person finds cloth and fermits the moths to eat it up. No action of trover lies.

The proper remedy is by special action on the case. In the above principle if a carrier loses goods it is not a conversion. Where the unlawful user consists in selling. The action of misdecoration is concurrent with trover. The rule to be observed in practice is—Where the goods sold for more than their value, then bringing—
A justice cannot justify by common

law a bailee to deliver on the ground

that he had a lien on the property for

his expenses.

of one person places the goods in the hands

of another, it is an incontestible conversion.

A servant is liable for converting by the

command of his master. He really may

see neither.

Lecture April 13th

Who may maintain an action of bailment.

Sometimes either of two or more persons may

maintain the action. This happens

generally in bailments. Yet, sends his

goods to be carried to B and the carrier

converts them, A must bring the action.

but, since A sends an order for goods
to be delivered to the bearer, and he con-
verts them, A is the proper person to
bring the action. Supposition: A sends his

goods, and directs them to be delivered
to a certain carrier, but without any
serious employment of the carrier at
must bring the action, but if B solicits
the carrier he must bring the action
for the carrier is then his agent.
 Authorities may be found under bailments.
There has been a question in this case:
A finds the goods of B to claim them
as his, and on the refusal of A to
deliver, brings his action and recovers.
the true owner then sues A can he
recover? It has been once decided
that he can. I have been always in-
clined to the opinion that he could
not; not that the record is proof
that the goods are not B's but that
the law will not compel a man to pay
twice for the same thing. If B should
not be the owner another action might
under the same principles be sustained.
It would be preferable to say the sum
claimed by B in the first suit was
money had and received to the use.
It is not necessary that the O'F. should have the absolute ownership of the property for the purpose of maintaining an action. A bailee may maintain it in many cases against a third person. So a bailee who has a special property for the time being may maintain it against the wrongdoer. Every bailee may because every bailee has a special property.

A sheriff may maintain an action for goods which have been converted after execution. The foundation of his right is his special property. A bailee of a house which has been blown down, may maintain it over the timber. It may be considered as a bailee.

It is settled that a proprietor gives the bailee for a right to maintain his action against all persons, but the true owner. This requires some qualification.
A right of possession is sufficient to maintain the action. This necessarily implies an interest in the property. If the goods of a tenant are taken from his servant, he may have an action for protection of the tenant's possession at the matter. A right of possession is the right of the present actual possession, where there is no right of present actual
his action cannot be maintained.

1st. If to a house he has no right of repossession during that week, but the bailee must bring the action.

It is agreed that some kind of property must exist in the P's half to support this action. Since where ill-rent an order to deliver goods to his servant, and the tradesman delivered them to the second host or innkeeper, it was held here that the servant master could not recover. There was not a consummation of the sale.

An uncertificated Ramblewit may maintain his action against any servant who takes his property in the habitual repossession and right of hospitality against every known cut abuses.

A common law executor or administrator could not maintain an action for conversion in the lifetime of the testator, but may now do so.

As the manner of declaring, when Executor or Administrator bring an action, Estimation has
a wrong case - he says that it is supported by the proof of taking in life time of the testator, and conversion after his death - but the taking must be from 8 D. 589. 

Lecture April 14th.

The right of a Bailee to maintain an action has been said to be founded on the liability over to the Bailee. This is not always the case. The rule can mean no more than that he is subject to no further liability.

A depository as well as any other Bailee would have a right to the owner even if that were the correct rule, but it is not his owing to his special property in the goods bailed. He has a right against all but the Bailee.

It is laid down as a rule - that if one delivers to A. the goods of a stranger A. the bailee by delivering them back
Again to the Bailor excepts himself from the action of the stranger, and even tho it is done hindering the action between the stranger and it.

A recovery by the bailor must to the Bailee of his right of action, so also a recovery by Bailee onto Bailor. There can be but one recovery.

I conceive that a Bailee by commencing an action, onto the Bailor, and vice versa. There cannot be two independent actions subsisting for the same offence. But if Bailor should sue for trepass onto power, this is not bar to the Bailee's action on the case for his special damage.

The Bailor by suing the wrong does discharge the Bailee, because has elected his remedy, and prevented the Bailee from seeking his remedy. If the Bailee was just, he makes himself liable to the Bailor, as he prevents him from getting his remedy out of the wrong done.
It is laid down as a rule in Baker Report 133 that he who has the special property or the Bailor, may maintain he has a right against the Bailor, so he that has the general property for taking it away.

This, if the held is not correct, he may have an action on the case. If it action can be for nothing but his special damage, but when against a third person it is to the value of the property. In this case the value of the property is not preventative by the rule of damages, it is not for loss of property but for use of it. Lord Coke says that the right of the Bailor, will be in mitigation of damages, but this will be to establish a new rule of damages. This presumption that originally the value of the property was the rule of damages, but it was not in fact ever found a rule of damages. The damages may be more than the value of the property.
Another rule is, that the returning of goods after the conversion goes in mitigation of damages, the it does not past the right of action.

The effect of recovery in an action of trover is to vest the property in the defendant. This will not hold where the property has been restored, that goes into mitigation of damages.

As there can never be but one recovery, a recovery against a stranger is a good bar to the action. Suppose A, B, C have joined in a conversion—A
B afterwards A—B may plead the first recovery, in bar. In torts one recovery is a bar to all other suits.

Where indebitatus a sumptui, hoppus, and trouve are concurrens, one is a bar to the other two: for otherwise a man might by changing the form, recover treble damages.
Against whom it may be brought.
It will lie against one who wrongfully takes goods—in favor of Bailee against Bailee—against a finder—by master against a servant—and generally, against all who wrongfully take—unlawfully use—or unlawfully detain.

Another rule—that the owner of personal chattels may maintain trover, not only against the original wrongfuller, but against any subsequent bona fide holder; provided there has not intervened a sale in a market overt. The owner may pursue it wherever found.

Exception—where property consists of money or bill of exchange. In the first case, upon motives of policy, to discourage a circulating medium of all embarrassments. As bills of Exchange in England answer the function of circulating medium.
Lecture April 17th

For what the action of hance lies.
It lies for personal chattels in general, but does not lie in any thing real or ipswig out of the reality.

Hence may be maintained for choses in action according to the common law. These are not subject of theft. It was formerly holden, that hance would not lie for choses in action but this has long since been overruled.

Then hance is thought for a chose in action, it is not necessary for the Pllf. to alledge the slate of the instrument.

Hence will lie for a title deed, this is not evidence of a thing in action, but evidence for a thing in possession.
This action it is said does not generally lie for animals, ferae naturae, but I suppose the ground of this is that the person has no interest in them, for if they are reclaimed in court and are of any value I think it clear this action will lie.

The authorities on the subject go to the rule that trover will lie for animals ferae naturae if reclaimed. It has been decided that it will lie for a parrot or a monkey. It is agreed that when the trover is not animals are merchantable and confined it will lie.

It has long been settled in England and in this State that trover will not lie for a negro slave. The reason in Eng. is that their laws never recognized slavery in any degree, and in Connecticut we have never considered them as absolute property.
The case does not lie for a public record. The reason is that it cannot be private property— it is a public place. But the copy of a record is in private property and for this it will lie.

The old rule was that it could not be maintained for money or specific value in bags or boxes so that it might be identified, but this is now held and also for in trover they do not recover the specific thing as to definite but damages.

If any one unlawfully obtains money from a man's wife (as by gambling) the husband may recover in trover, so may a master if obtained from the servant.

Where goods are lawfully, and tender made at the time of payment, this action may be maintained by the 

If goods are lawfully in an usurious contract the Promisee can't have trover against the
Parvanej till he had handed the money to 136.

him. The action is not brought to enforce
the contract but to be relieved against-

It. This wrongful contract is void as

respects the enforcing it; it follows in
this case the principle of a bill in Eq.

uity; and he must do equity before he

can demand it.

If a donee of goods by hand gift without
any act of delivery takes possession, this
action will lie, but I think there
must be a demand the mere taking

be done is not a conveyance hence. The

hand gift without delivery does not
vest the property, yet it operates as a

licence to enter; otherwise you might me

in trespass. The licence may be retrac-

ted at any time.

It must be observed that a symbolical de-

livery will be sufficient to transfer the

property. This delivery of a key to the

room where the goods were contained
...was held sufficient.

The tenant in common or joint tenant cannot maintain this action against his co-tenant, and if he does so, the plea may be pleaded, and this be given in evidence under the Act for the possession of one is the possession of the other, and so there is no conversion.

But if one of two or more joint tenants or tenants in common, destroys the property, he is deemed to have made a severance, and is liable in this action. It is assumed to say he used it for the other.

If one of two joint tenants or tenants in common brings an action against a stranger for a conversion of property, he must take advantage of the nonjoinder of the other tenant by a plea of whatman.

The act of severing a thing from the freehold is not such a conversion as will support this action. To taking a clerk off the register,
When windows or a house will not support it.

If an action is brought for chattels annexed to the freehold, and verdict for the PLF, the formal avenement of the PLF. That he was possessed as of his own goods will afford a presumption that the goods were his, and that there was a reversion, and the court will give judgment in his favour.

The tortious taking of a thing already secured from the freehold is a conversion.

Where a person being lawfully in receipt of another's goods, destroys them from necessity, he is not guilty of a conversion. If a master of a ship throws goods overboard to save the ship.

Pleadings. The declaration in this action must state the place of the conversion or if it is ill in substance according to the old rule, but it is now considered only as mere matter of form.
The declaration ought to show some property in the Plaintiff. If he alleges that he was possessed as of his own goods, it is sufficient.

It is not necessary to state a demand and a refusal, it is common to do it in practice. If it is mere evidence of a conveyance, and not prove such, it is matter of evidence, and this never need be alleged.

The time of conveyance must be alleged. Namely it was held that if the time was not ascertained it was a fatal defect, that could not be cured by verdict, but it is now settled that it is not a radical defect and may be cured by verdict.

A declaration is good to the verdict, if there is inappreciably of time in the declaration, as if declaration stated "that on the 1st of April 1810, the Plaintiff let the Defendant have a garden, which he converted to his own use, the 1st of March, 1816." This declaration would be good after verdict and "the first of March following 1816" would be considered as sufficient.
The proof must be elucidated with convincing certainty, that it may be known, for it is not required to be so particularly described as clearly.

Erasm. says it is unnecessary to state the value of the goods - that I think cannot be said for the value of the thing in the rule of damages, and there must be some thing which indicates the rule of damages, or the jury will have no foundation on which to assess them.

It is said there are only two good pleas to the action of house - the general issue, and a release - the many other pleas have been used - every plea of justification - how six house is tantamount to gen. issue.

In the latter justification must always be pleaded, but in house you must plead the general issue and give the justification in evidence.

Any thing which does not amount to a de

This is not a valid proof of the page.
Headed, if it does not amount to the general issue.
A case in which does not amount to a damage.
The Stat. of limitations does not run against
Travers v. Connecticut.
Action on the case for a malicious Prosecution.

Lecture April 18th, 1810.

This action lies to recover damages against any one who has before maliciously prosecuted the Plf. without probable cause. The word prosecute is repugnate both to criminal and civil suits. If one individual prefers an indictment, or brings a civil suit, maliciously and without probable cause, this action may be maintained.

The word malicious import any wicked motive in general. It does not always import malignity and ill will. A prosecution may be instituted to obtain the penalty without personal hatred.

The expression without probable cause means without any reasonable ground. It must be apparently groundless.
This action is analogous to the old action of conspiracy, now very much out of use. The action of conspiracy only lies against two or more, and only on a malicious prosecution for treason or felony. There has been much confusion with regard to the boundaries of these two actions.

There is another action which bears to an action for malicious prosecution a still greater similarity, viz. an action on the case in the nature of a conspiracy.

It lies when two or more have conspired to prosecute the party maliciously and without cause, or where they have conspired to injure him in person, property, or reputation.

This then is in some particular cases more extensive than acts for malicious prosecution. It lies when no prosecution has been actually commenced, if injury results from the combination. The gist of a gravamen of the action for
null
damage can never be the foundation for an action.

In an action of conspiracy it all but one are acquitted: judgment can never be rendered against him, on the other hand, on an action in nature of conspiracy, or malicious prosecution, judgment may go against one, when he is acquitted of all the rest. This distinction is founded on two reasons. 1. The action of conspiracy is founded on a form of the writ and that shows that one person can't be guilty of a conspiracy. 2. In action of conspiracy the gravamen is the danger to which the P.A. is personally exposed, but in action in nature of conspiracy the damage consequent is the gravamen.

There is a difference between, a malicious prosecution and an action in nature of a conspiracy, the first may be brought against one or more, but the other must be brought against two or more, or against one charging that he
Another another (who are not debts) had
countinued go

According to the better opinion not all
these actions were unknown to the common
law. I am clear that the action for an
infringement prosecution and the action
in the case in the nature of a conspiracy
were unknown, but there has been
some dispute with regard to the other.

But I apprehend it is now clearly settled
that it was created in the reign of Ed. 1
entirely by the government.

There were but three common law actions
founded on facts in Treason, Robbery &c.

Lecture April 19

It is essential that motive and want of probable
cause should have concurred to withhold this
action. Neither of these alone will withstand
the action. a man may prosecute real guilt
from a bad motive, or an apparent guilt
from a good motive. The former is right
in law, the latter excusable.
It follows from this doctrine, that it is a sufficient defence for the Deft, that there was probable cause.

The rule is that it lies against any man who has prosecuted, either knowing the charge to be false, or not having reasonable ground to believe it true.

In Connecticut, when an action is brought on a civil suit, it is called an action for a vexatious suit, when an action for a criminal prosecution is an action for a malicious prosecution. No distinction in name is made in England. But as there is some real difference between them, I shall first consider the action for a malicious prosecution of a criminal nature, then of a civil.

If one is falsely and maliciously indicted of a crime which exposes life or liberty, or injures his reputation or property, or subjects him to expense, he may maintain
This action.

Husband may not alone or malicious pros-
secution of his wife inasmuch as it was not
an expense.

It is no answer to this action that the indict-
ment was vile or insufficient in law, so that
the Plaintiff was in no danger of conviction, for
expense alone will maintain the action.

This rule as laid down by Lord Botetourt is qual-
ified by adding, if it is injurious to the
Plaintiff's reputation. This qualification is
not necessary. Expense alone is sufficient
to maintain this action. This case is suffi-
cient to settle this point. An action was
brought maliciously, and without probable
cause against a man for using a lawful
trade, without being qualified—this did
not endanger life, liberty or reputation.
Yet it was held an action for malicious
prosecution would lie on the ground of
expense. If an insufficient indictment
has not been found by the Grand jury, it is
not a good answer.
Public officers commanding prosecutions upon false information, ex officio, are not liable to this action, but the person giving the false information is liable.

If a public officer, without information of his own view motion, prosecutes another, he is liable to this action. This applies to an officer acting uninterestingly not judiciously. If the officer prosecutes and arrests, the action must be for libel and false imprisonment.

It must always appear on the face of the declaration, that the former such a prosecution is at end. A party who is not liable can never foretell that action by bringing this. In an action of conspiracy he must be technically acquitted.

The words that the GHF has been discharged from prison are not sufficient. The safest way is to state the manner in which the former prosecution is at an end. A declaration of this kind will be aided by verdict.
The Plll alleges that the former prosecution was ended one way when in fact it was terminated another it will be a fatal variance, and the
declaration will not be sustained; as it be
After acquittal when in fact it was not pros
it is bad.

The declaration later all the proceeding in the
original prosecution any material that is
not material is a variance which is fatal, but
not in an immaterial part. Courts are
very particular with regard to variance.

It is a better rule of the English law that
no action will lie against a judge of a court
of record, petit jury, grand jury, even for
a malicious prosecution in excusing their
officer, they must however be acting in a
judicial capacity, as a Justice of Peace when
he acts immaterially is liable when judicially
not. This rule is founded on general
principles of expediency. The State has
no claims upon them, but if this there is
no inconvenience or hazard.
Matice may be inferred from the want of probable cause, but want of probable cause can never be inferred even from the most explicit notice.

It is always expedient for the plaintiff to prove actual malice if he can, and this by collateral circumstances as in action of slander.

The conviction of the plaintiff in the original action by competent jurisdiction is conclusive evidence of the existence of probable cause. But a conviction before a court not having jurisdiction is void.

An acquittal of the defendant in a prosecution in such cases is presumptive evidence of a want of probable cause. The case is analogous to the throw of the die when the deflect. where it is presumptive evidence.

An acquittal on a defect in original prosecution, comes within the last rule.
Lecture April 23rd

I have said that the conviction of the present Pff was conclusive evidence of probable cause in the former prosecution. So also an acquittal in the former prosecution is in most cases presumptive evidence of want of probable cause. But an acquittal is not always prima facie evidence of the want of probable cause. The finding of a bill of indictment by the Grand jury, or the binding over to trial by the Court is presumptive evidence of probable cause, and the subsequent acquittal by the Court—having jurisdiction of the cause—will not rebut this presumptive evidence, but the onus probandi is thrown upon the Pff. So also if there has been no former finding of bill by Grand jury, nor any binding over by Ct. Then an acquittal is presumptive evidence
of want of probable cause, and the same is shown upon the plea.

But when the facts on which the sworn prosecution was founded are in the knowledge of the Deft, in this case he must show the probable cause for the indictment. As if A procures B to be indicted for robbing him, he must show the probable cause by the testimony which he laid before the Grand Jury.

The existence of probable cause in every particular case is a mixed question, consisting of fact and law, but what matters is things amount to probable cause is a true matter of law. Whether certain circumstances exist to show probable cause is matter of fact only, but the inference from these facts is a question to be decided by law.

It follows from this distinction that the Deft's ground of suspicion should be specially shown.
There cannot be legal contemplation exist int 145 probable cause, unless the crime of which the Pll was prosecuted, as actually committed. If it was committed by some other person, there may be circumstances amounting to probable cause against Pll.

So also whether the former prosecution was malicious in matter of fact, to be determined by jury, but what facts shall amount to a malicious prosecution is a question of law to be determined by the Court.

In a rule of practice in England that where the action is brought for a malicious prosecution for felony the Pll can't support his action without a copy of the original record granted by the Court upon motion. The granting is discretionary with the Court. But if it is for a misdemeanor only such a copy is not necessary, any copy will do. I do not see the ground of this distinction.
Division of actions for civil prosecutions. This action also lays for a former civil prosecution, if it is malicious and without probable cause. This is called in Court a veracious lawsuit.

The general rule is that this action does not lie for bringing a groundless civil suit, because a civil suit is a claim of right. The Plaintiff is liable to pay costs, and to be aversecd by the Court. There are several exceptions to this rule, but as the rule now stands, it is very incorrectly expressed. As it stands, it is no more true in a civil than in a criminal prosecution. The true meaning is that where the former suit was civil, the law presumes no damage, and the Defendant cannot maintain an action for a malicious prosecution without showing special damage. The rule as laid down is liable to these exceptions.

2. The there was a good ground of action.
in favor of A. against B. the present §§ 1476,
yet if J. filed brought the action without
authority from A. he is liable.
Why is J. liable? He is not amenable
and liable for costs, because his name
is not on the record, and if discharged the
action.

II. When the P against in the original suit has
good cause of action, but men in a court
having no jurisdiction the action will lie,
because he could not be amened or
fined to pay costs, for this would be pre-
cluding jurisdiction. It is necessary that the
P should have known the court
had no jurisdiction, because otherwise Bull. 12
had no avail.

III. If a person having no right of action,
and knowing it, sues another for the purpose
of vexation, he is liable for special damage
which must be always stated, as imprison-
ment, expense. There are no cases of this
kind in the old books it formerly was not law.
IV. If for the purpose of vacation or having a claim over for a much larger amount, provided the Deft. was held to excessive bail, it will lie. The fact of excessive bail must appear on the declaration.

It follows from the general rule as explained by these exceptions, that in one case v. the criminal prosecutions, the law presumes damage, in civil actions it presumes no damage - but if this presumption can be removed, the action will lie.

Where the original suit was utterly groundless, the the injury is only to the Deft.'s property - this action will be supported.

Lecture April 24th.

In a rule that when this action is founded on a former civil suit, the very gravamen must be stated, the special damage what ever it is must be alleged in the declaration.
When this action is founded on a former criminal prosecution, stating the damage generally is sufficient.

But to this rule there is an exception, viz., where a mere stranger incites another to bring a groundless suit, here you may state the damage generally against the stranger, same as if it was former criminal prosecution.

I have said that when the former suit was a public prosecution, it must be determined before this action can be brought.

But where this action is brought for a former civil suit, it is necessary that actual damage should have been incurred or that it should be inevitable, and it is also necessary that the former civil suit should have been determined in order to maintain this. But it is necessary that the former civil suit should be determined, still it is not necessary that it should have been decided in favour of the Off. for if the Off. 527 was convicted it sufficient to support this action.
In point we have a statute on this subject which
provides that this action will lie against
any person who willfully or willingly wrongs
by commencing and prosecuting a suit so with
intent unjustly to vex or trouble him, such
person shall pay treble damages to the party
aggrieved. It also makes the bringing of
such action suit a crime, by notwithstanding a fine
of 7 doles and for the third offence it shall
be deemed barrely.

