Judge Gould's Lectures.
Vol. 4 Vol 6

Gift of Cornelius De Dois Jr.
Law Merchant

And first of

Bills of Exchange & Promissory Notes.

The Law Merchant has been denominated a (1) particular custom 100 75. This is incorrect and
confined to local limits, not necessary to be
especially pleased 2nd May 360 4th 123. and ca.
cept in new cases where the Law (i.e. the gen'l
usage) is doubtful, not provable by ostensible
true by jury. In each case it is said
evidence of the custom may be received.

2 Decr 1218. 1222. 3rd 1669. 102 298. 4 2208

By the Law Merchant is meant that cur-
administrative Law, which governs mercantile trans-
actions.

Formerly it was confined in its operation to
merchants in the case of Irish Bills of Ex-
change Ch 13–14. Ch 81. Now confined to
all classes of men. governs particular trans-
actions among all classes throughout the
realm. - Ch 18–19. 22 462. 2nd 487. 461. 467.
1st 175. 2nd May 175. 2nd 295. 2nd 198. 4th 45. 152.

It is a branch of Public Law, and a mode
of the juri’writers or common Law.
March 13th. 18–19. See Insurance.

A Bill of Exchange is an open letter of request (3)
advised by one person to another dealing.
Bill of Exchange etc

There to pay or sum of money to a 3d person or to any other to whom that person shall order it to be paid or to the holder i.e. the bearer. 20 May 1757. Ch 1745. 13 & 14. 280 462. 7. 3 do 437. 12th 13. 7. 3.

It may be drawn there payable to 'for order' (or to the order of it i.e. to J or bearer, or to 'Bearer' generally. Ch 47. 17. 8. 170 150. 3 150. 1517. 1827.

The person who makes the Bill, or draws it is called the Drawer, he to whom it is addressed is called the Drawee, or if he undertakes to pay it, the acceptor. The person to whom it is payable whether specially named or not, the Payee, or if he appoint another to receive the money, he is then the Endorser of the one to whom it is endorsed. The drawer or any one in the position of it, the Holder. Ch 53. 1745. 18. 1811. 186. 182. Ch 22. 3. 18.

It is an assurance to the payee of a debt due from the Drawee to the Drawer in legal presumption Ch 18. It differs from a common draft or order by being negotiable 1745. 186. 18. 18.

If negotiable instrument is one in which the legal or as the equitable interest may be assigned to a 3d person not originally a party to it; i.e. the debt or duty raised by it, after it is able at law or, as well as, in equity to that the action may maintain an action upon
Bills of Exchange

it at law in his own name as assignee to the drawer, or when the drawer makes him to the acceptor, assignee to the acceptor in case he refuses to pay the Bill. 2093 444.

Chir. 4. 1. 18. 165. 255 20b 26 20b 376. 32 232
2. 12. 2 106 45 1 75 1 11 1 12 1 12 21 1 12 2 12 25 4 742
3 441 2 41 8 75 12 243 20 15 5 3 183 3 do 182
2 3 2 12 72.

This is opposed to the Rule of the Common Law viz. relations to choses in action generally. the general rule being that a chose in actions can not be assigned because it tends to litiga:

tion & Maintenance. 1 Inst. 255. 2 Chir. 2 176 2 00. 3 442 20 5. 1. 18. 109 2 25 2.

So where a bond is held by Obligees.
(Chir, in action what? Vid 20 3 376. 444)

The meaning of the Rule is that the Legit, Interest in a debt raised or secured by the
Instrument cannot be assigned as that the assignee can maintain no action at
law upon it in his own name. Ex. A bond on note payable to A to held by him to B. It must be held in A's name. Hence the
Obligees at Law may release the Debt, after the Assignment & notice of that assignement to the Obligees 20 444.

Contra John, Esq. 441 1 770 2 531. 3 3 do 435. But the proper course seems to be
as in the plea 100 41 20 3. 3 233.

Purchasing a chose in action was formerly
held to be a maintenance. Ch 108. s. 5.
In New York it has been virtually determined that all choses in action are unenforceable but the actions must be brought in the affipees.  

**John, Geo. 411 - 12.**

They are made transferable by Statute.

Chancery has always protected the affipees of choses in action where the assignment was for a valuable consideration. So that if affipees release after assignment to notice to the debtor, the debtor in Chancery may still be compelled to pay the debt to affipees. 12 Ch. 157, 2 De 412, 2d 43, 3020, 399, 12 V. 411, 2 Dem 428. 540. 395, 3 Cu 390, 34 10 Oct. 411 - 12. 1st. Cu. 232.

It has been determined in Court, that in the last case, an action for fraud lies on the original debtor in favor of the affipees if the former accepts the release after the notice of the assignment; if the affipees is not able to pay. If the affipees is able to pay; is not the original debtor liable in the case?  