In this action two persons cannot join as
Plffs for the injuries are separate personal
as same as slander. But there may be
two defts in this case — this is strictly a tort in
which two persons may be joined. But there
can’t be two defts in an action of slander.

There have been two cases in England, whether
of damages are given against two defts, they
can be severed — in one case it was said they
could, but it was afterwards overruled &
determined that the damages must be
entire, and this I think is the correct
rule.
An assault is an attempt or offer to do a corporal hurt to another without actually doing it, and without touching him, as well as to present a gun or sword or shaking the fist &c. is an assault in unlawful setting on another with an attempt to hurt him. This is an inchoate violence its begin and not completed, and for this injury no action may be sustained.

But a gesture which might otherwise be an assault may be so explained by words as to fall short of it; as if one says hold of his sword and says, if it were not a mere time I would beat you—this is not an assault. It follows then that the intention must operate with the act to constitute an assault, but in battery it need not.
Threatening words alone never can amount to an assault, tho' it was held otherwise anciently.

Battery consists in the actual commission of violence upon the person of another and as to this it is agreed that the least degree of violence, committed in an angry, spiteful, insolent, or rude manner amounts to a battery. So pitting in another face or pinching his nose, or treading on his toe if done under the forementioned circumstances is a battery.

If the actual injury done is merely nominal then the mere touching another is not a battery unless so done in an angry, spiteful or rude manner. But if there is an actual or substantial injury then this action will lie although it was not done in an angry, rude or illiterate manner. This is an important distinction.

Mr. Justice Blackstone has evidently given an
incorrect definition of a battery, he says, is an unlawful beating of another. Now to clear this is in many cases justifiable, as if a parent-whips his child, this battery, but is not unlawful but an unlawful act—cannot be justifiable.

A battery is actual violence committed 3 Bl. 128 on the person of another and is not always unlawful.

Every battery includes an assault, every consummated violence includes an immediate violence; hence proof of a battery will support an action of assault and battery. Threatening words alone do not amount to an assault; yet menace of bodily hurt are actionable injuries, and the rule is if they occasion an actual inconvenience to another they are actionable, and this action is said by Blackstone to be hails bi et armis. As if A terrifies B in such a manner, that he cannot attend to his business, an action will lie, but say, Mr.
I should say this should be an action on the case, according to all the analogies in the law, for the gravamen of this is merely the interruption of our business - this mere omission and the damage only consequential.

The injury, which will support an action of Battery, must be immediate, but it is not necessary it should be the instantaneous effect of the act of the Def. For if the injury is produced by a continued train of physical causes effect - which flowed from the act of the Def! This action will

Lecture April 25th

If one person should push another against a third, he would be liable in this action for it is the mere instrument of it.

If a horse taking a sudden fright runs
against another person and injures him. 1570

The rider is not liable at all, he he would
be liable if he was guilty of negligence
or imprudence in riding such wild horse
among a crowd of people, but the action
should be one and not trespass. nor this
act of violence was in no way the act of
the Def.

But if a third person should strike
a horse and he should run and injure an-
other, such person would be liable and
not the rider, and the action in this case
is trespass, ie assault and battery.

When a person receives a bodily hurt
from an act to which he consented, he may
in some cases maintain this action and in
some not. The rule of discrimination is that
when the act is lawful he cannot, because
the consent may then be pleaded as a justification—but if the act consented to be un-
lawful, an action may be maintained.

As if two persons agree to play at cudgels
and one is injured, no action lies, because
it is a lawful game, but otherwise it is unlawful. I doubt the latter part of the rule, "in
hand delicto, me ius est conditionis." If they are presented at the suit of the
public, it is never an excuse that there was an agreement between the parties. But
if one will consent that another shall whip him, or pull a tooth for experiment or
out of his folly - no action I suppose could be supported.

It is clearly a good excuse that the injury happened in an amicable contest, an in
wrestling. It seems to be settled law that
if one in defending himself, against the
attacks of another accidentally hurts a
person behind him, he is liable to this ac-
tion. The question is who shall bear
the load? The law says he who did the
injury. This example proves that for the pur-
pose of maintaining an action of assault or
Battery, a malicious intent is not necessary
to be shown. If there is no justification nor
It is laid down in Espinasse's Digest that it must be willful or be want of proper care. But a lunatic is liable to this action, but he has no will, so also is an idiot or a child of any age. These cases show that Espinasse is incorrect and that the intention is not regarded upon a question of guilty or not guilty. The no doubt damages would be mitigated.

To support a public prosecution, intention is necessary. The will must concur with the act. It is a general rule that in actions of trespass on the case, there must be a criminal intent. But these exceptions to this are in the case of trover.

Foulham says that it is insufficient if the Rest has been the physical cause, or means of the injury to support this action. But this rule I think is too broad says W. Gould, for if a person seized with a

it should fall against another and break his leg he would not be liable, but his meaning undoubtedly is that where the Defendant has been the agent in working the injury, he will be liable, but his meaning undoubtedly is, that when the Defendant and this is correct, is a rule that nothing will be an excuse for the injury done, except inevitable accident or necessity, or what no human power could prevent.

Lord Mansfield says that inevitable accident has been too loosely expressed, it seems to have been considered that if a man exercised due care, and an accident happened, it was continued to be an inevitable accident. But I consider that inevitable accident means something that physical strength can't avoid, for a man may exercise due care and still be liable i.e. such care as the most prudent man in the world would exercise.

In most cases of involuntary trespass there—
seems to be some degree of neglect on which the court ground their judgment, but still if there was no neglect, the action may be maintained. 4.3.2.292

If the accident is inevitable, then it is excusable. But there is another distinction to be observed, i.e. whether the act which the person was doing, at the time the accident happened was lawful or unlawful.

Where the person is doing an unlawful act, he is liable for every accident which happens in consequence thereof, in some way or other, if he is the immediate cause of the unlawful act, then he is liable in treble, if consequential, then on the case.

These rules are applicable to all cases of help with force.


The defenses to faulty battery are three kinds. 1st. A denial of the charge. 2nd. Excuse. 3rd. Justification. Denial is made by
The general issue - General issue is not guilty
Excuse may be pleaded specially under the general issue.
Battery is wanton, hence justifiable. To be justifiable, is to be sanctioned or approved by law. Excuse does not amount to a justification.

There are a variety of cases in which the act is justified. Thus, an officer in making an arrest may use violence so far as is necessary to effect it. But a battery is not justifiable by an officer unless there is actual resistance or an attempt to escape.

The right of arrest does not include a right to beat.

A mere right to arrest will justify an assault, though not a battery. An officer need not say there was resistance.

The law will not justify a battery in the officer - yet he may justify a molotov cocktail thrown at him, because no pro-

... can be saved without it.
The plea of involuntary manslaughter may be made as well of a battery as an assault, and when it is made to a declaration charging with assault and battery, it goes as well to the battery as assault, but it does not go to wounding or mayhem, because it cannot be said to be the same in law as wounding.

The law that distinguishes between battery and wounding, has not defined wounding. Every wounding includes a battery, and a laceration or contusion.

A battery is justifiable on the ground of self-defense. If one strike me first I may strike him in return, as if he uses me I may justify on the ground of "non assault dominee". A previous assault by the party will justify a battery by both; as if one menace or attempt to strike another, he will be justified in striking, for he is not bound to wait the blow.

There must always be preserved some proc-
in the battery or assault of a wrong
of right and that of the Plll. It is not to
be understood, that they are to be equal,
vioence cannot be measured, but they
must not be dispropertioned to each other.
This proportion is always a question of evi-
dence, to be determined by the jury.
A slight blow given by Plll will not justify
such an one by Deft as will occasion a
may hewn. The ground is self defence.
The amount of the plea on a wrong done,
is that at the time and place mentioned
in the declaration, the Plll with force arms
assaulted the Deft and would have beaten
and evilly inten:ted him, 
and that if any
damage was caused it is the fault of the
Plll and not the Deft.

In strictness of law a may hewn is not justified
unless the violence of the Plll was such as
might endanger the life or limbs of the Deft,
so the plea of non assault dooms the
proper replication is by way of denial.
In some cases, D has justified in a battery where P was the blameable cause. The P did not actually strike or attempt to strike him. As where the P and D were gambling, and P put his money into the salt. Here the D was justified in a battery. There are many cases where batteries are justified on account of the relation which exists between the parties, i.e., parent and child, master and servant, governor and prisoner, schoolmaster and pupil, and according to common law, husband and wife. These constitute special justifications. It has been doubted whether a husband had a right to correct his wife. According to a late report, the opinion of Justice Butler was, that by common law husband had a power of moderate chastisement over his wife. A man may justify a battery in defence of his wife, and she in defence of her husband, so may a parent in defence of his.
child, master and servant. When it is said that a husband is justified, it is meant that by law, owing to the relationship, he is placed in the same situation as the party himself, he interposes on the ground of self-defence and so of the other relations mentioned.

It is a clear case that a servant may justify in his master's defence, but it has been a subject of dispute, whether a master may justify in defence of his servant. There are many contrary authorities. I take the better opinion to be that he may. The only objection ever offered is that he has a remedy at law—regard servitude admits. But the same is the case with regard to a husband, or a parent, they both have remedies.

The plea must show that it was done in the defence of the party injured, and to prevent the injury. The law never allows anything restrictive—
Lecture April 27th.

One may justify battery in defence of his property when forcibly invaded, as by breaking a door or gate. Where there is only an entry, a battery cannot be justified until after a request to depart, but where there is actual force there is no need of a request to depart.

According to a great number of authorities where the original entry is upon lands, a battery must be justified not as a battery but as a molestation manum summis actum. There does not appear to be any sound reasoning in this rule. That the law should justify battery in fact but not in pleading is certainly very arbitrary. Let then you seem ready to deny the authorities.

These rules which justify a battery in defence of property, contemplate the owner of the property in possession for whom it is done.
a different rule obtains. A man may justify battery in defending possession not in regaining it. According to the ancient common law, one who had a right of possession was allowed to regain the possession by force from the dispossessor, but not a personal chattel. By several ancient English Statutes, the first of which is that of 4 & 5 Eliz. x ii, a person who has the right is not allowed to enter lands in possession of another unless in a peaceable manner. The same rule is introduced by Statute in Connecticut.

These Statutes contemplate such possession only as are in some degree abandoned by the owner. As if A leaves land to B for ten years and after the expiration of the term B continues to hold - here A abandoned at first to B. At common law, in case of personal property (as stated above) the owner was not allowed to regain possession by force unless illegally taken. There seems to be something arbitrary
In this distinction, between real and personal estate, I suppose however pays its guard
the reason was that the old common law
of England entertained a high reverence
for real estate, and paid but a slight at-
tribute to personal.

Bare provocation, indignity, or insult cannot justify a battery; it goes far in mitigation of damages.

A servant can't justify a battery in defence of his master's goods.

These are the principal grounds of jus-
tification. If one commits two or more
batteries at different times, they cannot
(as in case of theft before) be laid with a
continuance; nor as a battery committed
diversis diebus et vicibus.

A battery is one entire individual act,
says Lord Mansfield.

Where a battery is committed on a married woman, the husband and wife must join.
in the suit, and it must be laid against them a
sum as a maximum, for the husband is sub-
picted to expose 80.

If damages are laid only in the name of the
husband, judgment will be arrested even
after verdict.

If two persons are husband and wife
when they are not so in fact, the Debt
cannot show it under the general issue
but must plead it specially in abatement.

If husband and wife have both been bat-
tered, he must sue for his own battery alone,
and join for hers. If they sue for both
Together and entire, damages are given; judg-
ment will be arrested in toto, but if se-
cveral damages are given that part only
will be arrested which respect the hus-
band; for as to the wife, the joinder is
right.

A party may lay in his declaration many cir-
cumstances for which he has no right to re-
cover damages, and this is said for the par-
One of aggravating damages as if a person \\
reckless that at the time the Def. made an assault and battery on him, he also af-\\nhammered and beat his servant and children. \\

The confounded view above is hardly correct. \\
They are to show the aggravated circum-
stances under which the wrong was done or to a description only.

Hencever the Def. citing on matter of 
justification, he must plead it specially and not under the general issue. This is not our law.

If the Def. raises his plea and then offers evidence on a general issue which would have amounted to a justification, this will go in mitigation of damages not to support his plea of not guilty.

Words spoken at the time of the transaction may sometimes amount to a justification, yet if they are not specially pleaded as such they will not destroy the action.
A plea for justification on a false and malicious
complaint is tantamount to denying his plea is
true. The usual plea of justification
is non ad vitam

If the defendant pleads for assault domestici,
and the plaintiff can justify his plea of assault,
he must specially plead it in his repudiation.
This rule obtains as well in
our law as in the English

Matters of fact may be either pleaded speci-
cially or given under the general issue.

If the plea of motitio manu est imposuit,
Plaintiff may either plead de contorto domes-
se, this is a denial of the cause of justification.
Or he may reply that he committed an
outrageous battery, abuse hoc motitio
manus imposuit. Both can't be used

Satin. 381
Comm. 31st June
3 m. 16.
Lecture April 28, 1810.

In an action of assault and battery or in all actions of trespass, the Off. is not bound to lay the true day in declaration, and of course, in evidence, he is not confined to the time as declared.

In Connecticut he can't prove a battery no more than three years past, for the Stat. of limitations runs against any battery. If more than three years old — the Def. when he plead specially must cover the whole time or amount as the declaration can reach, and this is the rule in all actions of trespass. It having punctuated on one day, he must have covered the rest of the time.

The better way however is to plead, not guilty as to all days except as to one, and then plead a special justification, as to that. So this rule there is an except — when his justification is on assault done.
So if the Deft can prove that the PIsF did assault at any one time it is considered as identifying the time of the battery or is prima facie evidence of it. The PIsF can not be allowed to plead any other battery.

A plea nor can be determined to this plea of the PIsF wishes to show another battery; and that it is different from the one justified by the Deft he must show it by novel assignment.

The Deft's plea should be coextensive with the declaration as to the subject matter, thus if PIsF complains of assault, battery and wounding, if the Deft only justifies the assault and battery "molliter mance vier" This is bad as to all the charges, for a plea that is bad as a part is always bad as to the whole. So the plea of "molliter mance vier", is never an answer to a wounding or an assault, but a plea of non-assault denies"
covers the whole of the grounds for 1st 154
The Pll, first against may justify or
wounding or killing him. This plea in
includes it in the words, for if any damage
has occurred.

In a justification founded on the relations
of husband and wife, parent and child, the
brutish must be alleged to have been L. 33, ch. 62, 1
in defense of the wife and to prevent her
from being injured by
at home recovery of damages, by the Pll
for the same injury, whether from the
present. First or not, is a good plea in bar of 30
in the action. This is the universal rule. Sect. II
in the article. But in actions on contract this
rule does not hold. The rule holds when new
damage occurs from the original wrong
after recovery, for you cannot bring another
action. It is a Pll should sue in battery
and neither he nor the court adscribing
him to be greatly injured, but after
judgment for small damages, he loses a
The question when, or how far, the jury may 
recover the damages, is involved in very great 
complexity. If two or more persons are char-
ged jointly with having committed the 
same battery, and are found guilty jointly 
the jury cannot recover the damages partic-
ularly if the others join in their plea, if 
they seem in their plea, that is if the jury-
ship and another ted the general plea 
it is said they may have separate dam-
ages. I think the latter half of this 
rule is incorrect. The act of one is the
act of the other. The finding is against both, they are jointly charged, and are jointly guilty. A variance in pleading cannot prevent each from being liable for the whole.

It is clear that if judgment goes against both by default, the damages can be recovered.

It has been decided in our case that if the facts are not clear, the jury may fix the damages. Against this opinion, however, there is a powerful list of authorities, as may be seen by the margin. Take the latter to be the better opinion. In cases where the jury cannot recover damages, the Plaintiff may remit error by remitting one judgment and taking judgment on the other. Thus, if one is ordered to pay $15.00 and another $5.00, he may remit the $5.00.

The Plaintiff has the election to take judgment against one only, provided he will enter a

note prosequi against the other. The Plaintiff may always assert judgment, if he so elects,

The jury sever damages, when they ought not to, that is he may have the jury ordered to consolidate the damages.

It is said a jury may in hephasis, find one guilty of one part, and another guilty as to another part, and then sever the damages because they are not found to be jointly guilty. This seems to be questionable according to a case in Coke, the jury cannot find the parties guilty of different portions of the same battery, much at different times. This rule has been adopted in this State by the Superior Court. Justice Butcher wrote it expressly in his Visits, and this I think is the correct rule.

Lecture April 30th 1816

According to English law a verdict proceeds as to one of several parties, before judgment against the others, discharges the whole. This is not agreeable to the practice of this State.
When the P.S.I. has brought this section against several, the court will give the P.S.I. leave to erase or strike out one name, the name however cannot be erased without the consent of the Deft., whose name is erased. This is frequently done that the Deft. may be enabled to testify; on the other hand it sometimes happens that the P.S.I. will arbitrarily make a change in the battery, a change in the prosecution in Deft. to prevent him from testifying for the Deft. It is a rule in such case, that if no manner of evidence is adduced against him he may be sworn and testify for Deft.; but if there is any evidence at all, he never can be sworn with be in that case, but when the evidence is very slight, the court may direct the jury to find the issue as to him first, and then upon acquittal he may testify.

All cases of action arising ex delicto.
whether the party or cause are several. And
however the parties may be joined, at the
action of the S. J. Perhaps then it
would be more correct to say, they are
joint and several.

In this action the jury may vary from the
declaration and instead of finding guilty
as to the whole, may find guilty as to
part, and not as to the residue; or they
may find guilty generally, and a joint
damages; or as to the part which has
been proven.

A finding by the jury of more than is
put in issue, is idle, thus if part is hav
sued and part demurred to they are only
to find on the part traversed; the verdict
will be set aside.

Whenever there has been a mayhem, the
jury is may upon view of it increase
the damages; given by the jury, at
their discretion, and this although mayhem,
is not expressly charged in the declaration, provided the judge certifies that the defendant has committed mayhem, or reports being a Judge of a court above. Damage must be increased by aJudge at nisi prius, or must be done by the court itself. The Defendant must be present in Person at the time of this motion, that the jury be inspected. This doctrine is founded on the rule that by the common law, on an appeal of mayhem the question whether mayhem or not, was to be decided by inspection.

The Judge can never increase damages in case of mayhem, unless it is proved that the hurt inspected, be the same as the one found by the jury and charged in the declaration.

In analogy to this rule the settled in England, that damages may be increased in case of wounding and atrocious battery. It is an established rule of practice, not to increase
ables the party injured to prosecute by a writ action by which the party receives damages and the public attains a fine. There is also another statute concerning secret assaults when there is no witness present, this is peculiar to Spain. It was really a question whether an act for a secret assault could be maintained when two or more committed it, in secret without witnesses. I add as that it could be.
False Imprisonment.

Every unlawful restraint of one's liberty is called false imprisonment in law, or a violation of one's right of locomotion. It is no matter where or what the place is, whether tied to a tree, hut in prison, in the stocks, or a private house.

To constitute false imprisonment there are two things necessary to concur: 1st. Detention of the person; 2d. An unlawful detention. The unlawfulness of the detention must consist in the want of lawful authority to detain or imprison. Such authority may be founded either on lawful process or on some special cause amounting from the necessity of the case to a justification. In the first, a correct arrest under process, in the other
case any person may arrest a felon without a warrant—indeed it is prescribed as a duty.

The notion of false imprisonment will not be on the capture of a thief; even if she is not a lawful spouse. This is a matter of ad
ominally jurisdiction, to be decided and regulated by the law of nations.

Every arrest of a person without a warrant in a civil cause is regularly unlawful yet a parent may confine his minor child, a master his servant, and a husband his wife, but to strangers not in their relations the rule applies.

It is said that although every confinement in a civil cause is regularly unlawful, yet a private person is not liable for arresting or confining a person at command or by the authority of the sheriff—this, however, is not an ex-
ception to the general rule for the immunities of the Sheriff extends to the private person. It has been lately decided I think
to.Beguief and Suller), that the Sheriff may not commit a person the custody of a private man while he absents himself. It is not however necessary that the Sheriff should be actually in sight of the Prisoner.

Lecture May 1st 1810.

An officer having made an arrest on final process cannot delegate his right of custody to another person in his absence. Upon some process it may be different, then I should not decide on that head.

The most usual cases that occur of false imprisonment are arrests made under void process. To avoid process there are many distinctions. If a court of record from any motive even a bad one, commits a person to custody, even against the known principles of law and with a malicious object, the Judge is not liable if he acted within...
his judicial powers. The plea that he acted as a judge of a court of record, is conclusive, of a
deuvoir of no contradiction.