12 Ch. 168.

In Eng. it seems of the U. S. the contract of assignment is now good at law as between the parties, be it so it is construed into an implied contract or agreement, that the affipees shall have the benefit of the debt - they may use the affipee's name to recover it.
Bill of Exchange.

2 Deo 42. Sale 125. Ch 5. 109. 2 Deo 570. 2 Deo 688. Mod 113. Powell (on Cont. 37).

Said an assignment is a suff. consideration for a promise by assignee to assignor. Ch 57. Sale 212. 2 Deo 820. Rate 29. Jan 222. 4X2 344. 490. 8th 571. 190. De 239. 3 Feb 34.

If there the assignor receive the money or release the debt he is liable on covenant. Where is when the assignment is by deed. On 21st Oct 183 - 38. 124. 2 3 Feb 304. 2d 122. 125. 100. Cont. 37. 421. 274. 326. Note. A chose
in action may be assigned without a deed sometime the action is an action on the
case. 470. 479. 4 Taunt 326. Wa once doubted.

The equitable interest of an assignee of
a chose in action has been for several
purposes recognized in Courts of Law.
Ex. That of a suff. consideration for a
promise Ch 57. 156. 629. 21. 4 to 230. 122.
12. 60. 300 to 40. (Chiper)

So the assignee of a bond having become
bankrupt a suit may be maintained
when it is in his name for the benefit of
his assignor. So in an action on a
bond joined by one to P. in trust for R. a
debt due from A to B may be litigated.
I think this a point for consideration de
2 partners from Princess. 2 Show 509. 2 Ven 280.
25 Feb 120. Ch 5.
Indeed, according to modern decision in some of the States, especially in New-York—chose in action are virtually negotiable except that the aggrieved cannot recover upon them at law in his own name.

The negotiability of foreign bills of exchange was first recognized in Esp. in the 14 Century; 

Phil 485. 1 Mod 2d. 3. 3d 88. That of Ireland Bills in the 17—

The rule that one laid down with regard to Bills of Exchange will apply with equal force to promissory notes, unless particularly excepted.

Consideration—

Generally in action, upon simple contract, the Defr must prove bulk consideration. 

Rye 3 H. 47. 3 Darm 189. 69. 71. 1 Bowd Corr 330.+ 

award 7 52-2351. 

See yp in actions, on Reid. Ch 9—

But in action on Bills of Exchange it is generally not necessary for the Defr to prove that he gave a consideration for it; consideration is implied or presumed as in the case of deeds, in this respect as affording presumptive evidence of consideration—

Yale 48. 2nd Ray 758. 3 Hale 70. Ch 7. 57-115-116. 155. 2 Sc 44. 1st 48. 2 Me 20. 93-1295. 

In this respect they resemble Special Bills, a written agreement not constituting
a suit within the statutes of Anne, even the words 'value receiv'd' do not imply a consideration: else it must be proved. - 2 or 3 John, 257-8. 3 Caun, 286. 4o 5. 12 532. 7 John, 231 - 7 Tho 351 -

Exception. When the holder claiming as owner of a Bill transferable by delivery (not being an original payer) is under suspicion, circumstances - Ex. If it had been sent by the payer under such circumstances, the payer may be required to prove that he or some intermediate person took it as a bona fide purchaser for value. Ch. 51. 201. 209. 3 Dun 11. 16. 23. - King 11. 15 Meas 433 - 2 Shaw 285. Peak Eq. 226. 2 Pemb 255. 2 Shaw 2 5 257. 3 Robt 183 -

Where the Holder is named as payer or in a - declare the writing imports consideration.

If in settling an account for goods sold, the purchaser gives a Bill of Exchange for the amount, which he fails to pay at an action is brought on the Bill the (the payer) can not impeach the account, the bill being considered to be of the same date as bill. Peak Eq. 159. 1562. 445. 18 43 17. 27 27. Pic 152. 12 240. 2 Caun, 114. 174 276 7.

And in general theft is in no case permitted to prove that he had no consideration for the Bill, except when the action is brought by the person with whom he was immediately concerned, in the creation or negotiation of
It is between the drawer & drawer, drawer & assignee, drawer & payee.

Is whether a want of consideration may be averred between parties in immediate priority? 2 Camp. 248. 1857 19 v. 1 Ch. 9. 57. 2
1857 v. 17 v. 10 45. 19 29. 27. 2727. 5 674
5 27 v. 7. March Dec. 343. Bil. between two drawer & drawer &.