It seems then to be a settled rule of the common
taw that a judge of a court of of record of
genral jurisdiction, is not answerable for any
mistake, provided he had jurisdiction of the
subject matter.

If a court of record of even general jurisdiction,
acts in a case in which it has no jurisdiction of
the subject matter, the judges are liable as any
other persons. They do not act judicially, for
it is coram non-judice. As if the court of com-
mon pleas in England commit to prison on a
criminal offence, they are liable for they
have no jurisdiction over criminal offences.

On the other hand if they have jurisdiction
of the subject matter and yet in their pro-
ceedings trespass the limits which the law
has prescribed, they are not liable.

It want or defect of jurisdiction may go
either to the subject matter, or to privilege,
in defect of person or in other collateral matter. In the latter case it is not, even as an
amenity. If the privilege is not plead he is required to submit to the jurisdiction,
but he may quash the jurisdiction by pleading to his privilege. By the subject matter
so meant; the question or controversy or the
particular cause of action.
Suppose an action of debt is brought in the
Common Pleas against a Peer. There is no doubt
but the court has jurisdiction, but a Peer
is not liable to a capias; the court how-
ever issue a capias, the judges are not liable
nor the Sheriff, for they acted within their
jurisdiction.
A distinction is made between courts of gen-
eral and special jurisdiction. The reason of
the distinction is not to me obvious. The
courts of limited jurisdiction they are
liable if they trespass their jurisdiction
even by mistake. Suppose a court of lim-
ited jurisdiction can hold liable of debt to
a certain amount and a Peer as before is
well before it, and they suffer a capture, they are liable. This is a vigorous rule.

If a court of limited jurisdiction is a court of record, and exceed their jurisdiction, they are liable, but there is here a distinction: they are not liable for mistakes in opinion without exceeding the limits of their jurisdiction, and they are not liable in this case even for malicious acts. Suppose a court of record of limited jurisdiction oversaw a demurrer when the declaration is clearly bad, they are not liable for a mistake, but if these it is decided from malicious motives, they still are not liable if they confine themselves to their jurisdiction.

The precise distinction then, between courts of record of a general jurisdiction, and courts of record of a limited jurisdiction, is this: that the judges of the former court if they have jurisdiction over the subject matter, are not liable if they exceed their jurisdiction, in the latter case they are liable although they
In the Peace of 1945, the Turkish state was recognized as a neutral state. The terms of the Peace were:

- The returning of all war reparations.
- The establishment of a Franco-Turkish border.
- The re-establishment of the Ottoman Empire.

The Peace was signed by the representatives of Turkey and the Allied Powers. The Peace treaty was ratified by the Turkish Parliament on November 12, 1945.
record and no other. This is presumed to be a correct definition by Chief Justice Drow. No correct definition of a court has yet been given. Whenever a word of record will lie that is a court of record, but it does not show that when it will not lie. It is not so in House of Plead, or our supreme court of errors. It was erroneously supposed in Connecticut that commissioners on the estate of an intestate person were a court of record and adequate was taken from them but the superior court decided against it and that they constitute a court.

Lecture May 2, 1840

There are some cases where persons are exempted from arrest by reason of their character, magistracy, and from peculiar temporal circumstances. Thus executor and administrator are not liable unless on a suggestion of a deponent, that is he is not liable unless for his own acts, but for any duty or debt of the intestate.
he cannot be arrested. A motion for habeas corpus
would lie against the principal, sheriff, and attorney, severally as joint
Defendants. The general rule is that an attorney, who is
instrumental in an illegal arrest is liable, with his principal but he must actually be
instrumental as by counseling, advising.
The execution of an arrest and an arrest arises
arises from the representative character in which
they are sued. In this case it seems, and I
suppose it to be correct, that the sheriff
officer making the arrest would not be
liable for an arrest unless provided the
arrest was issued by a court of general
jurisdiction, having jurisdiction of the
subject matter; for he is alleged to execute
the process. It is an agreed point that a sheriff
is not liable if he arrests a person on a capias
from the court of common pleas. But the att
orney and principal not voluntarily are not
liable.

286. 286. 286. 286.
Temporary circumstances may exempt from arrest, as in case of a person attending a court of justice either as plaintiff or witness, they may be completed while going to court, while continuing their business, or returning home. This exception extends not only to his person, but to his house or means of conveyance, to his money and to his necessaries.

In case of failure or witness, the arrest is not ill-gotten in the first instance, for the party nor officer is not bound to know his exemption. Both the court will issue a writ of supersedeas and if after the said detention is unlawful.

This is equivalent to a new arrest or imprisonment. There is some diversity of opinion in the books, on the question, whether the sheriff is liable after a supersedeas, tho' there is no doubt with regard to the principal.

And it however laid down expressly in some books that the sheriff will be liable, and I think the opinion correct.
The sheriff has as much authority to make an arrest as the earler had originally, for him to make it. In Count
the usual practice is to obtain for the party a writ of protection before he comes to court to testify or as party to a suit. This operation is to suppose dramas after arrest in England. If
upon arrest, he shows his protection, and after is arrested, the officer as well as must be liable to an action for false imprisonment. This is
said to be not so much a privilege of the party in the court. The writ is good, the only objection is to the time of serving it.
If the writ is found to enter common bail, and
the suit proceeds.

For the case of a Peer, the rule is that the officer is not liable, or a certified law trakt. He is certainly not liable till after su
ceed. The Party however is liable, because the exemption is personal, after the super-

Peer, the Peer may sue to the personal arrest.
The prisoner, the his bond is paid. This is a mere private contract which the grantees is not obliged to make.

When the process or order of court requires the person to be confined in any particular prison, confinement in any other prison is false imprisonment. For the sheriff has no other authority except what he derives from the court.

It has been decided in Connecticut that an officer has an escape warrant, he may arrest a prisoner who has escaped into any other State.

It has become a question of great importance in the U. States, whether the bail can arrest in another State. My opinion is that he can, it may be found in Days 3 days April 172, case Oct. 5, 172.

Lecture May 3rd 1810.

A peace officer is also justified in arresting a person without a warrant on reasonable charge.
of felony, the law being always afterwards have more to have been committed. For
ordinarily the rule was not to be by the ancient com-
mon law, the officer making the arrest, if
the charge on which he arrested him proved false. This was a rigorous rule, and
Lord Mansfield decided that he was not
busted, if there was a reasonable charge of
felony.

This rule does not hold as to private in-
creases. But if the felony has been committed,
a private person may arrest a man whom
he has good reason to suspect has committed
the felony, and take him before a magis-
trate for trial.

A private person may also arrest a felon to
prevent his escape.

At common law an arrest in a civil case
on Sunday was legal, but now an arrest made
on Sunday is void, and the person arrested
may have an action for false imprisonment against the officers who arrested him.

But it is said that bail may arrest their principal, or retake him on Sunday to have him before the court, because it is said that he is in nature of a jailor, and the principal in nature of a prisoner. But this rule is not yet settled, and it is clear that a jailor may retake a prisoner who has escaped from prison on Sunday.

If an officer breaks open an outer door or window and arrests a person, he is liable for false imprisonment if the arrest is for a civil action, the law will not justify breaking open the best house for considered as his castle. But a man's house is no protection to him in criminal cases. But this rule does not extend to inner doors or partitions, if he can enter the outer door without force, he may
make use of any force or violence to execute the process, even to the destruction of the house, if he can't execute it without. He must first make a demand of the party's body or goods as the case may be for he can justify no violence if he can execute the process without.

But in this case it has been questioned whether the arrest was good of itself, and the person arrested had no remedy, but by an action for an illegal arrest or whether the arrest was void, and the person had a right to be discharged from the arrest on motion. But it now settled that the process is void, and the officer is also liable for false imprisonment.

So also it has been questioned whether if there is an illegal arrest in consequence of which another is made by another person, whether the latter will be void. But it is now settled that if there is a bona fide arrest without
He is answer'd, that evildoers may have their action for false imprisonment. This rule I think is not founded on principle of equity; for surely no man ought to have a remedy for an injury occasioned by his own wrong. In France both the move and final process begins in rem et in personam, in the officer may attach the goods on the body, but if the officer arrests the person when sufficient goods are attached to him, to pay the debt, he will be guilty of false imprisonment. But in England the writs capias et satisfacendum, et scire facias, et braccius facias, are all distinct writs, so that on a false facias he cannot arrest the body, nor on a capias can he take the goods, but must have two separate writs.

Every individual has a right to arrest a person who is fighting, or disturbing the peace, in order to put an end to the affair. Executors and Administrators have said men not liable to arrest. So also in some cases some execute...
are not liable to be held in custody on a mere process, where the husband and wife have both been legally arrested.

A person arresting another upon suspicion of some crime by authority of a search warrant from a justice, for the purpose of examining him before a magistrate, is not liable for false imprisonment but the court must decide whether it was a short and reasonable time or not. 5 Bac. 649

So also any person without a warrant may arrest a madman or a maniac to prevent him from doing mischief.

There is a great diversity of opinion about the liability of officers arresting under the authority of courts. It is said by some that if a broken officer makes an arrest upon a process, from the face of which it appears that the court
In no instance of the case, he will be liable for the arrest, the
the jurisdiction goes only to the person or the place as the arrest of a
Peer or the officers of a particular court, not to the subject matter of the suit, by
other the said he is not liable.

But this rule has been extended further, so it
has been held that if a court of limited juris-
diction, which has not cognizance of the case,
whether it goes to the locality of the case,
merely, or whether it goes to the subject matter
itself, or whether it appears on the face of the
process or not, the officer will be liable for
the arrest.

The decision of the case cited from Coke is that
every thing done under the process is void,
if the court have not jurisdiction of the
case. But the following I think is the true rule,
that when a court of limited jurisdiction has juris-
diction of the subject matter of the suit, and the
local, which does not appear when the law of
the writ, the officer is not liable.
But Lord Raymond goes further and says, 'the
officer is not liable, even the the defect does ap-
pear on the face of the writ, but all question,
Lord Day: are at issue on this point. In this
point are also the authorities in the margin.

But as to courts of general jurisdiction, it is a rule
that the Sheriff may justify an arrest, on a writ
which issued from Westminster Hall even tho
his void on the face of it. But this rule must
be taken with a qualification, he may always
justify such an arrest except where it appears
from the face of it that the court has not jur-
isdiction of the subject matter, in that case
he can't justify the arrest.

Lecture May 4th. 1810.

With regard to this subject our courts in general
have established one universal rule, that an of-
"icer executing process is justified in all cases
unless the process is void upon the face of it.
It follows then that although the court have not jurisdiction of the subject matter, the officer is not liable. As the case may be, the court may or may not have jurisdiction, the officer may not have means of knowing except from the face of the process whether it is void or not. According to the rules of the common law if the court proceeds having jurisdiction in wrong name or irregularly, if the process is regular, the officer is not liable. The only difference between this rule and our is, that this requires jurisdiction of the cause, ours does not.

From what has been said it appears that where the subject matter is not within the jurisdiction, whether the court be of general or special jurisdiction, the process is void and the officer is liable. Where want of jurisdiction goes to person or place, the officer is not liable unless the defect appears on the face of the process.
This article is laid down only to some process, if it is upon suit process, the officer in justification must show either that the cause of action arose within the limits of the court jurisdiction, or that it was so laid in the declaration. This will not justify the original PfFF and if he is sued for bringing his action in a court of limited jurisdiction, he can only defend by showing that the cause of action and actually arose within the limits of the court's jurisdiction. He is bound to show the extent of the court's jurisdiction, the officer is not.

In some cases where the jurisdiction of the court is complete as to subject matter, person, and place - the process may be void, and the court as well as party may be subjected and as the case may be the officer executing it.

In courts of limited jurisdiction it is a rule that where the authority given by Stat. and that authority is not strictly pursued...
the proceedings are void — in the statute concerning game, authorizes a justice to commit a person, provided he has not sufficient
effects to pay — a person was committed, the justice having sufficient effects, and he was subjected, but the officer was excused, because it did not appear in the face of the process that he had effects. So when a person was convicted on a
statute, and ordered to pay the penalty, but the officer detained his belt he paid his fees, but as here was a special authority to a court of limited jurisdiction, the constable was liable. Process is many times void in what is called in law irregularity. The officer in this process is liable, but the judge, are not nor the officer of the court has jurisdiction. The officer was just observed to be liable even upon process issued from the superior courts of Westminster. Thus if a capias issues return-
able to the next term but one, it is void, because if it was otherwise, that is merely
Moreover, the cause might on the same principle make it returnable ten years hence, and his claim against the defendant remaining in doubt, he must be committed or he held to bail. Such would be the deplorable consequence of a case treating magistrates.

If the process has issued from one of the palace courts of Westminster Hall, the officer is not liable. The mandates of those courts are not questionable by any of their officers. In the original arrest was taken at yet for any subsequent oppression the officer, magistrate or else as the case may be, is liable, because it is a rule that if the law intrusts a man with power, and in the exercise of it he is guilty of any misdemeanor, he is in the latter exception. When a person is in his own action of trespass that he acted in an official character, proof that he actually exercised the office is sufficient to prove the fact, he need not show his appointment.
An arrest founded on a process under an irregular proceeding is void. That is as to the Dff, it is still a justification to the officer. Thus if the Dff has execution served after judgment has been set aside, he is a help paper, but the officer is not liable.

But process the erroneous will justify an arrest. It answers every purpose of justification as well as legal process. The party may justify an order if a judgment is served on the debtor arising from an erroneous judgment. An erroneous judgment will support an action of debt, but a void judgment will not.

There is no definition in the books of irregular breach or irregularity, nor can I give one, it is only to be learnt from examples. Irregular process is such a proceeding as may be set aside in a summary way. Process held to be irregular is of various kinds. 1st when not filed up by regular authority. 2d. Where the process had issued withoutally. 3d. It has also been
Holden that where a writ is not returnable on a day certain, or at the next court, it is in regular. This applies only to more processes. In the case where the rule has been denied as applicable to more processes, if the day on which the court is to be held can be ascertained, so that if process is made returnable to either one superior or county court at their next, it is not irregular, for the terms are fixed by law and are certain.

Lecture May 9th 1810.

Articles under general search warrants are illegal, and so are general warrants of every kind. A general search warrant commanding an officer to search any where and everywhere for stolen goods is void and illegal. So also a warrant commanding an officer to search any where and everywhere for a liberator is illegal and void.

The requisites to search warrants are, 1st. That they be granted on oaths. 2nd. The party making oath must state the ground of his suspicion.
3. It must be executed in the daytime by a known officer in presence of the complainant. The other process may be executed in the night; and lastly, it is required that the warrant be directed to some particular place or place, they must be specified. These requisites being all complied with, the information is justified or not by the event of the search, so if they are not found, he is liable as a trespasser, and if any of these requisites are omitted and he still finds the goods, he is liable as a trespasser.

Mode of justification. When an officer justifies an arrest under a process, he is to show the process itself, and if to same process that has remained, if the return day has arrived. The reason why officer must show that the reason the process is returned is that a return is necessary to consummate and validate it. The defendant has nothing to answer to till the said process is returned.

But in small process the officer need not show
The return to final process is a returnable one. The object of mere process is to compel the appearance of the Deft and this is not effected unless the suit is returned.

But in final process its immaterial to the Deft whether the order be ever returnable or not, except as the case may be, so may at some future time want notice of the judgment so to a return in that case is not a consummating act, for Pll get satisfaction as much of the final process is not returnable and it were. But in mere process there must be return, for unless there is the Deft has nothing to answer to, as was stated before.

But in the rule just laid down as to officers showing a return of writ in mere process. There is an exception in Eng. in case of under-sheriffs, they act in name of sheriff, and have by law no authority to make return in their own names. So in justifying an arrest under mere process, they need not show a return, or they have no power to make one.

But when the Pll in the original process issued
It must show judgment as well as explain the fact. He is privy to that judgment and must show it, and also show that his unfaith and misconduct.

And the rule is the same with a stranger who satisfies under final process.

If a sheriff in making an arrest under some process, omits to make a return of the writ, he is made Responsible at iniyo.

Now this case seems contradictory to several rules on this subject viz. that no person shall be made a Responsible by relation for non-performance merely in omission. Now the true ground why the sheriff is made Responsible at iniyo, here is that where he omits to do that which will complete and consummate the original act, he shall be made Responsible by relation.

When different parties are sued together they may have different justifications.

If the officers are sued together they may recover in pleading.
out of the area in our plea and one convicted 179
but will be, if the plea is bad for fact it will be 179
be as for all.

In this as in all other cases of Treason, aiding,
abetting, assisting or commanding will make a
principal - and every thing which would make
Luke 4:9
one an accessory - before the fact it belongs to 15:29
make him principal in the Treason. For there are
no accessories in Treason.

So if A imprisoned B and gives the key of door
to C, who knows of B's imprisonment, and C
keeps the key, he will be principal.

The procuring a Sovereign Prince the influence
of law, by threats or to imprison wrongfully
a person in his own dominions is false in
imprisonment in the party so proceedings it.
Trespass Victim Armis on Personal Property.

This action is brought for an injury to a person or his property by a direct act of another, and this must be by a mistaenance. As to property it includes either real or personal. Proven and this action are many times concurrent. The taking away by a wrong act is a trespass and a conversion. But if there is a destruction of property without a motion, it is only trespass. Trespass is not always concurrent with larceny. As if goods are bailed, and the bailee refuses to give them up, here is no trespass, but a non-barel. Sometimes the act is a lawful one, where trespass victim arms will not lie, but if consequential damages ensue the action of trespass on the case must be brought. In case of putting a foot or that near the water or carried on to a neighborhood house or pavement, it is said that only trespass on the case will lie.
trephines

out of my technical reasoning I conceive that the action of trephines, viz. armis, would be supported for an arm and air law extends from the centre of the earth to heaven, therefore a trephine or armis may be committed as well in the air over the surface, as upon the surface itself.

There must always be a misprision, to this there is one exception stated in the books viz. If an officer goes with a writ and attaches property, and the creditor appearing to a county poor, is discharged, the writ prevails on the officer not to return the writ. Here they say the action of trephines, viz. armis, is for a misprision in not returning the writ. I view it however in this light that no man can ever take any property unless by force, but this writ can never be shown in court, because it can never be shown except by return. Therefore the officer is in the same situation as any other person, concerning the distinction with regard to voluntary and involuntary injuries. There does not appear to be any necessity for the exercise of will to support this
The truth appears to me to be, if the thing done by a person not in the true execution of his calling would be wrong in case he did execute his calling, he is liable. But where they are excused it goes on the ground that it was not a misfeasance. A person is in the pursuit of a lawful act, and involuntarily with the exercise of proper care, does an injury, he is not liable. So that all persons are liable where the act was unlawful, or being unlawful one caution is not used.

A mistake will constitute an excuse. The act will be an unlawful act. As if B asks supposed his land to extend further than it does, he cuts timber upon it and improves it as his own, upon measuring it they find it to be another's land, B is then liable to take in trespass.

When a person has obtained the professional goods. If the profession was obtained lawfully, any authority of the owner—trespass of his goods will not lie, but action on the case will provide. If he refuses to deliver or insures them. But where there is fraud in obtaining profession.
Then he is considered as a trespasser and the subsequent conduct of the man shows that his original intention never was to go to Labi but to run off with the house to Canada, he is liable to the third party vicar armis and as the case may be to it with amount to theft.

If a licence which the law gives as that an officer may enter on lands to serve an arrest, is abused by any trespass there he is considered as a trespasser. But a non-service will not entitle to the action of trespass vicar armis. A man may take up paddle shooting but has no right to use them. If he does he is guilty of a trespass vicar armis.

A man to suit out this action must have a licence, either general or special. In case of personal property the general property is sufficient. But if Miles has bailed goods to Wikes and White takes them from Wikes who shall bring the action? The man who has the general property may bring an action and
in which the man who has the special property may have his action, for special damages only. But if, from the special property man brings his action first, can the other have an action? He for the special property man in such cases may recover the whole, both the value of the property, and his own special damage, but he is liable over to the general property man. But sometimes the special property man is not able to pay over—why then is this allowed? It is said in the books because he is answerable over, but he is not in all cases, as where he has used due diligence. The true ground I conceive is this owing to a special care which the law takes of a special property man. He may be liable and he may not. On account then of the nicety of the question, whether the man who has used due care, or has been careless, he may maintain the action.
This is a distinction between personal and real property. In case of personal property the special property man can never bring an action of trespass, against the general property man. I see no reason for this rule, on a special property man in real estate may maintain trespass against him, who has the general body. I see no principle to warrant the distinction. In real body there must be an actual possession to maintain the action, but a mere intender of possession is not sufficient. There must be a feudal possession, or one equivalent to it. If there is a tenant in possession, his possession is that of his lord. Suits are filed, under Nokes, and others under false claim of title. They cannot maintain trespass. Nokes can. In Connecticut we require no actual feudal possession, therefore a man may maintain an action.
of совсем ужасно, что в случае противоположности, даже если он не видел лица.

A general law that a tenant cannot be taken by an officer either to obtain his person or to levy an execution. This refers only to his

mansion house—not shop or barn. Reason is that it would tend to disturb domestic tranquility of person escaping from his own house to that of another will not be screened by this law, nor will the man himself after he has been

taken and escaped. If outer doors are open, inner ones may be broken. Suppose an officer

breaks an outer door, and enters and finds goods, can he levy on them, or take the mans body. That

is will it be a good levy? It has been said by respectable authority that it will, that the

injury is past, for which he is answerable, but if apprehend that no man can take advantage of a breach of the ordinary regulations of society.
Trespass

It tends to very temptations before men to break the laws. The case cited from Cowper is conclusive against Mr. John Croke and I think is correct. It is the best case on the subject of outer and inner doors.

Suppose a sheriff has an execution against 

Voter and levies on the property of Stiles? 

Sheriff is answerable in an action of trespass, but the sheriff is never obliged to levy on property where he has any doubt. But suppose the 

Plutarch orders the sheriff to levy on this property, in such case the sheriff may have his remedy 

own against the Plutarch. This has been denied but I apprehend without sufficient reasons. This is not the species of illegality which the law respects. If a ministerial officer mistakes and commits a person to gaol, he is liable, the gaoler is not. All costs on the person who made the last mistake.

If an officer knows good to be another person
and yet attach her them, in consequence of the City
because to indemnify him for, with her to be the
21st except without a remedy, as case of re-
ceived judgment. Still gets execution against
Woke and takes his property, and sells it at the
best and gets his money, a writ of error in the-
wards brought and judgment reversed. Woke
then wishes to sue Still in treppass. But this he can't
do so the judgment is reversed, still still may
have the judgment as the authority under which
he acted, an action of a debt, if not, it will lie
to recover back the money, as money had and
received to the Bishop. Of a Woke.

If the goods of the testator are taken away
before the will is proved, Except may maintain
his action after proving the will.

The heir by ratification or confirmation received from the
Deceased death his right is from the will not the
lodtate. To also a legatee of the cistic goods
they maintain treppass for taking them after
Coronation might, but it is before the delivery to...
Freepafts

him by the Encumber: Abte of the Decay had
been third part of the testator goods, & this is
not specific. And in the first instance all. There
supposes that freepafts could not lie if the
taking was before the one: "a" present to the legacy.
If he have goods taken by & belonging to two,
both should join in the action, but the defect is
pleadable only in abatement.

This action, about afterwards against the represen-
tation of the highpast for personal injuries,
cannot and damere. I conclude, it never do on
at the right of but damages as to action dies
with the person. But for injuries to property,
in somewhat different, here, your action will lie,
the not in first action. The old common law
was that no action would lie against Excep.
Injuries done to personal property, by his
inhabitants. But the Stat. of Edw. 1 over an action
against an Excep. whose goods have been car-
ried away, but extends no further, not of the
own field, no action lies against Executor for it. So the principle is that some action will lie against Executor if his agents have been benefited which would always be presumed if the property was carried off. I should suppose the rule ought to be if the agent property has been injured, the action ought to be maintained. But it is not so the majority of cases in Europe, not so on the other hand, an Executor against injured party can always maintain his party against the injurer, if he is living. Reprobit agents show however, will lie for servants of any kind. If a dog does mischief, he must have been accustomed to do mischief before, or the master is not liable. So also if an ox goad, the master's liability depends upon his knowing whether he goads by accident, or whether it is his character.

Where a man's property is taken away, owner has a right of re-election and it will not be heplful in him to go on his neighbors land to retake it,
Trespass.

If it should turn out not to be his, he will be liable to trespass. But he may not distrain the

peace in retaking the property.

It seems at common law that trespass does not lie

an act amounting to felony or Robbery. Grand

accomplished by reason of the merger. But you may

commence an action of trespass before he is

publicly prosecuted, the reason why you cannot after

merger to be, because forfeiture is the consequence

of felony, therefore he has nothing to make satis-

action with.

English authorities are contradictory as to the

application of this rule. Merger is founded on

forfeiture if情形.

 abide! as there is no forfeiture. I think

merger would lie notwithstanding the public

prosecution. The sheriff takes the goods of one even

against another. Sheriff is liable in this action.

licitate are found damage severant; you may either

distress them till you get your damages on
you may sue in trespass, but cattle so distrained may be repaired.

You can't distrain for rent in Connecticut.

The declaring the goods must be described with convenient certainty, to "diver goods" or "all goods" is not sufficient, nor will it be cured by verdict.

For one recover would not be a bar to another in that case, and Jeff! could not justify.

But this rule applies only when the action is founded on the taking or injuring the goods themselves, not when the injury is laid by way of aggravation - then "all goods generally is sufficient. E.g. trespass for breaking and entering, 

1st, house and spoiling his goods, is sufficient even on general demurrer.

Trespass for breaking and entering his house and 
exhaling all, estailing, is only an aggravation 

with all makes a new agreement of it as a sub-

stantive trespass.

Such description is sufficient if it made particular by reference to other things in the deed.
Trespass

Declaration. Trespass of a permanent nature may be laid with a continuance.

Lying with a continuance, when the act is not in a continuance is not cured by verdict, unless some additional act in continuance.

Plaint must state a trespass or proper showing a right of ripening, i.e., either in actual or constructive ripening, or trespass is not sufficient. Taking hay from Off's land is not sufficient. The declaration in these cases is not good even after verdict.

value of the article must be stated.

Here is it not to aggravate the damages, not after what

Day said not material. Off may prove help, at any time previous to the action brought, not within the statute limitation. Therefore if a release is pleaded, Def must have as a subsequent time.

If a trespass has been committed by several, Off may declare against one, or more or all—so also against each one separately.
If an action against several are completo to pay the whole, he can't oblige the others to contribute, and this rule is applicable to all acts. But if it appears from the declaration that the debt was by another certain person committed, the declaration is ill for not joining. Post 199. As to the latter, since as to the principle, (both being novel and the debt showing the fact,) does not hurt the declaration. Nature of the latter is not known.

Justification must be pleaded. Est 411.

If the justification pleaded by one of several shows who the whole was the P. had no cause of action—judgment cannot go against either, even if one is defaulded, or found guilty. Est. 421.

Words, vitis armis, are not necessary to be stated in the declaration in Connect. Borowith & Phelps.

In this case cited there was a special indemnity. In Eng. words vitis armis are words of substance, for at common law the judgment in case of forcible injuries was a capitaci profini, taking out
Trespass

The original, and the judgment was a misconceived

imposition on the judgment.

Now a unit of capital profile is taken away by Stat.

5 1/2% M, but the plaintiff, a substitute on the

ignoring judgment, in actions for injuries with

force v. 6/8. Therefore the reason of the rule

will continue.

To contra poasem are words of substance in Eng.

Then defects are aided by verdict, and shall be

amended.

Decided nearly 30 years ago in Connecticut, that

trespass & rep. on the case might be joined in one
declaration - no late decision.

At common law such a joiner would be ill

because different judgments would be necessary.

Now the capital profile is taken away by Stat. M.

yet the general criterion has still been the

difference in sumness of the judgments.

Case for misfeasance is not victors and nego-

liance, may be joined with Tresco. Rep. victors,

Tresco can't be joined it seems.
In consequence the rule as to torts may be different as to the two causes of action.

Justice Buller says that the identity or difference of the judgments is not an universal criterion, but he says where the same plea i.e. the same general issue is proper and the judgments would be the same - the causes of actions may be universally joined. By the same judgments is not meant the same judgments at common law, before the State of W. of Mary,

contract and tort can be joined.
Action of
Trespass on the Case.

I am not about to treat of all actions on the case. The object of this title is to give the general outline of the action arising ex delicto and not as sounding in contract.

I shall consider trespass on the case arising ex delicto, for injuries to the person and personal property of another.

It has been frequently said that trespass on the case, lies for wrongs not accompanied with force, but this is not a complete description of the action.

I think a true description of this action is that it lies for wrongs not accompanied with force, and for consequential injuries which are occasioned by acts which are forcible.

"As to wrongs accompanied with force," it lies in case of malicious prosecution. Moreover, because it lies for nonfeasance as against Bailey,
against Astley for neglect of servant &c.

and for consequential injuries which were occasioned by acts which are forcible.
Thus it is for those wrongs which are occasioned by a person's inten-
tion or will, &c. or child, here the act was forcible, but
one action is brought to recover consequential

damages.

Actions of trespass on the case, irregularly foun-
ded on the equity of the Stat. at Westminster. The in-
said there were actions of trespass on case at
common law.

The general provisions of this Stat. was that if
a party who was injured could not find a form
of action in the Register, he might bring an
action on his case. This is one of the most
important and beneficial statutes ever made.
The forms of declaring in Court I have made
a difference between an action on the case as
an action of trespass on the case. If the act
founds in tort we call it trespass on the case.
Lecture May 9th 1810.

Where there is no trace of the original wrong complained of, there is no difficulty in finding the action, its clear trespass on the case is the proper remedy. But where there is none, there is difficulty, sometimes in determining whether trespass or case should be brought; sometimes one will lie sometimes the other. The rule is if the original act was immediately injurious, trespass is the proper remedy, but if the injury is consequent, trespass in the case. Many cases have furnished great controversy in determining the application of the rule.

If my servant is beat, and I lose his service, I must bring trespass on the case, he will have help in arms, for my damage is consequent.
his is immediate. For the purpose of maintaining
hotspur, is not necessary, that the injury should
be the instantaneous effect, but if it is the direct,
necessary and physical effect of the act is suf-
ficient. The only difficulty as was observed before
is to discover when this is the case, or what is
immediate and what consequential effect. If the
injury is by a train of necessary effects, hotspur
will lie. I have endeavored to establish a rule which
will be a pretty correct criterion to determine
what is immediate and what consequential.
When the immediate or proximate cause of the
injury is but a continuance of the original
act of force, and is not by any means produced
by the extraordinary intervention of a voluntary
agent, the injury is deemed to be immediate, and
he is liable in hotspur; but when the original
force ceases before the injury, complained of
commences, the injury is said to be consequential,
and hotspur on the case lies. When one of these
is proper, the other cannot be brought, the it
has been said otherwise by one or two judges, but when one is farther, the other is universally wrong. Explanation of the rule laid down. A shoots a ball at a tree, and it glances and hits B. B can maintain the shot. Here altho the tree gave the ball a new direction yet there was no intervention of any voluntary agent. The only agent is A and the force at giving the wound is but the continuance of the original force. Suppose A puts a football in motion and B kicks it so that it hits C here there is a new agent— and a new force impressed. B only is liable in this shot. A mandischarges a gun at a mark and after glancing several times it hits the servant of B. The bodily hurt is the effect of the immediate cause, therefore action by servant is repulsed. The force is continued the diverted, but the master must maintain action of trespass on case. The servant have could maintained his action so instantly when the injury happened, the master could not because his injury is only occasioned by lapse of time,
in which he can lose service. The original force is the causa causans, the servants injuring the causa causans.

In those cases, if a log in the highway, this is an unlawful act, and it may be convicted for it, and the injury caused by it. A remedy is, for the place to cease before the injury commenced. Here the damage is consequential. But if A had thrown the log against B's carriage, and broke it. A remedy would have been Hopkins, to the immediate cause of the injury, is a continuance of the original force used.

Again, suppose a man wantonly turns out a mad bull into the street and he injures some person, now his remedy is Hopkins. The bull is the mere instrument of this person, is the same as if he had thrown a stone, he sets an instrument of mischief in motion, and is considered as the author of the mischief.

So if one man cuts a tree on his own land and it falls on to his neighbor's fence or house, and
injure it, and the remedy is trespass.

As a man is tending a tree, some of the branches fall onto his neighbor's land, the remedy is trespass.

But suppose I erect a spout on my building and the water runs from it onto my neighbor's land or house; now the remedy is case of no trespass. Here the force comes before the injury commences. The injustice is there is no force here, but a right to put a spout on his house.

But if it cuts down a bank or head of water, and the water flows on the land of B, and injures it, the remedy is the right of remedy.

Suppose a wild horse runs into a field where there are a great number of people, now if one is injured by this horse, the remedy is case. This is not the act of the horse, he is guilty of negligence and that is all. This case is examined on both sides of this question, but I conceive this case has nothing to do with either. If this act was in any way the act of the rider.
Lecture May 10th 1810.

The case of Scott 

in Blackstone's Reports is frequently referred to, to illustrate this distinction. The Beef threw a lighted squib into a market place, and after several explosions, it lighted on a butcher's stall, and he in self defence struck it off, and it exploded, and put out the eye of the Pllf. Plff brought an action of trespass ag. the person who threw the squib first, and it was decided to be the proper action. Just Blackstone differentiating I conceive the decision to be correct. The butcher was not considered as a voluntary agent.

The first branch of the rule concerning these actions, holds only as ag. the party who used the force, & by this I mean all persons who assisted, aided & abetted, as well as he who was in fact the author of the act or force.

Thus suppose a servant in performing
his master thereby commits an injury with force, 1917
now the servant is liable in trespass, and the
master in cases for not employing a more skilful
servant.

When the injury is the immediate consequence
of the act, it makes no difference (when action
of trespass is brought) whether it is owing to his
negligence or wilfulness.

It has been decided that if at willfully runs his
vessel ag. that of B. trespass will lie, & so if at should
carelessly steer it ag. B's vessel.

If mischief is done by any dog or other animal, the
master or owner (when liable at all) is liable on
case. In the act is that of the dog and not of the
master.

But if a servant willfully drives his master car-
triage ag. that of another is said the master is
not liable at all.

It does not hurt a declaration in an action on case,
with a few good words in amidst, to have some
words stated, they are words of description. Still you
must not call your action on case, an action of
trespass.
It is said that when the original act causing the injury is lawful, trespass is the proper remedy, and wherever it was lawful the remedy would be there. But this idea is now exploded; it all depends on the distinction which I have taken.

It has been said that care and not trespass is the proper remedy when the original act is lawful. This is not correct, for if it cuts a tree on his own land it falls on B's house and injures it. Trespass and not care is the remedy, and this is said to be a lawful act, i.e. the cutting of the tree.

This action of Trespass lies in a great number of misfeasances, and nonfeasances. I have considered some of the misfeasances for which it lies, and with more heat of those nonfeasances for which it may be brought. A mere neglect for which this action will lie must be an omission of some duty imposed on him by law. So there, are liable to any neglect in their offices.

A person performing business for another is in the line of his profession & doing it carelessly & unskillfully is liable. But if he is not acting in the
line of his profession he is liable only for carelessness and neglect, and not for mischance.

But to this general rule there is an exception in case of Surgeons & Physicians, to whom it inquires on in his professional business, the party injured may have an action whatsoever, even if he is caused by neglect.

But this action lies in general ag any one by whose act, or culpable neglect the health of any other is injured. e.g. selling bad liquor, or excising a noxious trade &c.

The mischief done by one dog or other animal. The animal being addicted to this mischief, and the owner having knowledge of it—he is liable for it. But by our Statute Bennett, the owners of dogs are liable at all events for the injuries done by them.

But if one keeps animals from nature and they do any mischief, the owner is liable, whether he knows if they are addicted to it or not, whether it is necessary to prove that they have ever done mischief before.
But in some cases in which silence is nec-

essary to make the owner liable, his d. in the

books that the scienter is not traversable.

Now you cannot do it by a special plea, for

you cannot adapt a technical traversee to the

allegation. But by this is not meant that

you cannot deny the scienter, or you may do

this by pleading general issue.

This action also lies for a disturbance which is

generally an incorporeal right, so if one obstructs

a right of way, this action lies.

Another class of cases in which this action lies

are those of Escapers.

If the Escaper is negligent it will lie only ag. the

Sherriff, but if he but is to voluntary it will lie

ag. both Sherriff and under Sherriff, vice title Sherriff

and Bailor.

This action lies ag. one who unlawfully refuses to

take bail - if sheriff on some process refuses

to take bail when the tendered he is liable in

case.

So also if a magistrate refuse to take bail for a
criminal: when the offence is bailable he is liable.

This action lies also ag. Rescuers. It is said in one of the old books that the party is at arms is the party proper remedy in this case, but this is not law. And in case of rescue the party may give what damages they please. They may find the whole or a part of it.

When the rescue is of a person taken on some process, this action may be maintained by any person in that process but not by the sheriff, for a rescue is good action in those processes.

But if a person is arrested on final process, the sheriff and sheriff may have this action ag. the rescuers, for rescue is not good action in final process.

If in rescue on final process the officer, the rescuer, the sheriff is discharged. —

This action also lies in favour of a sheriff ag. the party escaping from him, after an arrest either on bailable or final process.
Lecture: May 11, 1810.

Attorneys are as the class of persons against whom this action will lie for neglect, whereby any injury is occasioned to his client. An attorney by dishonest practices may make himself liable to his client's adversary. As were an attorney, unless up judgment for his own client, after a nonsuit, by practising fraud on the office of the court.

Justices of the peace also are liable in this action for refusing to do their duty, provided any injury results to an individual. This for refusing to take bail, or to authenticate an instrument which requires his signature.

But it has lately been decided that this action will not lie against a person (who has sued out a writ against another) for not countermanding it after settlement, unless he did it maliciously. The writ was issued lawfully, there is no legal duty to countermand it on the part of the Pll. He may live in one part of the
State and the Sheriffs in another.

Another numerous class of persons are Bailors of different kinds, for breach of trust. The action lies on the ground of neglect, in all cases of bailment, wherever the property is lost or injured, by want of such care as the law imposes.

Generally a bailment will lie, and if it be brought on the implied contract, that action is waived.

That is the law.

This action lies ag. owners or masters of vessels for any negligence, whereby there is loss or injury occasioned to the goods.

It is holden in the case cited from Talkett, that where owners are sued, they cannot be sued alone, but must all be joined, and that if one only is sued he may plead in bar the non-joinder.

This is all incorrect and has since been overruled.

Portmasters are not liable for loss, occasioned by even the neglect of their subordinate officers. Each is separately liable for his own neglect. There is no priority between the person lodging a letter, and the Port-master. Besides
The responsibility would be too great. Reasons of policy, then would supplant the exception to the general rule that, masters are liable for the acts of their servants.

This action lies against any person for deceit. Innkeepers are also subjected to this action for all losses of property of their guests, by want of that attention which the law requires.

This action lies against any person for deceit, to the damage of another. This is usually committed in contracts of bargain and sale. It is upon a false affirmation of quality, or a fraudulent warranty. But I consider warranty as coming under "actions founded on contract," not torts, there is no need of fraud to support it. An express warranty is an express contract. But false affirmation is properly ranked under this head of deceit, it arises ex delicto.

When the action is brought for a false affirmation, it is necessary to allege, and to show that the deft knew that this affirmation was false. There is no tort without fraud, and no fraud without knowledge.
An action will not lie ag a vendor when he vendes a defect in the vendes, for he has been guilty of a neglect himself in being imposed upon. Thus if a house is sold having a visible defect, and there is no general warranty, no action lies for this defect.

But the general warranty will not extend to these defects, yet I conceive that a special warranty, 3 S.C. 165

When the defect is of such a nature that although the marks of it may be visible, yet the discovery requires skill, a general warranty extends to it, as in case of the heaves in a horse.

As to the law of deceit, the rule is that a concealment of truth is the same in law as an expression of falsehood, sub judicio vero sic.

And I take the rule to be that when a man sells his goods for a round price, he sells to Barrack, his goods to another, knowing of defects and does not make them known, he is liable in deceit._ 2 Rod. 5.

It has been settled in Connecticut that when a man sells for a round price, the seller is liable. If the seller does not know, at the time of sale, of the.
defect, not the purchaser. This is a departure from common law.

When the vendor of property practices fraud by a false affirmation of title, he is liable. But the conclusion from this rule is incorrect, viz. that if there is no affirmation he is not liable, the sale is not a sale. The truth is the action may be brought on the implied warranty. By the act of sale, he warrants the title.

Injury occasioned by a false and fraudulent affirmation, the person making the affirmation is not interested. A person says a man is a person of credit, and in that way gets him to be trusted when he knows him not to be so.

It will be in general for all injuries occasioned by cheating of all kinds.

Where a public right is obstructed to the injury of an individual he may maintain the action. There must be all these cases be special damage stated.
This action lies for all injuries occasioned by a
nuisance, its obstructing ancient lights. They
have been decided ancient if 40 years have el-
aped.

But if a man erect a house on his own land
whether he have any person claiming under
him shall obstruct his rights so whether they
be ancient or not. For this would be against
his own grant.

Lecture May 12th, 1810.
This action can't be supported or obstruction of
a mere prospect.
A house built contiguous to the street is, upon the
side near the street immediately entitled to the priv-
ileges of an ancient house. An action for and be
immediately for an obstruction of ancient lights.
The reason is that no man is deemed to be foolish
or improvident in building on the highway,
but this can't be said if he built on land con-
tiguous to another, and so places his lights
that they may be obstructed.
In case of nuisance the recovery of damages
is no ground, why damages may not be recovered for any subsequent injury, from a continuance of the nuisance.