When one take a Bill by transfer or endorsement whether after it is due, in such a case any party that is sued in such a case permitted to plead, by way of defense, that he received no consideration for it, or any other equitable doctrine of which the holder was aware at the time of the transfer? Ch. 52. 113. 1243 282-4

For a transfer after the bill is due offsets grounds of suspicion & hence it is left to the jury on the slightest circumstances to presume that the transfer was known by holder to be unjust Ch. 113. 1243 83.

Therefore if notice of non-payment has been given or if it could be proved otherwise, that the holder knew of its being dishonored, he is, cor.

elated to have taken it on the credit of the person from whom he received it & the above defense will prevail (at supra) 19
429. Has not the very fact of its being over due, create a fair presumption of its being dishonored or already paid?

It has been laid indeed that the holder who received it after it was due is liable of course.
To all the Equity to which it was liable between the former parties, 372 35. 423. Title 293. 4. Ch. 114

Bills of Exchange are divided into 2 General Classes, Foreign and Inland.

Foreign Bills of Exchange are those which are drawn in one country or foreign state to payable in another. Title 10. 1 Shaw 483. 3 Wood 24.

Inland are those payable in the country where they are drawn. Hyde 10. Resolved in Lawrence as Brown's Ch. Of U.S. 1821. Pennsylvania district. That a Bill drawn in one of the U.S. upon a person in another is a foreign Bill. (Washington D.) contra s Johnson, 375. So decided by Sup. Ct. U.S. 1829.

Bankers' checks or drafts on Banks are in form like Inland Bills of Exchange, but they are generally made payable to bearer and are substantially Bills of Exchange. Ch. 16. 17. 109.
171. 7 6b 423. Not universally payable in this country. S. Johnson, Ch. 5.

They are now negotiable like Bills of Exchange; hence, they could not be Ch. 16. 17. 35 and 187. Hence such a check or draft may be convicted upon as a Bill of Exchange. So nomine.
Bills of Exchange or

But they are not payable until demand is made, in which they differ from Bills of Exchange which are payable at a particular time—

Ch. 16. 7. 44. 37. 7. 51. 123. 124. They are payable at no appointed times of the latter are, but when demanded.

They may be declared as a Bills of Exchange, the latter not to be protestable—Ch. 16. 77. 54. 423 123. 274. 44. 6 55.

If not demanded within a reasonable time the broker fails, the Bank or Declarer the holder must bear the loss—Ch. 16. 44. 5 54. 41. 2. 102 21. 123. Day 44. 3 John 2 57.

What is a reasonable time is, was formerly a fact for the jury to decide. It is now established (the fact being given) to be a question of law for the Court to determine—Ch. 41. 2. 102 21 1850 550. 415. 916. 2 1848. 1173. Baunor, Law, Mason—Law 482.

Whether the time is in any prior cases has been reasonable is a mixed question until the facts are ascertained. For suppose the broker does not in the same town with the holder, the jury will ascertain the distance and the judge will make up his mind as to the reasonable receipt of the notice.
Bills of Exchange

The Bill of Exchange is a legal instrument that was formerly used in commerce to facilitate the transfer of goods or services. It was formerly held that not everyone could be a party to a Bill of Exchange, as defined in Stat. 21 Hen. VIII. All craftsmen were expressly prohibited from being parties to such Bills.

However, the law has evolved, and it is now recognized that certain persons, such as corporations, may be parties to Bills of Exchange. Certain restrictions are imposed on these persons, as defined in Stat. 6 Ann. 15 Geo. II. 12 Nisi 30. 38. Stat. 125. Ch. 19. 181-2. 2 Dom. 12. A Bill of Exchange is payable to the holder, or to his order. "Parent and Child" Ch. 23-1. Act 160. 1 Roll 79. 12 Geo. 1st.

The original parties to a Bill are usually three: (1) Drawer, (2) Drawee, (3) Payee. The endorsement or transfer of a Bill to a new party is allowed, as defined in Stat. 22. Hyd. 23. It is not necessary that there be three parties; frequently only two parties are involved. One draws a Bill on another payable to his own order, or to himself payable to another's order. Ch. 48. 22. Hyd. 1 Sal. 130. 6 Nisi 29.

Indeed, there may be but one party to a Bill that is valid. So, P draws a Bill on himself payable to his own order, he
Bill of Exchange etc

The Bill of Exchange has three different capacities:

1. Banker
2. Cashier
3. Drawee

The person is in the position of a Promissory note when it is endorsed by himself to a 3rd person. It then becomes operative, as he has negatived it, he is now wholly non-convertible by it. It is merely an order upon the Bank as a Bill of Exchange Ch. 22.

It is necessary that such a Bill should be accepted. O.G. thinks, etc.