The author of a nuisance does not discharge himself by leasing the premises. The action may still be brought ag. him.

The action however may be brought ag. the lessee or assignee, if the nuisance is still continued, or is deemed to continue at the wrong after he takes possession.

An action will lie for obstructing ancient rights, by the lessee for years, as well as by him in reversion. It is an injury to the former in respect to his present enjoyment, as the latter as it affects the value of the property.

This action lies for overhanging one’s house, whether there is any obstruction of lights or not.

This action will also lie for erecting a manufactory or other building, from which there is an unhealthy vapour, or which issues heritage so as it lies, as far as the works go.
This action arises from the fact of injuries standing in particular relations to others, who are the objects of immediate injury. Thus, husband for beating his wife, master, his servant, parent his child, considered as a master. In actions, 

for grand insurrection against, where that is the gist of the action, the action is kept from the crowned case. Because force and arms are usually stated. It is usually confounded with help. Culpable has fallen into this error.

There are certain other personal injuries for which this is true. Thus for violation of the elective franchise, as if a vote is refused.

To also the candidate may have this action aley. 26, 17. The presiding officer if he refuses to take a vote for him or refuses to count them.

The returning officer is also liable to this action to the candidate if he makes a false return, so that he is not elected.

The action it is said will not be for a false return of a member of parliament, unless the right is determined by parliament in favor of the person.
who brings the action. This has been denounced by

Justice, and I think correctly, for the laws
generally have no right to interfere in the claim
of an individual in a court of justice.

In England there is a statute on this subject giving
the party injured double costs etc.

Note this act an officer makes a false return
and a mandamus by the party injured.

This action is in favor of an author of any liter-

ary or work for publishing his works. There is
now a statute on this subject—limiting the
author's right to fourteen years, and of he is alive
at the expiration of that period for 14 years
longer. We have a similar statute:

Any person employing another in the trans-
action of his business, is liable for any injurious
misdemeanor in the management of that busi-
ness.

This action lies for obstruction of process. Thus
if an officer is prevented by a stranger from
executing process, he is liable in this action
to the original plaintiff, the act however,
would not be as the cheat because as the cattle. 221

A declaration in fact in the case of public

fancy a better on the course of public

ities which are not contrary to those men.

W. 1898.
The object of this suit is that when A. at
laches the property of B. to respond the
judgment, which attachment is allowed on
mesne process, then B. may reply. This
property so attacked, and give the bonds of
6 in its stead. If B. obtains a judgment
against B. and B. does not pay, it may go
upon to a responsible man who has given
bonds. It is only therefore a mode of sub-
mitting it with a security equivalent to
what he had before gotten. A question here
arises, which I do not find has received a
decision. What shall be recovered upon this
bond? Suppose at an mesne process did not
take security sufficient, as $50. for a debt of
$100. Bonds are given to respond, and the
goods-replevied. Shall the P'ly recover the
landsmen the whole judgment viz. 18000s
where be could not without the replevin,
have recovered more than 850.

I apprehend that he can recover no more
than the property replevied. The object of
the security is only to put him in as good
a situation as before replevyr. No doubt
would have been entertained, but from the
words of the statute. But I think that the
intention of the legislature does not con-
travene the doctrine I have laid down.
Mandamus.

There is a great deal of obsolete learning on this subject. I shall direct your attention only to those parts now in use.

This writ can only be obtained from the superior courts of law in the country. The legislature have nothing to do with it. Its object is to afford a specific remedy in certain cases—viz. 1st. Where a ministerial officer refuses to do his duty. 2nd. To compel a town clerk to record a deed. 3rd. To compel every inferior court to compel them to do their duty, etc. if they refuse to proceed in a case. 4th. Where corporations, or other classes of men, are bound to admit another to certain privileges to which he is entitled. It is not necessary it should be a corporation—e.g. you may compel a county court to admit a person to the bar if he is
guaranteed. 4th. Wherever persons are deprived of privileges wrongfully, as if a person is thrown over the wall without cause.

This is not to compel a specific performance of contract for then you must go to chancery. Whenever a specific remedy can be had in law, or equity, mandamus will not be issued. It is not to be understood that no actions will lie, for they will generally.

1st. I shall consider the mode of proceeding at common law. The man injured makes complaint to the superior court, and makes affidavit stating all the facts, as that he bought such land, that he carried the deed to the clerk and he refused to record them. The court then issues out a warrant to the officer, stating containing the complaint, and directed to be served on the clerk. The warrant states that an application has been made to him so and so and directs him to record
the deed within a limited time or render his excuse. If he then records the deed, the matter stops. But suppose he does not, then he must state to the court his excuse, and if it is said by the court to be sufficient one, then there is an end, but if insufficient, they then issue a preeminent mandamus.

If the man makes a sufficient excuse whether true or false, the court at common law cannot enquire into it, but must dismiss the business immediately. The party injured may then have his action for false return, recover damages, and have a preeminent mandamus.

Concerning the allegation made by Stat of abuse. This is like the other until you get to the return made on the first mandamus. Thus if the applicant knows it to be false, he traverses it; if it is found not true, the court issues a preeminent mandamus.

If the court mandamus is not obeyed
Within the time limited, the court issues a writ of attachment for contempt, and he is committed.

There are cases where money is concerned and a mandamus issues. As when Counties are under obligations to build jails, bridges, now Towns may be sued, but Counties cannot, because they are not considered as corporations. The method of issuing a mandamus against a county is, after an application to the Treasurer and not receiving the money, to apply to the court for a mandamus. The Treasurer's excuse is that he has no money of the County. A writ of mandamus then issues for the Justices to lay a tax, which if not done, an attachment issues to commit those who are not willing to comply with the mandamus.
Habeas Corpus.

Lecture May 15th, 1810. Reeve.

In considering this subject I shall confine myself to the meaning of habeas corpus at common law. That has been much amended by the Statute of Charles 2. and as that Statute has been made since the resignation of our forefathers, it has never been adopted in this country.

The object of this writ is, to bring up the body of a prisoner, and also the cause of his detention before the court. It may be granted where the imprisonment is complained of as unlawful, or where the original imprisonment was lawful, yet by something subsequent, further detention is unlawful, or where the imprisonment is in an improper place.

It is no matter in what manner the
imprisonment is made. The writ lies where there is a prevention of free motion as in
hands confining his wife, wife, or guest, or
private house or other place.

The object is to see that no person shall
lose his liberty, except by the laws of the
land. As if a man is brought before justice
for a crime, and committed, for trial, the
justice supposing the offence not bailable,
he may demand his habeas corpus and be
admitted to bail. This writ is granted by
the superior courts in England. If, by the
court of King's bench in term time, and by the
court of Chancery both in term time, and
in vacations. This is the common law, but by
the Stat. of Charles 1. The common pleas, and
exchequer together, with the others may give
it in term time and in vacation. Above

have not adopted. The Stat. of 162. our court
answering to King's bench can alone issue
it in term time, and Chancery both in

4 Inst. 81.
- 93. 290
2 Inst. 89
Dugan. 154
8 Edw. 172
vacation and term time.

May a man have in all cases a writ of habeas corpus? He will be refused the writ if he is in fact on a conviction of a crime, or in execution for a debt. There may be statements made on these, however, that will entitle to habeas corpus. As if a man is surprised, 23 and 52 on a conviction, by a court not having jurisdiction of the crime. One thing about the Stat. of Charles. Some have supposed from dilletention in learning this Stat. that it excluded those from habeas corpus who are confined on a charge of treason or felony, but all that is meant by these exceptions is that a justice may not grant the writ in vacation for these offences, tho he may for others, but it shall in such cases be only issued in term time. If a person is privileged from particular arrests, an habeas corpus will by the question.

The business of a court on an habeas corpus is either to remand the prisoner, to take

This is grantable of right to every body except Deserters of War.

23. 1765

Can habeas corpus when it is awarded for a person confined for a crime, must be by motion to the court, like an application for a mandamus. In other cases there is not this formality; it is by application to the clerk, who signs it.

In the return the officer must show by whom, the person was committed, and also the cause.

Suppose the officer makes no return? An attachment issues against the person who ought to make it. IT has been said that another order must issue previous to attachment. The Act of Charles has done away this, it issues immediately. The return must have sufficient certainty. But if the court can understand by whose committed, and for what, it is now deemed sufficient.

Suppose the officer falsifies the return? The court must take it for truth, and no habeas
corpus issues. The officer is liable to heavy penalties.

Where a return is made by any other person beside an officer, the court give no credit to his return, but have the party before them and enquire into the facts. As if a woman petition by a friend for a habeas corpus to deliver her from a confinement by her husband. It cannot be returned that she is insane, but she must be brought before the court, that the court may enquire into the facts. If the return shows sufficient cause and it comes from an officer, the court must remand the prisoner, unless it is a bailable offence. This authority extends over every confinement that can be mentioned.

The conviction itself must be brought before the court. Any person may petition for habeas corpus, for another who cannot do it himself.

Suppose one person claims the person of another who is in the possession of a third. The claimant may have this writ to bring
the person before the court. This is not on the ground of false imprisonment but the right which one person has to another. As an infant, a wife, a child go. The court generally consider the circumstances of each case, and frequently leave it with the persons to determine with whom he will reside.

This writ as used in the manner we have been speaking of, is called a writ of habeas corpus ad Subjiciendum.

There is also a habeas corpus ad testificandum and various other kinds.
Prohibitions.

Lecture May 16th. 1810.

This is a writ but little used in this country, as the powers of the courts are so well defined. It is a writ issuing from a superior court, to an inferior court, and to the party prosecuting, prohibiting them from proceeding to try a cause which is not within the jurisdiction of the court. It issues from any of the superior courts as Exchequer, King's Bench, & common pleas, and also from the court of Chancery.

When a prohibition is prayed for, it is made with the court with a suggestion of the facts and an affidavit of those facts. What if it appears to the court not to be sufficient, or that the court has jurisdiction? The court dismiss it, and do no more about it. But if the facts as stated appear insufficient, a rule goes out giving notice to the party to appear before the court at a certain...
time and show cause why a prohibition should not issue. This operates as a temporary prohibition, and is properly an order that the party should show cause why this prohibition should not continue. If this order is not obeyed, it is a contempt of court, and attachment goes out. But if the party comes into court, the applicant files a declaration which, if the facts are denied is traversed, but is demurred to, if the court claims jurisdiction. It follows then that there must be a judgment— if for the applicant, it is prohibitory at least, and all damages sustained are recovered by this writ, but if for the defendant, then that they proceed.

Audita Quærela.

This is a writ to which a man is entitled in this case and this only viz. When a man is possessed with an execution which ought not to be paid, and has no day in court to defend
against it. Thus it may happen when the execution is in fact paid, but not indorsed on the execution. Suppose two men are sued in two courts for the same trespass; one suit is not a bar to the other, but judgment given against both execution is satisfied by one, but a man can have but one satisfaction for the same injury, but the other has to come in court to show that he may have his &c. 443

639

643

737

It is not a writ that issues of course, but only upon good cause shown to the court. The operation of the writ is that it is of itself a supersedeas to all proceedings. It is further an absolute conclusion of all the proceedings. But to prevent injury from occurring, must give bonds to respond the damages that shall accrue. These bonds come in lieu of the execution. It not only is to set aside the execution &c but to give damages, as much as in an action on the case.

It is a liberal remedy.
If you have had a day in court to plead
the matter, you can never have an action to sue
for. Perhaps it is said down a letter too broad.
It is where a man sued another on a note of hand,
the Deft wrote a letter and told the Plff he could
not go down to court, but if he would meet
him half way, he would pay him. They met
and Deft paid, and got a discharge to the
note. He had not the note. Plff then obtained
judgment by default, and issued out ex-
ecution. The Deft in the case obtained a suit
of assumpsit, although he might have
had a day in court to have had his dis-
charge. He supposed the notes were destroyed,
and there was no negligence.
Who grants this suit? In England it always
is granted by the judge of the court whence
the judgment issued. In Court it has been an
immemorial custom which cannot be traced by
the Chief Just of Court of Common pleas in the county
clone issues it, unless he is sick, and in such
case the next Judge sits Monday.
Powers of Chancery

There has been much difficulty in ascertaining by proper description the general powers of chancery. There have been many attempts but all have failed hitherto, because all the objects of this Court's jurisdiction cannot be included in any definition which has yet been given. The proper jurisdiction of a court of chancery has been defined to consist in three particulars. 1st. It is said it abates the rigor of the common law. 2nd. That it decides according to the spirit and not according to the strict letter of the rule. 3rd. That it has a peculiar jurisdiction over brand, accident, and trust. This is little in the chief definition, and the same is given by Lord Kames. Again it is said, that a court of chancery differs from a court of law in so much that the
This description is now agreed to be very imperfect; it is imperfect in all the parts of a good definition; for first it is incorrect because it supposes a court of chancery to have power which it does not have; and secondly, because it does not give the court all the powers, which it does have. 1st. This said, it is the power of a court of chancery to abate the rigour of the common law; but this power has never been claimed except in the same way in which a court of law would do it; true, chancery gives relief where law cannot, but it is on the ground of jurisdiction. There are many rules of the common law which are extremely rigorous; thus before the Stat. 3 and 4 Wm. 1º, if a debtor conveyed away his real estate, his true creditors could never have a remedy. In this case neither law nor chancery could give relief and even now a man's real estate devised or inherited...
is never liable for simple contract debts. Chan, cannot interpose.

The rule of descent that a lineal ancestor
shall never succeed to an estate is a positive
and rigid rule of law, yet Chan cannot pre-
vent this rule from operating. So, that the
half-blood should be excluded from inher-
ting is a hard rule. Equity cannot change
agreements the hard. These show that
there are many rigorous rules of law, that
Chan cannot do away, and yet the defini-
tion is that it is the duty of a court of Chan
to away these very rules. In general the rules
of common law are not hard and rigorous;
for various reasons, however some are so. It
is true that generally speaking that a court
of Chan has nothing to do with the comon-
law rigor, in abating it. It is said that
a court of Chan decide according to the spirit
and not to the letter of a rule; but a court
of law is bound to decide according to the
spirit of a law; and it is a standing rule.
cardinal rule in the construction of all laws, that the spirit of it shall be the guide and all other rules are merely ancillary to this. The rules of construction is common to both courts, and so is the rule as to the construction of contracts. A court of chancery has a peculiar cognizance of frauds, accidents, and trusts. But as to frauds, there is perhaps no species of it which may not, in some manner or another, be decided in a court of law. A court of chancery have not an exclusive jurisdiction of frauds, because matters of fraud are generally decided there. The reason why chancery interposes generally in fraudulent transactions is, because the method of proceeding is better adapted to a discovery and the relief given is more complete. Indeed in some cases, the courts of law have an exclusive jurisdiction of matters of fraud, as in the question whether a devise was obtained from a person by fraud. 2. Accident; it is true that courts of chancery will often relieve from the
unfortunate consequences of an accident, than
Courts of law; but yet the latter will do it, and the case of a deed lost, which a person may a
vail himself of in a court of law, as well as in a court of Chan.
Thus it is, which a man has lost, he may declare to one say, it was lost by time or accident, and a court of law may give the amount of it, if it was not lost by his own negligence, which is as much as a court of Chan. could do. Perhaps a court of Chan. does relieve in more cases of accident than a court of law; but it is not true that it has exclusive jurisdiction; Mistakes. Courts of Chan. relieve in more mistakes more than courts of law, not because it has an exclusive jurisdiction, but for the reasons before given in its mode of proceeding, and in the competency of its relief. But mistakes are relieved in law, as mistakes in Account, contingencies which render performance of a condition impossible; but all mistakes cannot be relieved, either in law or equity, and a
device is ill executed by mistake, Chan. 4
here. So where a
surer, Courts of Chan. 4
cane no relief against it. Trusts. These are
generally cognizable in Equity and some of
them there only. But a Court of Law has cog-
nience of trusts in many cases. As in com-
mon cases of bailment, where the Bailee is
strictly a Trustee. There is no case where a
court of Chan. 4 has exclusive jurisdiction of
a Bailment because it is a Trust. Where
there is money had and received, the recei-
ver is in strict use of Law a Trustee, yet there
is no necessity of applying to Chan. 4 for
relief. A proper technical Trust is regulated
only in Chan. 4 for this reason, that the title in
law is not consummated. It is only binding
in conscience. Chan. 4 will in some cases aid a
title defective at law. a Mistakes in written in-
strument are generally aided only in Chan. 4.
The reason is not because there is any intrinsic quality in a mistake that renders it peculiarly incessantly cognizable in a court of law, but because in this case a court of law could not give complete relief by reason of its mode of proceeding. Suppose a bond executed for $2,000 when the parties mean only $100 and afterwards the obligee is dishonest enough to insist on the $2,000. Now in law a contract cannot be apportioned. The bond is either the act of the party or not. If it is, the jury must give the amount of the bond when there has been no payment. If non est factum might be pleaded to it, the obligee would suffer, for he has a right to $100. A jury then cannot apportion the bond, and the court never apportion damages; but the Chancellor can make a decree, that the obligor shall pay $100, and upon doing this the obligee shall deliver up the bond. Lastly it is said that courts of law are not bound by precedents or positive rules. A more incorrect proposition.
could not be laid down. The courts are bound by precedents, and many times by those which they want to get rid of. Thus a distinction is made between the right to dower and curtesy. If the husband is possessed of a trust estate, it is settled in chancery that the wife shall not be entitled to it, but if she dies possessed of a trust estate, she shall be tenant of it by curtesy. If there is such a distinction made it ought to take in favour of the woman for she may get seisin for the wife but she cannot for him. Again a settled distinction is made in a mortgage, between one with 5 per cent. with a clause of reduction to four, if the interest be regularly paid and one at 4 per cent. with a clause of enlargement to 5 if the payment of the interest be deferred; one being an unscrupulous, the other a conscientious bargain; these are positive rules founded on precedents. Now there is not a particle of difference between the above; the substance in both is precisely the same.
Thus far with regard to the general description given of the powers of Chancery, Judge Blackstone has given another which the act completer is not complete in the best which has been given. He says, the principal difference consists in the mode of administering justice or giving effect to the same principles, and this difference consists in three particulars—mode of proof, of Trial, and of Relief. 1st. As to the proof In this particular, Chancery has a great advantage over courts of law, it can compel a disclosure under oath—this is a power the common law courts do not possess. Why? The reason is not given in the books but there is a substantial one, viz. That if a party were compelled in law to make a disclosure, he might be greatly injured, by a positive rule of law. In Chancery this can never be done. Courts of Chancery have no criminal jurisdiction at all and sometimes in courts of law the disclosure would work a penalty, and it has therefore become a standing rule in Equity, that if the disclosure
with work a penalty, the Chancellor will enjoin the party and all others not to use for nor take advantage of the penalty, and will compel them to enter on record this promise. This compulsive disclosure is called pincising an oath—appealing to party's conscience, and the party may be compelled to make a discovery of all facts within his knowledge. From this power of compulsive discovery, the court of Chancery has obtained concurrent jurisdiction in matters of legacies, administration and distribution of legacies, partnerships, affairs generally, in many cases at hand, when Bailiffs or receivers are sued; these are all incidents to the power of compulsive discovery, and their judgment is the same in Equity as at law. It refers to the mode of trial. Chancery trials in Eng., are by interrogatories stated in court by counsel, and approved of by the Court, from which depo-
sitions are taken out of Court and afterwards read in Court. This is not the mode in Court.
Here it is generally done "viva voce."

This mode of trial is useful in many cases indeed in some cases, the question cannot come up before the court without the interference of chancery. As if a witness is about to leave the realm, is aged, a minor. Courts of chantry may take the depositions provisionally, which are called "de bene e fide" taken by a commission to perpetuate testimony. These depositions thus taken may be used in a court of law, and chancery will enjoin the opposite party not to object to them. In consequence of this power, chantry may exercise a jurisdiction over the subject itself, which a court of law might do if the witness might be called before them. This is incidental to a collateral jurisdiction of theirs.

3. As to Relief. Chantry in many cases affords specific relief. So if executory agreements for the sale or purchase of land are made, chantry will decree a specific performance. A court of law could
only give damages for the breach of the agreement which might be very inadequate. Indeed in many cases, Chan's applies jurisdiction in this very business of affording a more specific remedy than can be had at law. It interposes and expiates a concurrent jurisdiction. So for waste the law gives damages and under the Stat. of Plow? the thing wasted. But Chan's will issue a prohibition to prevent waste. By specific relief is meant that which reinstates the party in his rights as they were before they were actually violated. This injunction in the case above mentioned merely continues him in the enjoyment of his rights as they were before violation, so it is properly called specific. So where Chan's interposes to prevent the effects of fraud in a contract it affords a specific relief and vacates the contract either wholly or partially as justice may require; whereas courts of law will compel a performance and afterwards give the party injured dam-
cases in an action on the case. So it requires two suits; but Chan
to prevents the evil, and
preventive is better than punishing justice.
In many cases Chan will do one for that very
purpose. In some cases in law to be sure, the
remedy is specific, as in Ejectment and sometimes
in Dehinct. I have gone them summarily the
three particulars in which a court of Chan
differs from a court of Law. Mode of proothe,
and relief. But they differ in other respects.
and as to them it is more difficult to ascertain
the boundaries of Chan, or describe its powers
than in the other three particulars. The different
view taken in a court of law and of Chancery
of a penal bond, gives a great jurisdiction
to the latter court. In a court of law the whole
penalty is, and must be recovered, by the breach
of such bond. But in a court of Chan, the
penalty will not always be given to the Chan-
celler may look into the question, and if he sees
that the damages are not equal to the pen-
calty he will chance the bond and decree.
which is really due. In law the penalty is considered as a debt. In Ch. 2 it is considered merely as a security, for the debt, a warranty. Hence it will be said, a different construction will then be put on the whole instrument, than what could have been done in law. True, so courts of law put different constructions upon whole instruments and in some a penalty is not considered in law as a debt. As when a penal bond is given for the security of a debt, and not for the performance of a condition, the court if this has run a long time will give not only the bond but the interest. Here they consider it as evidence of a debt. It cannot then be said with any more justice that courts of Chancery and of law differ in the construction of these bonds, than that a court of law differs from itself in the construction of different instruments, where the penalty is the same, and the condition the same. By this ground Courts of Chancery
have obtained a very great and almost absolute prejudice of the mortgagees. The condition here is in the nature of a penalty, and is taken notice of by a court of Chancery in the same manner as the penalty in a penal bond is in Court of Law.

The interest of the mortgagee is gone forever unless he pays at the time specified. At Chancery it is different. This court has created an equity of redemption unknown for most purposes at law. Here it may be said there is a difference of construction in the two courts, although it is a general rule that the construction of an instrument should be the same in law and equity. Yet the rule of construction may be different between these courts as well as between two courts of law. But as I before observed, this equity of redemption is for some purposes considered in law, and so far, that where it exists they will consider it such a pre-existing interest as with a settlement, and which gives the person entitled to it, the power of voting for member of Parliament. The objection is no more.
proper here than it is, where there is a different rule of construction in the same court on the same instrument, for different purposes. This forms a fourth ground of distinction. 5th A technical trust or use in lands or in real estate as contrasted distinguished from a legal estate affords an extensive jurisdiction to the English courts of Chanc. not so much in Connect. because trust estates are little known here. A trust estate is where the legal title is in one and the beneficial in another. In ordinary purposes courts of law will not take notice of creating a trust. They take notice only of legal estates, Chanc. of equitable estates. In a court of law the legal title must govern; yet where an estate is given to one to hold for another's use and benefit, there ought to be a remedy provided in him who has the beneficial estate. A court of Chanc. has power to give this remedy. Mitford in his Pleadings in Chanc. has endeavored to give a general description of these
powers of Chancery, which are not comprised in the three divisions of Blackstone. The
description which he gives is this. The first
seeks with Blackstone, that a court of Chancery
acquires a jurisdiction by its different methods of administering justice, and then says
1st. That a court of Chancery has a power to enforce justice where positive law is silent, and where
without the interposition of Chancery justice could not be done. 2d. A court of Chancery may
authorize the revenue and supply the defects of the
common law, where such rigor and defect is a
collateral and unsuspected consequence of the
rule of common law, as he explains this it is con-
structed. But to do these things by avoiding col-
lateral mischief, the consequence is nothing
more than giving effect to the true spirit of the
common law. And courts of law have a right to
judge according to the spirit of law. Yet he
says, if the unjust consequences of a rule of law
are directly obvious, and if the unjust rule
seems designed for the cases to which it literally
extends, and must have been present at the
time of making the rule - Chan? cannot in-
tereose and prevent the consequence of the
rule. Examples of both kinds. First injunctions
to stay waste; the common law affords no pre-
ventive remedy. Suppose a tenant for life
then commits waste; now a court of law can
only give damages after the fact is committed.
But if there is a plain intention on the part
of the Tenant to commit waste, a court of
Chancery which is always open will issue an
injunction to prevent him from committing
waste. Again, it is a general rule of law that
all contracts made between husband & wife,
before marriage are avoided by the interme-
riage, but it seems hard that those con-
tracts which are made for the furtherance
of the marriage should be avoided by the
marriage. Now there is hardly a marriage
in England without a marriage settlement,
and a court of Chancery will enforce these mar-
riage...
riage settlements agreements, the Comm. Law, rule to the contrary notwithstanding. A court of law does not thus decide according to the spirit of the rule; and all the decisions of laws are, that such agreements cannot be enforced in a court of law. These distinctions embrace all the well-defined grounds of the jurisdiction of a court of Chancery, perhaps not all. One ground of the jurisdiction of a court of Chancery (which came under the third particular mentioned by Blackstone, or relief) consists in decreeing a specific performance of executory agreements. This power has been exercised from very ancient times, from the reign of Edw. IV. In the reign of James I. there was a violent contentation between the courts of law, and the courts of Chancery on this subject. The former held that Chancery had no power to decree a specific performance, and that the party had a relief only in law, by a recovery of damages; but the Chancellor stood his ground, and obtained a complete
victory. However at this time they were not frequent, the they became quite so in the time of Charles II, in the 2d year of his reign.

It is thus by decreeing a specific performance that marriage settlement agreements made before marriage, in Chancery are carried into effect. General rule at law contra.

By a specific performance of executory agreements is meant that the things agreed to be done should be specifically done i.e. that the very things agreed to be done should be done. There has been a question made whether such marriage settlement engagements should be enforced, when they were in the form of a penal bond. But it is now settled that if either party execute a bond before marriage to settle an estate upon his wife either after or during coverture, this bond shall be specifically performed as an agreement by the decree of a court of Chancery.

It is not in the form of an executory agreement,
The case considers it as implying one. The object was to procure a settlement for the wife, and to construe it in any other way than as an executory agreement would defeat the object, and Equity adverts to the substantial object. Such a thing is good or not at law, according to this difference, the former in the idea was that it was to be avoided at all events. It is only made with a condition that such and such things shall be done after coverture is ended it is good at Comm. law, but if the things are to be done during coverture it is void at law, because the wife cannot see her husband at law. In the former case the heir of the husband will be compelled to do the thing his ancestor commanded.

Again it is a clear rule of Comm. law that an agreement made between husband and wife during coverture is void, and it was formerly held that in Shari'ah such an agreement could be enforced only through the medium of trustees. Now such an agreement made...
The husband is considered a trustee to the wife. She has the legal title for her, and the has the beneficial interest.

The ground of chancery interference in this case is its peculiar cognizance of technical trusts. The mode of enforcing the contract is founded on its power of enforcing specific contracts. And it is to be observed that where the court of chancery has enforced such an agreement made between husband and wife, the latter in most cases may dispose of this property as she were a free sole. True, she cannot make a contract concerning it which will bind her at law. She may bind herself as a free sole according to the Law of Equity, not according to the common law.

It has been decided in Connect. that such a contract made between husband and wife cannot be enforced in Equity. Hence observed that an agreement between husband and
wife was sometimes enforced in O'han's notes.

Standing the common law rule that contracts between husband and wife are void, so that the foundation of this was their right to enforce a trust. It is to be observed however that O'han will not in general enforce such contracts where the effect of enforcing them is prejudicial to creditors. And if there is no consideration, and any appearance of fraud it will not be good against creditors, a bona fide purchaser even in O'han's but want of consideration is no more conclusive evidence of fraud in this case, than in any other. It is not sufficient evidence of fraud because it will not have to be set aside merely because it is inequitable; there must be some appearance of fraud. It is not necessary to receive all the badges of fraud. Moreover if the husband is largely in debt at the time of the contract made to settle so it is one badge of fraud; so if there is a power of revocation
That is another; or if the contract is to settle the whole, or a great part of the husband's property on the wife, it is evidence of fraud; yet if he is not greatly in debt, and makes a contract to settle a jointure or family settlement without any badge of fraud, the he afterwards becomes greatly indebted - Chan. will not set it aside in favour of creditors. The same rule applies to subsequent purchasers, as to creditors. But under any or all these circumstances, the the contract is voluntary, it is binding upon the husband, or his representatives. For now they can make no objection that it was voluntary, or that it was done to defraud creditors, the a voluntary conveyance is presumptive evidence of fraud, so it may be rebutted. It appears from several examples that the court of Chan. adverts to the substantial object of all contracts, and gives effect to them, so as to obtain that
object and this it does without regard to the particular form of the contract. This is the case with a bond given to compel conveyance of lands; then a court of Chancery will always compel the obligee to convey the land, although there is no stipulation or express covenant to do it, unless the penalty is in the nature of a forced damages, and when enforced it is considered as an executory agreement. If one of two or more obligors pays the whole debt and then as the easiest way takes an assignment of the bond and brings his action against the obligor in the name of the obligee, Chancery will order the obligor not to plead that the obligee is paid and therefore that the debt is discharged. But if the case was such that he who paid the whole was only surety, Chancery will order the other obligor to pay the whole and issue an injunction to prevent the obligor from pleading payment in an action in a court of law on the bond. In this case the court
interposes to enforce the agreement between
the obligor implied by law, from the fact as
they exist. A bill will therefore be sustained
on the part of the man who has paid the
whole, on the ground of an implied contract.
In Conn. there would be no necessity for
suing for the money paid, or for an action of
indebitatus on account as it will lie for the money paid
out, and expended, and from some data
in the books it seems the action would lie
in England. And is the person has paid
the whole or partly, this action this action
will lie in his favour for money paid for
his (the Deft) use. But when there is a
single bond as in the case first mentioned
there can be no action of Indeb. go. With
regard to the equitable cases in which a
court of Chan. will interfere, the general
rule is that equitable interposition extends
to all cases where the subject of the con-
tract of the parties to it are within the
jurisdiction of the court, for the court
act as well in personam as in rem. As the rule stands in the books, it is incorrect, for it cannot mean that whenever the parties on the subject are within the local limits of its jurisdiction, it will afford relief if it would have cognizance of all cases which a court of law would: but it certainly has no such cognizance. The rule means that, that when the matter in dispute is of such a nature as to require the interposition of a court of Chancery, that court will take cognizance of it, if the parties be bound on the subject matter of the contract is such as is within the limits of the jurisdiction of that court. The rule in the books then, should have been expressed in the negative. That Chancery does not interfere where the subject or parties are not within the jurisdiction of the court. Thus in Eng.

...
of a court of Chan't. In that decree a specific performance of contracts, this then is within the rule, for if the party be in the U. States yet the land the subject is within the jurisdiction; it acts here in rem. So if it in Eng. agrees to convey land in the U. States to B. Chan't. We enforce this because it acts in personam as well as in rem, by process of contempt and requestration of goods and land. This court enforced a specific performance in the case of J. Baltimore and Gov'r Penn, on the boundaries of Pennsylvania and Maryland. There are several cases on this subject. But when neither person or subject are within the jurisdiction of the court of Chan't it cannot interfere whatever the nature of the case may be. Formerly it was held that this court could not act in rem, i.e. it could not specifically enforce its own decrees, and that it could only act in personam. This has long since been overruled, and it is now settled that
That Chan? can act in such a case by issuing pro. 223
-ees, to put a party in possession of lands
within its local limits, by injunction or a writ
of assistance to the Sheriff, as well as in per-
sonam. While the old opinion lasted that
Chan? could not act in the subject matter
of the contract, it would have been nega-
tory for that court to have made a decree
respecting the sale of lands. The practice of
acting in such a case began in the reign of James
I.
I have considered the general grounds on which
a court of Chan? into cases, but I have not
considered the particular cases under these
general grounds in which they will inter-
vene. Generally, however, they will decree a
specific performance of agreements properly
falling within its jurisdiction, in those cases
and generally those only when the courts of
law give damages for the nonperform-
ance of the agreement. On the contrary
they will not generally decree a specific
performance, where the courts of law will
not give damages, altho' it may fall within
its jurisdiction. And they will not decree
a specific performance of course, because a
court of law will give damages for its non-
performance, it must fall properly within
its jurisdiction. Whence arises the rea-
son for this distinction, or is there none for it?
I think there is an obvious one which may
be furnished by a recurrence to what has
been said. This decree for a specific perfor-
ance is generally only in aid to that remedy
granted by law, or in other words, the power
is exercised generally for the purpose of giv-
ing a man a complete and more adequate
remedy, when the laws before gave an incom-
plete and inadequate remedy. The prin-
ciples in the two courts are generally the
same; tho' they have different modes of pro-
ceeding. In promissory of this they will
not enforce a voluntary agreement ex-
cept between husband and wife, because
for a breach of a voluntary agreement a
court of law would give no damages, or even of a covenant under seal when voluntary. For Chan. will not raise a right, which the contract does not raise, and such a voluntary agreement is in law a void.--But there are exceptions on both sides of this rule: But the specific performance will not always be enforced in Chan. at the cost of law would give damages for the non-performance of the agreement. Thus suppose that after an executory agreement is entered into for the conveyance of lands, and a third person not knowing this agreement should become a bona fide purchaser, and get the legal title--here Chan. will not decree a specific performance, because it would be unjust to the purchaser; he has paid a valuable consideration, and he was ignorant of the executory agreement (it is no lien against the bona fide purchaser without
notice, and against the other party it is nugatory. It has become impossible that it should be specifically performed in the view of a court of chancery. Yet in this case a court of law will give damages and the reason of damages is a want of relief from the court of chancery. The equity is the same on both, and it is a rule that where equity is equal law shall prevail.

Such an agreement to convey so on a valuable and adequate consideration as this, will bend the subject as against intervening judgment creditors, secus if the consideration of the agreement is very inadequate, because they have not a specific lien upon it. It is a general lien or incumbrance on the land, but the executory agreement is a specific lien and shall have the priority. This is different from a direct conveyance to a third person. So also when the title is to compel a deft to accept a conveyance and pay the con-
consideration money. Chan't will not decree a specific performance, where the title of the realty is under encumbrance, not immediately recoverable, the damages might be recovered at law. It would be inequitable to decree a specific performance, and yet according to the rigid rule of the law he must pay damages on the non-performance.

If one person covenant to convey land to another which actually belongs to a third person, Chan't will not compel a specific performance of the contract, yet damages in such a case will be recovered at law.

I have observed that Chan't will decree a specific performance of agreements falling properly within its jurisdiction, where damages would be given at law; and I have mentioned some exceptions to this general rule and that there were also exceptions to the contrary branch of the rule viz. that Chan't would enforce a specific performance where no damages would be given at law.
instance occurs in the case of a bond before marriage to convey lands after coverture. Now in law this bond is destroyed by the intermarriage, and of course there are no damages; but Chan concludes a performance of it, or where a sure sole made such an agreement to convey her intended husband's lands, damages could not be given for a breach of this agreement, at law, yet Chan completed a specific performance of it. The reason is a plain one. It is most obviously improper that a civil action should lay between husband and wife. A recovery in a court of law is strict juris, and therefore an execution might issue against her personalty. But in Chan the decree binds her property only. She has no process from this court which will act upon her person. The decree acts in rea, and she is bound only to the extent of her property; because she is not liable under the decree as a stranger.
would be. The covenant is considered a binding only as to the subject, and the extent of it only, in a court of Chanc.

So also in the case supposed of the intended wife who contracts to convey lands to her intended husband, Chanc. will decree a specific performance of this agreement, the sheere an infant of her parent or guardian appointed to it, and it was made on good consideration. Another instance of this kind is where one lends money to an infant to purchase necessaries, and he actually expendit in necessaries, now in Eng. law this money thus lent is not to be refunded by the infant, because his privilege is not to be destroyed. But in Chanc. this infant would be subjected only to the amount of necessaries value and therefore there is no danger that his privilege will be infringed. In Chanc. the lender is considered as the seller of necessaries, complete justice.
then is done to the infant, and yet he is sub-
ject to the court, and yet the contract,
ject; this is a case in which relief for-
laps is not specific. So also where the
agreement is made under the act of the
court of Chancery itself, that court would
enforce the contract, the a court of law
would give no damages for a breach of it,
or in the case of a judicial sale of an estate
in Chancery. The Purchaser indeed acts for him-
self, but the seller acts for the court, it is
therefore a judicial proceeding. A court
of comm. law cannot interfere, because
it never interferes in the judicial pro-
ceeding, of Chancery or any other indepen-
dent jurisdiction. It is common for the
Chancellor to order the Master to sell off
estates and circumstances, so as to give
effect to his decree. The sale is called
a judicial sale. Further, when the con-
dition of a Bond is destroyed or the bind-
ing force of a contract extinguished at Law,
by the obligor's becoming Executor to the
obligee, Chan9 will enforce the contract in
favor of those who have higher claims than
the obligor; it however could not be en-
forced in law. Thus, it exists without Vo B who
dis-analyses at his executor. I I know their
obligation is extinguished because it can
not be enforced. The reason is, the same
person would be both Puff and Deft, he a
man cannot see himself, and no one can
in this case sue e. I but himself, Chan9
will however order him to pay it to the
creditors or legatees if necessary, for he is
considered as their trustee, and Chan9
having cognizance of their desire a
performance. Mr. Powell states, a distinc-
tion where Chan9 will and will not do.
see a specific performance when dam-
ages would not be recovered at law. It is
this if there is a good agreement in sub-
stance, but one which is insufficient at
law by reason of a formal defect. Chan't wish
declaw a specific performance, ex. Case of the
infant some go to supra. But it is ineffectual
at law by the non happening of events as pro-
vided for by the agreement. Chan't can give
no relief. Ex. Husband covenants to settle
an estate of his mother and his coming into
possession and he never the tab comes into
possession. Chan't want decree. Perhaps
this distinction is proper. The former
part however hardly conveys the idea in-
tended. By formal mistakes are not meant
mere mistakes in the scrivener. It means
often an inherent defect in the thing. All
the cases before mentioned are rectified as for-
mal defects. This is not using language
as we should use. I have observed that a
court of Chan't will generally desire a spe-
cific performance, when the subject falls
within its jurisdiction; yet it is to be observed
that if the damages given at law would be an
adequate remedy, they will not generally
decree. If they fall not within the jurisdiction of the court, if an adequate remedy can be obtained at law, there is no necessity of going into Chan. But it is now necessary to state in the bill in Chan. That adequate relief cannot be had at law else the bill is demurrable. But the contract is in its nature such that an adequate remedy might be had at law, if any could be had; yet if under all these circumstances of the case it appears that a court of law cannot give adequate relief, Chan will interfere. Whether the nature of the contract may be. There are certain cases where Chan will interfere of course because relief cannot be given at law; there are others where the nature of the contract being such that law cannot give adequate remedy there too it interferes. Hence it acquires a junior situation collaterally. When therefore it is said that Chan will not interfere where
adequate relief may be had by damages at law, it is not meant that Chancery is ousted of its jurisdiction under all circumstances of the case. Another general rule is that Chancery will not usually decree a specific performance of a contract respecting personal property, because a court of law can give an adequate relief. The damages given are usually an adequate remedy, and damages are not to be ascertained by the Chancellor's conscience. As it respects contracts for money, there never is any need of going into Chancery. This is not an universal rule, it must be regulated by the particular circumstances of each case, and be qualified or modified by their exceptions, that when the ends of justice plainly require a specific performance, Chancery will decree it. As it relates to personal property, and if the party wishes it, the presumption is that damages are an
adequate remedy for breach of contract respecting personal injury, but this presumption may be rebutted, and a specific performance required. The
whereof it contracted to save B. himself from certain
claims, acts he had to perform, as it required third
persons at different times than it decreed specific
performance because justice required it.
If the remedy were to be at law it would require
an action by B for every circumstance against
which he engaged to save himself. So
the action would just be brought against B.
in all these cases and it would then have his
action over against A. In another case
where there was an agreement to sell on one
foot, and purchase on the other 800 tons of iron
and payment was to be at different install-
ments, here there might be many actions brought
at law, and therefore Chant will decree a
performance by which this is prevented, per-
haps too the credit of the purchaser depends
on the fulfillment of the contract.
Another exception to the general rule is when the contract respects personal property that Chan will not decrease. When fraud is mixed with the damages, then Chan will decree a specific performance. Where there is a claim of damages on one side, B is a counter claim on the other, and a further one on the other. In an action at law against B for a breach of covenant, B files an injunction against A in Chan. Because the contract was made by fraud, now as B has brought him into Chan. A may file his extra bill and pray relief here. Chan if they find no fraud may decree a relief. In this case damages might have been given. And if to a bill brought on a contract of personal nature the defendant does not decree on the ground that relief ought not to be had in Chan, but files an answer Chan will decree because the defendant waives all right to
the objection, and jurisdiction is admitted. Gilb. Eq. N.

On the other hand, if the agreement respects an interest in lands, or stipulates for some act in specie to be done - Chanc will regularly decree a specific performance, because damages at law are not of course an adequate remedy. A voluntary agreement however of this kind will not generally be enforced. In fact this rule must be understood with the qualification before mentioned, if the A enters into articles of agreement with B in which he covenants to deed a farm of land to him upon sufficient consideration within a limited time and afterwards refuses, B will compel him to do it i.e. to convey the legal title to him by a bill filed in Chanc. All that B could do in law would be to secure damages, which might not be an adequate remedy, and when the reality is on one side and the personality on the other, Chanc will decree a specific performance.
A specific contract, more a concept of chain than an actual agreement. It cannot be enforced as a legal title on lands because it is not legally recognized. Sale under expense and necessity enforced to the latter leaseee. All parties to be present. There are several parties to be present.
The who demands the specific performance of a contract must show that he is ready and willing, or has performed his part, or in other words amounting to the same. He who seeks equity must do equity. In a court of law there are what are called conditions precedent, and those which are called conditions subsequent. Now here where the right of action is to accrue by some act of his own, he must aver performance or what is equivalent to it. But in Chan. 4. he who seeks the specific performance of a contract must show that he has performed his part, or what is equivalent to it. In other cases besides those where the condition is precedent, or where he is not bound to do certain things before a remedy can be had in his favour against the other party. Thus at covenants to convey land to B, who covenants to pay for it. How at law e t may sue B or B, et. without a seeing her.
...formance but in this case there would not
deceive a specific performance unless there is
such an agreement or its equivalent. This differ-
eence is not founded on a difference in construc-
tion in the two courts. Whether in this the rem-
cedy at law is stricti juris. A court of law
must interfere when such a covenant is broken
ex debito justitiae. But the Chancellor inter-
poses or not according to his discretion, the
party therefore must go to Equity before he can
have it. Another general rule under this
branch of the subject is, that where the bill
to a bike in Char. 4 had done a part of what
he was bound to do and is prevented by sub-
sequent events from performing the residue,
he cannot obtain a decree against the other
party. Thus where A agreed to pay B £1000
within two years in consideration that B
would marry his daughter and settle a joint
line upon her. B married her, but she died
before the two years had expired. After her
death he brought a suit in Chancery to recover the 232
money from her father, but the court would not intercede and dismissed the suit. The
party here covenanted to do two acts, one of
which he never performed. For he was pro-
hibited from doing the other by the act of
God, but it was a condition precedent, that
had him no injury. Mr. Fovesham's case is of
the same nature. A marriage agreement was
entered into between himself and his father
in law. He agreed to settle on his wife a
manor, and to the heirs of their to be cer-
tain persons; he settled the manor and
before he had settled the persons she died
without issue. He then brought his suit in
Chancery to recover 3000 liv. annuums, the sum
contained in the agreement, but the court dis-
missed it. He had not done all he agreed
to do, and whilst he was guilty of no blame,
he was no sufferer by what he had done.
This general rule however is not to be understood
without qualifications. There are exceptions to
it, one of which is, when the ship having been
formed in fact, and being in so default for
the non-performance of the residue is not
infrangible, i.e. where by a performance of a
trust he must be a sufferer by reason of that
trust performance only he has a decree. This
was not the situation of the parties in
the two cases above, Thus where there was
an agreement between the freighters and
owners of a ship, and it was stipulated that
there should be a freight only on the home and
bound voyage. It happened there were no
goods of the freighters at the place specified to
bring from. A bill was filed against the
freighters and a decree granted in favor of the
owners, for they had performed a part of
what they promised; they had gone after
the goods, the had been at expense in exam-
ning and virtualing their behalf. Unlucky
therefore they could not have subjected the
freighters, they could not have been in state.
gou, they might have been great cases.

It seems by way of general rule, that the one who seeks the specific performance of a contract, must show that he has done his part of that which is equivalent to it, therefore his readiness to perform is equivalent to an actual performance, and this is the rule both at Equity and Law. If then the party seeking relief has been ready to perform, and the other party would not accept performance, and has prevented him from performing, Chan will give a decree in his favour. But a court of Chan will not decree the specific performance of a written agreement if it has been discharged by past. It is a general rule that past evidence is admissible for the purpose of rebutting an equity and this even against a deed. This rule is peculiar to Equity; but as past so lease will not discharge a deed in Chan? the Chancellor has a right to intervene by reason of his extraordinary powers i.e. he has a right to
interpose disinterestedly, and on this ground it is that hard evidence is admissible for the purpose of rebutting an equity. But in the case of a deed suppose the court does not over-throw the deed. The testimony is introduced to inform the chancellor's conscience, whether the party requiring a specific performance, has destroyed his right to equity by a partial discharge. The chancellor upon finding this to be the case only refuses to interfere, and leaves the deed just as it was before. The deed is not destroyed, for a recovery may be had upon it at law, a partial discharge to the contrary notwithstanding.

Thus if A covenants under seal to convey land to B, in six months, B discharges himself, afterwards, he brings a bill in equity to compel him to performance; here the partial discharge may be introduced to rebut the equity, it shows in fair conscience that he ought to be discharged, again where the party in equity claims a specific performance
An agreement he has for many years let lie, 234, without resorting upon it; he is not entitled to a specific performance, unless the delay is explained by special circumstances. It is presumed he has waived his right. Law: This presumption cannot take place. Chan raises the presumption, but it cannot on this ground vacate the agreement. A different course is required by the same but not a different construction. But a delay of this kind may be explained by circumstances which shall rebut the presumption and do away the waiver. In general, however, it is difficult to rebut such a presumption as this. But no length of time will prevent a court of Chan from relieving against fraud. In general no great injustice is done by Chan if not deceiving a specific performance, because a court of law will give damages. But in the case of fraud this is not true; there is no presumed waiver here, so no man can be
presumed to have experienced in hand.

I have observed that he who wishes Equity not the Equity; it is to be observed however that the P.P.P. objection to his fault precisely at the time fixed does not bar him from obtaining a decree in Chancery; and the reason is said to be that if the rule were otherwise this relief could seldom be given. It is said by Sir Ellenborough that this rule has been altered, that Chancery more frequently than formerly. As a court of Equity they exercise its discretion, it is a general rule that if the P.P.P. whose rector's relief has shown an inexplicable conduct, in performing his part, he has generally no favour from the court, especially if the circumstances are altered so that the other party may be injured. The rule as laid down is that if he has failed with the free-consent of his part, here you may see the great discretion that is left for the Chancellor to use. And with respect to the mercantile of the
Ifs performing his part that he may obtain a
decree against the other party, there is a great
difference between a marriage settlement agree-
ments and all others. The general rule that
iffs must have performed his part or done
what is equivalent to it does not
apply here. The issue are generally hunch-
ous and neither favour a court of Chanc.
will compel one party to perform his part
at the other has failed to do his. Thus a
covenants to settle property on B has intended
wife and her issue. B does the same as it re-
fects him and his issue; now B dies without
having done what she covenanted to do. The
children obtain a specific performance of this
covenant from the Father in Chanc? The reason
is the children are in no fault for the non-
performance of the mother. They are in no obli-
vious breach here, or the mother. Now ordinarily
the iff who requests a decree in his favour,
without having done his duty will have to for
answer, you have not done your duty; but in
In this case the children were not compellable to do any thing. They were not bound to perform what their mother commanded to do, therefore they shall have a remedy. The rule is precisely the same as it respects the wife of she is not the party. Thus suppose the parents are the covenantors and co-covenanters. The husband and also a party, and the wife not; now the wife further dies without having performed his part, or perhaps he is insolvent, shall have a remedy against her husband in than, if she will decree a specific performance against her husband. And she had to do to entitle her to this remedy was to marry. In pursuance of the same subject viz. the power of a court at than? to decree a specific performance of a contract, I would observe that if after an executory agreement is entered into a statute intervenes which renders a complete performance impossible, a court of law may decree a partial performance, if the party
requests it, and if it can be done consistently with the flat. Then when a lease was made by a corporation for 10 years, and a flat afterwards made it impossible to make longer leases than for 10 years. Chan! deemed that this lease was good for 10 years, but is enforcing what is called the cy-près as near as may be. In a court of law this could not be done nor anything like it. If the party had been at less for non-performance, it would have been a good defence to have plead that a performance of it was now made unlawful and as a court of law cannot enforce a contract, it must therefore have given judgment for the rent. The same is true where complete performance is rendered impossible by accident or the act of God. Thus A covenants to convey to B a grove of standing timber and before the grant is actually made, a tempest blows down one half; here a court of Chan! will compel A to convey the residue and in such
In a case they will consent the party seeking a remedy to have in proportion to the part performed. This doctrine of cy pres is recognized at law when the contract is executed. Here a court of law will decide the contract to be good and that it shall stand, this, the question doubted, is now settled. Thus if a party empower B to limit certain of A's lands on B's wife with remainder upon her issue in tail, and the wife should die immediately and the party authorized to limit should limit it upon the children, this would be a good limitation at law. If it were executed, then it would order it to be enforced. This interference of cy pres would seem to militate against the general rule, that a contract, the performance of which is rendered impossible and made unlawful by Stat. is void: but upon a fair construction of this Stat. it goes no further than to render performance unlawful, as in the case of a
LEASE FOR 40 YEARS DURING SECONDS ENCODE. THE
RATES ARE THEREFORE STRICTLY UNIFORM. WHEN FALL. 193
ONE ACTING UNDER A POWER CONVEYS A GREATEST
INTEREST THEN SHE HAS A RIGHT TO CONVEY, THE
CONVEYANCE OR GRANT WILL BE GOOD IN CHANC
FOR SO MUCH AS SHE HAD A RIGHT TO CONVEY.
THIS SHE HAS A RIGHT TO MAKE A LEASE FOR 10 YEARS
AND SHE MAKES ONE FOR 20; THIS LEASE IS GOOD 23
IN CHANCE FOR 10 YEARS, BUT AT LAW IT IS NOT.
AND THERE IS A VERY MATERIAL distinction to
BE TAKEN BETWEEN THE construction which CAN
WILL GIVE TO CERTAIN WORDS IN AN EXECUTORY
AGREEMENT, AND THE construction which BOTH
Than: 4 and Law will give to the same words
used in a contract executed. The distinction
extends to certain cases where real estates is
limited to one and his heir general and
special. HOW IT IS A RULE OF LAW settled in
the time of Ld. Coke that when one conveys
by grant or devise to A for life remainder
to his issue or the issue of his body, it takes
an estate tail and generally whenever
an estate is limited to one for life, and the
remainder to his heirs general or special;
the person to whom the life estate is lim-
ited takes the inheritance, this is the
construction given to the words in a contract
extended. The reasons why such a construc-
tion is given in law are numerous and well
sounded; for heirs of body are words of
limitations, not of purchase, of course they
cannot take or remainder more who if they could
be taken, they would take only a life estate,
for want of words of inheritance as laid
to them. If however in a conveyance words to
convey the same words are used and to all for
life, remainder to the heir of his body than?
with observe the Conveyancer to settle the estate
when A for life, and then upon his eldest son
30, and on failure of issue on his part then
be the second son and his issue 30. There is a
great difference in effect between the construc-
tion of these words in a contract executory
and executory. They in the former case be
may defeat his issue by having a fine or suffering a common recovery. But in the latter case he cannot do it. The law will follow the intention of the grantor or devisee generally, not particularly. But this it will to counter the instrument as to give effect to the particular intent of the grantor or devisee. Now in the case supposed where the contract is executory, it shall be tenant in tail and the general intent of the grantor is followed because his children will not probably have it. But in Chan. 4 it shall be tenant only for life and his children be defeated of the estate, and here the particular intent of the grantor or devisee is followed. As the articles themselves do not in the case of an executory agreement convey the title Chan. 4 will do it and so give effect to the intent of the person making the instrument. And they will go further, as it is in favour of an executory agreement made before.
Marriage settlements should be actually made after marriage. There will not, it is said, and orders are to be made, and the reason is, the words in the grant after marriage have a different construction from the same words used in the executory agreement; they do not therefore consider the agreement as performed. But if in pursuance of such an agreement as this before marriage, the settlement should be made before marriage, there will not, it is said, unless the settlement is expressly to be made in pursuance of articles contained in the agreement. Because these parties to any suit under the court will not resume, they made a new agreement, but when this presumption is done away by the express provision used in the settlement, they will set it aside. It has been said there rules will only in favour of males not in favour of females. There is no reason for this distinction.
and it is now denied. In carrying executory agreements into effect specifically, it is a
great leading principle that the court of 
should consider as done that which ought to 
be done, and that from the time at which the 
agreement is entered into unless some other 
time is appointed. This rule leads to very 
important consequences, so that it has been 
called by Sir Joseph Black the omnipotent 
rule. Upon this ground it is that an execu-
tory agreement becomes a specific lien upon 
the subject of the agreement. It becomes a 
lien upon the property contracted about. 
Hence the vendor is considered as trustee for 
the vendor and so are his heirs at his 
death. Thus where A covenants to convey 
laid to B this covenant forms a lien upon 
that land. The intended purchaser is vested 
with the equitable title, and A is considered 
as trustee for B. So C holds the legal title 
but B may claim and attain it out of his
lands, by applying to a court of Chancery, the

of this great principle, it is set

that if any person enters into any acti-

cer, by which he binds himself to lay out
money in land, or if he devises money for
this purpose and dies, that he shall have
this money as real estate, although it was
actually laid out in lands. It is considered
as real estate from the time of the articles
entered into. It makes no matter whether
the money is by itself, even if it can be iden-
tified it shall go to the heir.

The same rule also leads to this important
consequences: if a woman before marriage
has bound herself to lay out money in
lands, and she marries, and dies before she
has actually completed the purchase, the
husband shall be tenant by curtesy of it, so
then I will order that the same she devised
shall be laid out in land which shall be con-
veyed to him for life and then to her chil-
dren, or it will order that he shall have
The interest is fit for life. The reason is found on some quaint notion, by which it was antiently decided, and it is now become a general rule of equity: yet in this case if it had been husband instead of wife she could not have been tenant in dower of it. In fact a husband may be tenant by curtesy of a trust estate, but a wife cannot be tenant in dower of one. Further the money thus intended to be laid out in lands will pass as a devise as real property and on the other hand it will not pass as personal property to a legatee. And it makes no difference in cases of this kind whether the money is identified or whether it forms a part of the general mass of his personal property; in both cases it is treated as land. I observed above that as equity considered that as done which ought to be done, of course when money was agreed to be laid out in land it will be considered as laid, but they
want do this unless the agreement be per- 
itive. So if A instructs money to another to 
remain in his hands till it might be laid 
out &c. for his daughter, the daughter died 
and it was held that the money was still 
personal property because there was no 
express agreement. Thus if a man should 
enter into an agreement to vest a certain 
sum of money in the public funds or in 
land for his son at the election of his 
son, and before he makes it he dies, it will 
go to his Executor as personal property.

All these rules hold a converse; for if a 
man having land agrees to sell it for money 
and die, it shall go to the Executor at the 
death of it, as personal property and not 
to his heirs. This is in pursuance of the great 
principle that a Court of Chancery considers 
what ought to be done. It follows 
from this general principle, that after an 
agreement for the sale of property such 
as one as Equity will enforce the vendee.
under the articles shall be liable for all the
contingencies, which happen to the property
from the time the agreement is entered into,
the vendee being no fault. Thus where
are covenanted to convey a plantation in
Jamaica, and before the conveyance was
made, the great earthquake destroyed it,
it was held that the intended purchaser
should suffer the loss. A made an agreement
to take a lease from B for three lives and
take a conveyance at a certain time and
before the time arrived one life failed; a
specific performance was refused in Chancery.
The ground is, from the time the articles
are entered into, the purchaser is considered
in Equity as the owner, and the vendor as
the owner of only the consideration money.

There is a case in 2 P. Wm. 217 where Leveson
= Jekyll "seems to deny this doctrine arguendo;
but it is a mere dictum. For there refuses to
decree a specific performance of the contract,
because it was a matter of moonshine, a
piece of wording. There is one of those cases
from which it would appear that the doc-
time was denied, but from an examination
you will find there is nothing in it contra-
dictory. Moreover remarks if the contract is
not properly a contract of sale, but merely
a contract for a future agreement, with
respect to the subject, the property is not
changed in equity; and these consequences
do not follow from it. By this is meant
where the agreement is that one of the par-
ties shall have the possession or refusal.
With regard to the rule that money added
to be laid out in land is regularly considered
as land from the time of entering into
the articles; yet it is to be observed that if
he who is to have the land when purcha-
sed is to be tenant in fee simple of it, he
may, at his election retain the money or
have it laid out in land as he pleases. That ot
a covenant to do appropriate $1100 to purchase
land in fee simple for his son, now if the son
This hand in law will have the money, till 24th the 7th may wave the agreement if there is no objection from the opposite party, and if he does so, and dies the money will go to his Executor. In this case there are no third persons who are to be injured; but in the case of a Portrait it is different, for the issue and remainderman have a claim. But still to take the case out of the general rule, even when he is to be benefited by the purchaser who would be tenant in fee simple, he must show his election to consider it as money, for if he does not decide it, and a contention arises between his heirs and his Executors, it shall be considered as land. It is necessary that in some way or other be manifest his election. Thus if he declares in his will that it shall go to his Executors, it shall go; so if he devises it away as so much money, appropriated for the purchase of lands, it will go to the Legatees. If part of goods of this or his own declaration that he in-
it should not be ascribed to the purchase of lands is evidence of his intention. So if he has received part of the money, for this is to return an equity. This election is confined to the tenant in fee simple, it is personal and dies with him. As between his real and personal representatives one cannot make an election in preference to the other. There are the leading distinctions on this subject. I observed that this general principle viz., that property is considered as transferred from the time of entering into the agreement only in those cases where a court of Chancery will decree a specific performance. A want of mutuality in an agreement is a decisive objection to a decree for a specific performance in Equity. So in uncertainty in the terms of it which would make it void at at law also, tho' it law more certainty is required. Thus when A agreed to sell an estate to B for 1500£ less than to any other purchaser, and B did not bind himself to
take it, upon a bill of specific performance. It was dismissed for two reasons. 1st. The want of certainty, as one knows how much £1,500 is that what any other person would give. 2nd. For want of mutuality, B has not bound himself to take the land. But if the agreement were originally mutual, no subsequent event which occasions a want of mutuality, however hard it may be to prove an objection to a decree for specific performance. This is evident from the cases cited before when the subject of the contract was wholly destroyed. And when the agreement was to convey an estate in consideration of an annuity and before the first instalments became due, the annuity died. Chan. 5 ordered the party to convey the estate. And where there was an executory agreement for the sale of stock and an enormous premium to be given, stock being high, and before the conveyance was made it fell to half a specific perform.
ence was indeed in Chapter 4. Thus far with respect to the power of Chapter 4 to enforce the specific performance of executory agreements.

**Penalties**

I observed that in general Chapter 4 will not suffer an advantage to be taken of a penalty as they consider it only as the means of enforcing the contract. From this it is laid down as a rule that when application to Chapter 4 for a specific performance of an agreement the non-performance of which may incur a penalty, it is necessary for the plaintiff in the bill expressly to waive the penalty else the bill will be demanerable. To such a bill the defendant is not bound to answer, and the reason seems to be this, that if he answered and confessed a violation of the contract, the plaintiff might have to law, and upon the confession of the defendant in Chapter 4 obtain the whole penalty. The reason is not because it is necessary to waive the penalty, that Chapter 4 may not enforce it, for this they never do.
It is not universally true that these will not allow advantage to be taken of a penalty. Where the substance of a contract may be enforced without a penalty, they will relieve against it by antecedent injunction improperly, and in such a case will never enforce it; as in the case of a penal bond. Hence than upon payment of principal, interest, and costs with order the obligee to desist from an action at law on the bond.

But when does it happen that the substance of the contract can be enforced without the penalty? I observe that in general whenever a compensation can be made to a breach of the condition according to a clear rule of damages, the subject of the contract can be enforced; as in the last case of a penal bond; so in the case of a mortgage. This is not considered as a purchase, but only a pledge. It is the accident, the payment of the money is the principal. Where then the object of the parties is ob-
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[Handwritten text not legible]
against it, nowhere at a marriage covenants agreed that if he did not settle a join-stock upon her within two years he would forfeit his marriage portion, and she died before the two years expired, here the the
pittance would be the rule of damages, yet the wife is not alone to receive the compensation. According then to the rule that laid down, if there is no rule of damages by which a compensation may be made, nor there is a rule and yet there cannot be a compensation, by reason of intervening events than can not relieve against the penalty. These rules are not independant of the general rule, but subversive to it. When one party voluntarily stipulates an advantage as a favour to another on certain conditions, the latter must lose all advantage from the stipulations, unless the party who adheres to the conditions. No they relieve penalty.
Thus if a creditor agrees to take less than
the amount of his debt, provided the debtor will pay it at a certain day, he must pay it on that day or he loses all advantage from the agreement of the creditor. The stipulation on the part of the creditor is purely gratuitous. The condition is in the nature of a penalty, but the penalty in this case does not bite, other things operate unjustly, all the same will compel a man to be just in spite of a penal bond, it will not compel him to be bountiful. It is also a general rule that when a court of Equity will relieve against a penalty in favour of one party it will decree of course a specific performance in favour of the opposite party. And on the other hand where it will not relieve against a penalty, it will not enforce a specific performance. This is founded on principles of justice. As the court of Equity deprives the party of the advantage he might take of the penalty at law it will control the other party to do
in justice, i.e. to perform his part of the agreement. As if A. conveys to B. under a penalty, that he will receive A. the penalty and at the same time compel a specific performance. So on the other hand it will not decree a specific performance when it will not relieve against the penalty, because the penalty is the substance of the agreement and therefore good every where. Justice does not require that relief should be had against it. The party can enforce the penalty at law which being the substance of the agreement than it would not interfere, because it would give the party a double advantage. It was formerly held that when an executory agreement contained a penalty, the party bound had his election to do the thing agreed to be done, or perfect the penalty; and this is now the rule at common law. The may now the one or the other. But this is not a precedent the rule in Equity. It is thus laid down by Lord Kenwolow "where
The penalty seems to be a security for the performance of some thing collateral, so that the enjoyment of the collateral object seems to be the thing intended to be secured, Ch. 39, who receive against the penalty on one side, and enforce performance on the other. This rule must be understood with the qualifications before mentioned viz. whenever the circumstances are such that performance on one side cannot be enforced, without the penalty. Ch. 39 will not receive against it. As to the general rule see the case of a penal bond which is mere by itself a security, so in the case of a mortgage which is in the nature of a penalty. Belief is generally had by an impression addressing the party not to sue for that penalty at law. This however is not done unless the other party do as he is bound to do. But when the sum to be paid on the non-performance of the agreement is in the nature of a penal clause.
a court of Equity cannot relieve against it. In such a case as this, the penalty is not considered in the nature of a security for the collateral object, but as a compensation for the loss of it. In such a case as this, the party bound by the agreement has his election either to perform the agreement or to pay the sum stipulated, as a compensation for the non-performance; here the common law rule applies. Thus where in a lease, the lessee covenants to pay it to for every acre of meadow he shall plough, chant cannot relieve against it, because from the structure of the agreement it was evident that the election was to be on his part. This sum is in the nature of liquidated damages. In such a case chant will not decree a specific performance, nor enjoin the party not to plough. But if the lessee covenants thus: "I agree for myself not to plough meadow" and at the close of the agreement a penalty is annexed, here chant.
with eing, in the party not to plough, and if he
should plough on the same principle it
would relieve against the penalty. Thus
much of the nature of a difference between
a penalty properly so called, and a sum in
the nature of a pecuniary damages. Whether
the sum is one or the other of them depends
upon the construction of the whole instru-
ment. The object must be seen, and its good
sense consulted. I observed that at common
law when an action was brought for a pecul-
arium due the whole sum would be given: the
common law knows nothing of chancery
penalties. But now by Stat. 5th and 6th Wm.
and 4th and 5th Eliz. courts of law are in
certain cases allowed to chance penalties;
the penalty is usually double the sum due;
it is easy then to ascertain the damages.
In this State penalties have been chancered
courts of law under the Equity of a Stat.
Stat. com. 21. When a court of Equity relieves
against penalties, if frequently ordered from
quantum classification at law and decree
according to the verdict. In many cases this
is not necessary, but in many it is absolutely
necessary. Generally it results in a performance
of conditions, where the damages are
in any degree incomplete. In this case
the Chancellor never does and indeed cannot
afford the damages.
I have been considering the cases where Chan
will decree the specific performance of con
tracts, but a Court of Equity too hopes the
power (and exercise it) of setting aside ag
reements in certain cases. I would here
observe that when Chan sets aside an ag
reement, the relief is specific. A law where
a contract has been unjustly obtained after
the court has enforced that contract it will
give the party damages, but Chan will set

of aside, and the relief is therefore specific. Suppose a bond is fraudulently obtained from another, here, in a court of law fraud does not vitiate it, but a recovery may be had upon it. Still a court of law will give damages for the deceit practiced. But in Chan v. an injunction will issue to prevent an action on that bond. The remedy in this case is superior. It does not follow however from a court of chancery refusing to decree specific performance that the court will grant relief against the same contract. As if a claiming under an agreement, presents a Bill for a specific performance, and it is dismissed, it does not follow that B by a bill may have this agreement set aside. A law it is not so. The contract is enforced or destroyed, always there is upon a judgment upon the merits. I cannot
refuse to intervene, but at least it is discretionary with the Chancellor to intervene or not. There are many cases where it cannot

be raised by the specific performance of an agreement if it is to be unreasonable on the part of the defendant it will not decree a specific performance although it is not attended with fraud, and the defendant will not decree, they cannot set aside the agreement. There are many more cases where it will refuse to decree a specific performance, than those where it will set aside the agreement. Fraud in obtaining a contract is a good ground for setting it aside, and un-reasonableness, too, it will not set it aside, yet it is often times evidence of fraud. At law every species of fraud will not set a side a contract. Even in the case of executory contracts by fraud, a court of law cannot refuse to carry
it, it will not be set aside. The agreement is not void but only voidable in Equity.

In a court of Law a contract obtained by any degree of coercion not amounting to duress is good, but in a court of Equity, any degree of coercion so as to excite the fear of one of the parties, and cause him to act under the influence of that fear, if it does not amount to duress will set it aside. A statute is a court of Law and will relieve against a contract which is oppressive or also unlawful, recovery unavailing.

Here are two grounds for relieving unlawful contracts, and hardship. But the rule is different as to illegal contracts when both parties are equally guilty; the maxim here is nullum actum injuria. The court of Law

sets no limits in such a case i.e. a court will go no farther than a court of Law, as in the case of gambling. Both parties are here in the wrong, but in the case of an

unavailing.
contract but one party is criminal, the law does not deem the former guilty.

The law does not deem the consequent

ity. And in general and public practice on

part of the P.U. to the disadvantage

of the Deft. will prevent a decree in his favour.

The P.U. must come into Court with clear hands.

Thus where there is a misrepresentation to the

value of the subject of the contract, the court

will not enforce it, but on the other hand

will set it aside. And a suppression of a

material truth to the disadvantage of one

of the parties forms a strong objection to a

decree in favour of the other party, as the

suggestion of falsehood. Sufficiit erat sug-

gestio falsistandi on the same ground. As

when A wished to sell land to B, B wished
to buy it. It represented to B that it yielded

£10 rent which was true, but the land re-

quired an annual rent, which was not

told to B. And as B had no means of know-
ing it, than refused to decree a specific per-
The case of this kind as when the bill has brought a suit for a specific performance. But I should suppose that if a bill was brought to set aside the contract, it could not be granted. So also in some cases where the contract under a mere mistake or misapprehension, a misconception without any fraud or unfairness on either side, that will not only deserve a specific performance but it will set aside the contract on a bill brought for that reason. A where an agent sold an estate and it at less value by a mistake in the quantity of interest. It was a free hold and it was sold as a leasehold. The rule on the subject however is, if the fact misconceived is the cause of the agreement, it will be set aside; but if it was such a mistake as could not have prevented the contract from being made, as it was made, it will not be set aside. There is another case which is a very strong and singular one. It appears that the misrepresentation here arose from ignorance.
en force of law and in such a case, Chan? will not generally interpose. The case is this. One of four brothers dies leaving a peninsule estate. The elder brother claimed the estate as belonging to him and the younger brother claimed it as belonging to him. They agreed to leave it to a schoolmaster who having read in a book that inheritance always descends gave his opinion in favour of the younger brother; in consequence of which the elder brother con-\text{-}tented into an agreement to divide the estate with him; afterwards being better advised, he brought a bill in Chan? to be relieved, and relief was granted him. This is contrary to the general rule both in Law and Equity, for if an agreement was written differently from what was intended by the parties, relief may be had against it in Equity, but if there is a misconception in law, relief cannot be had. Again it is a general rule...
That a court of Equity will not enforce a voluntary agreement, such as is not binding at law. The interference of Chancery is for the sake of giving more adequate relief than a court of Law could do. But in this case a court of Law could give no relief. Therefore Chancery will not give any, because it is a general rule that Chancery will not decree where Law will give no relief. But the compromise of a doubt as to right is a sufficient consideration to enforce an agreement, and where there is such a consideration the agreement is considered as voluntary. Thus an agreement is entered into between two persons to settle the boundaries of their land. Chancery will decree a specific performance. This was the case with Lord Baltimore and Gooch Revere, yet there is no agreement to convey land or pay money, and it would seem as if the agreement were voluntary. This case may perhaps strike
The mind is being analogous to the case of the Schoolmaster. But still these two cases stand on different grounds. A mistake in law is different from the commissive of a doubt that right; for in the latter case it may not be a matter of law, but a matter of fact which is doubtful, and if it were a matter of law, while it would stand on different grounds, in the case of the Schoolmaster the ground of the eldest son's executing the contract was a mistake in law, but the ground in case of a doubt of right is very different. It is a rule of Equity that agreements obtained by coercion not amounting to duress may be set aside. Thus where upon a treaty of marriage between A and B, B being a minor, and her guardian would not consent to the marriage unless the husband would release to him the habitability for the same profits of the ward's estate— he did it, and Chatt set it aside.
But mere fright, fear, or reverence, in a person is not by itself a ground on which a suit may be had. But if this reverence should be made an of the
The purpose of obtaining the contract, it would be if not such. Intoxication in a party at the time of
entering into the contract is not a sufficient
ground for setting it aside, unless the party claiming benefit under the agreement produced the
intoxication for the purpose of obtaining the
agreement. The ground of reliefs would then
be the fraud used, and not the intoxication
there, and if one party should get the other
intoxicated and then make a contract with
him, although it should be a fair one than it
will not relieve it because he comes into than
with infected hands: and I suppose than
would set it aside on the grounds of fraud.
Again mere weakness of understanding of the
party be legally competent and it is not have
a ground for setting aside the contract.

The common law cannot distinguish between
The shades of intellect in men. The inquiry in a court of law is not whether one party had more understanding than the other. The rule established by law is that if he is legally qualified or competent mental for want of understanding shall not be the ground of relief. There must be some standard, else the decision would be vague and uncertain. Yet want of understanding may be presumptive evidence of fraud. The only difference then between a contract made by this man and any other is, that in the former case Chan will give relief upon future evidence than in the latter case. It is to be observed that agreements operating as a fraud upon this person are always set aside in a court of Equity. And this is one of the strongest grounds for which than? will set aside contracts, and such an agreement is now void at law. Thus when in an agreement in contemplation of marriage the latter is one
side agrees with the father in the other, to set off £1000 if he will do the same. Now if there should be a clandestine agreement on the part of one of the parties to the marriage as the son, to release a part to the father, this agreement is void, it is illegal for it is a fraud on the other party. And when any agreement with a bankrupt the creditors agreed to take 16 shillings out of each and the bankrupt to induce some more rigid to agree to this, so long as to give 5 more on the pound, this agreement was void at law, it was a fraud. Contracts of this kind do not admit of a subsequent ratification. They are void at first, void because if they could be ratified they might impose a fraud upon third persons. When a fraud is practised by one party to an agreement on the other party, the other may ratify the agreement if he pleases, but a fraud imposed upon third persons is an
agreement never can be satisfied. Then being a treaty of marriage depending three reasons objection on the part of the intended husband's relations, because the wife's portion was not large enough. It was agreed by her brother that he would execute to her a bond for £500. It was done and the clandestinely gave an instrument by which she agreed to deliver up the bond. In fact she gave a release of it. The bond had its effect; the parties were married. Afterwards the husband brought his wife to set aside the lease and it was set aside. In this principle marriage by proxy bonds and contracts are void. There are such as where one party agrees to give the other such a sum if he will procure a certain person to marry him. They are void because they lead to fraud and undue influence and misrepresentation. Shengers should not interfere in such things. I believe at law they would be void.
Contracts with heirs apparent for their expectations are always set aside in a court of chancery. Formerly they would not set them aside unless the terms of the contract are disadvantageous to the heir, but the rule is now altered, they are radically defective and it makes no difference whether the heir apparent was an infant or not i.e. an adult at the time of making the contract. This rule is founded on considerations of general policy. These contracts tend to dissipation and lead to vice. They render heirs independent of their ancestors and excite rebellion against parents. And after the death of the ancestor the heir apparent should perform the contract by actually conveying his inheritance. Courts of chancery in many cases set it aside, but not always. And the rule is if the original contract is shown to be fair and it appears to be ratified justly, and the heir has knowledge that it might be set aside, the satisfaction will not be set aside.
otherwise it will be heard in general a court of
law will not enforce a contract to do anything
which is apt to tend to oppression, extortion or
immorality. The thing itself need not be immoral
it if it would tend to immorality it would not
be enforced, and I should think upon a bill
for that purpose it would be set aside. The case
arises to establish the rule is one where the
defendant wished to enforce a contract and the
Chancellor would not enforce it. In the same
case the contract also stipulated for an ap-
pointment of the Justice's office, this was not en-
forced because it tended to immorality, clean-
liness. So thus far of the powers of Chan-
cery or set aside contracts. Chan
exercises
the power of decreeing a sett off, a thing un-
known in the Common law. All law the con-
tracts are entire and distinct, as where A
owes B $100 by note and B owes A $100
by simple contract. now in an action by A, B
cannot at Common law plead a set off of this
Of debt of £100 by note. By two Acts 2d. and 3d. George 2d. He can thus plead; but Chancery can decide a set off. The set off is especially necessary where one of the parties is insolvent. Harm will not always however decide a set off. In common Harm is in the constant practice of decreeing set off. It is improbable to a court of law upon any principle of common law to consider a set off as a defence. They have only to consider whether the contract was made, whether it is good, and whether it has been discharged; because the Debtor has a debt against the Debtor, that is no payment or discharge of the Debtor's debt. Under our Nat. law on the subject of Chancery proceedings, original proceedings in Equity are to be brought before the general Assembly, when the thing demanded exceeds £100 or £5555, between this sum and £100. But court take notice of the proceedings, under £100. Chanc. court.
I believe there is no case brought before the Superior Court where there was any objection that the sum was too large. Indeed the provision in the Statute that the General Assembly shall have the cognizance of sums over £1600 is a disgrace to it. In our Chancery proceedings there is no appeal from one court to another, but a writ of error will lie. In England there is no writ of error but an appeal - where the value in question is $500 or more, the alleged value determines the jurisdiction.

Power of Chancery to issue injunctions.

The nature of an injunction has not yet been explained. An injunction is a prohibitory writ, the object of which is to restrain a person from doing a thing which appears to be contrary to equity and conscience. Injunctions are issued in a variety of cases. The most usual writ of injunction
to that issued against a bill in equity, is in some suit at law, and this issue upon some equitable ground not adverted to in the courts of law, i.e. upon some grounds upon which a court of law cannot take notice. As in the case of a personal fraud which is one at law. The defendant bring a bill in Chancery praying that the injunction may issue to stay proceedings upon his bringing further suit, interest, and costs. But there can issue no injunction in any criminal case whatever. The rights enforced in Chancery and the wrongs redressed are civil rights and civil wrongs. A court of Equity may issue an injunction to stay waste, as cutting timber, demolishing buildings. So A court of Common Law can only give damages for committing waste, but Chancery can give a preventive remedy. The damage given at law may be very indeterminate. This injunction may issue either in favour of the remainder man or vice versa.
But an injunction to stay waste with force not only in these cases where an action of waste
is admissible at common law, but in many others. At
common law waste is only to the immediate
remainder man or successor. In other remote
cases one may have the injunction. The reason in
the former case is, if it would do at law, the
remote remainder man would destroy all
the intermediate remainder men; for he
would receive the land. But in them the
land is not recovered, the injunction is a
preventive remedy. It does not that the re-
versor or remainder man into possession
of the lands. An injunction to stay waste
will none in them? in case of a mortgage.
A mortgage in possession can never be sued
by the mortgagee in an action of waste, for
he may commit waste. But in them the
mortgagee has only the equitable estate,
and therefore he cannot commit waste.
An injunction will of course issue to stay waste, and I should suppose (in the case of timber for example) even if it were to be cut down and applied to the payment of the debt, it would be the foundation of an injunction; at any rate, if timber is not so applied, the injunction will issue. On the other hand, an injunction will issue in favour of the mortgagee against the mortgagor. An action will not lie at common law because mortgagee is considered as tenant at will. Of course when the owner to waste the immediacy determines his estate. He is then a trespasser, all priority of estate being gone. But then it will issue this injunction; for the mortgagor has right to diminish the hedge; thus a remedy may be given at law by suing in an action of ejectment, but this might be inadequate. Again, an injunction against waste may
...true against tenancy for life, without en-
forcement of waste or the care may be.

[...]

...if the tenants of waste would lie
without enforcement, of waste. In cutting timber,
an injunction will not issue, it will issue only
for great and outrageous acts of waste. And in
a case of this kind if the has committed
waste by demolishing or partly demolishing
a building, that will decree a specific re-

...[actions]

...[relief for the injury done by ordering him
to repair the buildings and put them in the
light in which they were. And an in-
junction may sometimes issue to stay waste
against him who has the inheritance at

...[trusts]...
his bill is in more Equity, and as it is to
were, the trustee to perform the trust as
the convey, the legal title estate, or to stay
waste, which prevents him from violating
the trust. An action at law will not lie
against a tenant in talet after possibility
of true extintion; but there is little in this
case if the are any injunction to stay waste. This
man is in the same plight with a tenant
for years, with imprisonment of waste. If
the waste is outrageous, an injunction
will issue. Injunction may also issue to re-
claim a nuisance. As, if one is about to raise
a building that will obstruct ancient lights,
an injunction will issue to prevent it.
At law when the building is raised dam-
ager might be given. The lights must be
ancient in no remedy will be had either in
court or than. Ancient lights are those which
extend beyond the memory of man. The
right must be found on prescription or agreement of the parties, as those under whom they claim. It may be here observed that the lights are not in point of fact ancient lights within the term yet when one has built and his lights look upon another's land, and they have been enjoyed a considerable length of time. They will presume an agreement. An injunction may issue to prevent one from building on another's ground. But will not have as a nuisance for the purpose of obtaining an injunction, that which is not at common law a nuisance for the purpose of supporting an action. On this ground an injunction will not issue to prevent one from building a rent house for this is not at law a nuisance. A writ of injunction will not issue to stay common. Perhaps damages given at law are deemed equivalent yet if they are continued for a length of
time as to become a nuisance are injuncti-

on will ground. That which in its inception
is a mere trespass may by continuity be
come a nuisance; an action without
land for a nuisance, when it is a mere tech-

nep. Relief on a conscionable bargain
agreement is effected by injunction and
when the Equity of the Deff at law, who is
Pla in the bill carries out of the name of the
Pla at law, who is Def in the bill an injunc-

ion will issue to pay the trial. In cases

where one judgment in a court of law is not
a bar to another, between the same parties
there have been several judgments to all in fa-

vour of the same party, and suits are still
brought than will issue an injunction to

quit the title of the prosecuting party.

This is the case in actions of ejectment where
the nominal Pla, and Def may be altered
a thousand times. The names of the parties
in the record are different, one action in
not a bar to another for the same cause.
It was once held that Chetnó could not
infringe in such case, but the decision was re-
versed. There are also other cases where an in-
junction may issue to quiet a person in the
possession of his estate, as where he has a plain
equitable title, and has been in possession
for a length of time. As certain que hacienda,
who
has had the possession for many years. An
injunction may issue except in cases of adjourn-
ment to prevent a multiplicity of suits res-
pecting the same rights. When many suits
are pending or are likely to happen, because
an action cannot settle the question. Chetnó
will issue an injunction and thus clear the
question within its own jurisdiction, and
settle it at once, as where three are several
tenants of a manor claiming the profits, or
where a multiplicity of suits are about
to arise respecting the boundaries of land, be all the parties and settle the question at once. And it was a principle analogous to this that the case of Boardman against Lyman was decided in Sup. Court Feb. 1800, in which the court said that where there were more than two partners, an action of account would not lie against one of them as it would tend to a multiplicity of suits. So also an injunction may issue leading a controversy between two or more persons claiming to be executors of a third. It issues to restrain them from acting as executors until the right is determined. There is no other way to prevent them but by applying to Chancery. An injunction may issue when a person sues to the literary property of another. It may issue in favor of authors or inventors to restrain others from publishing their works, or imitating their inventions. There has been
a great question, whether at common law there is an exclusive right to literary property, but it has been so decided in the court of King's Bench, and in the house of lords. the latter decided, six to five, that the common law remedy took not away that by the Statute. Ed. Mansfield was among the five. Therefore think the weight of authority against the last decision.