But further. A person not originally a party to a Bill may become such by the negotiation of it, and still further. He may become such by accepting or paying it for the honor of the Drawer or any indorser Ch. 23. 183. 184. 185. 153. 156. Earth 129. Latter 84. 89. Dean 38. 34. 436.

This is if the Drawer refuses to accept any one may after Dickie accept for the honor of the Drawer. This is called "acceptance before protest," as to his right to duty, etc.

So on refusal of payment by acceptor or drawer may make himself a party by paying the bill for the honor of the drawer or indorser, this is called payment before protest. O.D. protest Ch. 23. 113. 184. 112. Dean 159.

A person may become drawer, indorser or
A person signing his name to a blank paper or delivering it to another authorizes the latter to fill it up with a bill of exchange or note for any sum. * In S. 3° for any sum the signature will warrant. Attorn. of Deeds. Ch. 25. § 6. 7th 49b. a 514. 1 N. C. 315. Hyde a 110. P. 42. 2° 25. 90d. Comb. 18. 17. Pep. 54. P. 4. 118. 4. 4. 21. 26.

As to authority implied or authority by agent subsequently given. see Master of Serv. Ch. 21. 2° 25. 90d. Comb. 458. 512. 757. 2. 2. 21. 815. 16.

& to any person whatever. The principle of the C. 2: is, when one of two innocent parties must suffer by the act of a third, he of the 2 who enabled the 3° to commit the fraud must suffer the loss.

An agent cannot delegate his authority unless expressly authorized to do so. 92° 35. Wood. 339. Ch. 27. 29. 95. 96.

In drawing, indorsing, or accepting for a principal, the agent must do the best in the name of the principal, otherwise the agent is bound to 2 not the principal. Hyde 84. 94. 70. 45. 95. 17. 36. 15. 181. Hard. 35. Scaw. 12. 83. 6. 95. 75.

The usual form is: "By C° or C° by his Attorney" or "C° or Attorney to A°.

The incapacity of the Drawer of a Bill will not discharge a subsequent endorser from
Bill of Exchange on

a bill commenced by the Holder. It is
binding upon all parties, except those whose
legal incapacity for the indorsement in
legal effect creates a new bill. Note 705-708.

Bill 17. 2 Noll. Ch 21.

Binding power of Parties.

One of two joint traders,
may be acceptor in the name of both, or of
the firm; it may bind the firm if the bill concerns
their trade; i.e. the trade of the company.

12 Mod. 354. 20 Den. 277. Peak 12 16. 1 Corp. 403. It is.
if the

drawn by the firm is accepted by one only
and in the name of both, but in his own full
name, or in the others only. 1 Corp. 381. pr17. Ambl.
2 Corp. 305. 15 East 11 12.

It is said however that the act of one in the
name of the firm, if it concern his separate
interest only, will not bind the firm. Sal. 125.


is now, that the act of one in the name of
the firm, for his own benefit will bind the
firm, if the holder of the bill did not know that
it was, for the separate benefit of the drawer.

It has been held, that two persons, by making
a bill payable to their order make themselves, paid
in their transaction, so that one may in
owe for both. To Mansfield in such a case
admitted the evidence of merchant, that the
endorsement was invalid, because not indorsed.
By both. But in that case the indorsement was, in the name of both. Ch 29. 30. Decr 653. 7218. Watson on Ch. 253-7.

Manfield afterwards considering himself in the wrong reversed the rule, which now stands as above. That it does carry the whole indorsement by one.

If a bill is drawn on a corporation or accepted by one of their body, it does not bind the corporation, nor being their act. Ch. 29. 30. Decr 653. Sums if accepted by its authorized agent or officer.

When one partner draws for himself & partner he should do it in the name of the firm, otherwise it is doubtful whether the other would be bound [underprayer]. Pecr 126. 3d Ray 175. 1824. Ch 30. 56. 73. Salt 126. Decr 653. The firm could not be liable on the bill that it might be on the consideration. Decr 308. 13 3d 11. 11. 12. It is a sound rule that where of two innocent persons one must suffer, he will be the sufferer who was the cause of it.

Form & Requisites of a Bill

No particular form or set of words are necessary to the creation of a Bill of Exchange. Ch 21. 28. 10. 174 284. 360 374. 3 ile 223. 3d Ray 390. 3m 229. 3d 124. 5d 601. Conn. 42. 16.

Ex. I promise to account with A or his order for $50. This is considered as a promise to pay it. i.e., a good bill of the rule i.e., the same with regard to promissory note.
Bills of Exchange etc.

But it must possess certain essential qualifications without which it will not operate as an instrument, but as mere evidence of a past contract, is without the requisites it does not convey with it internal evidence of a consideration not negotiable is it will not be a Bill of Exchange. Ch. 32, 173, 184, 5 Th. 485, 20 E. 2, 172, 3 Th. 2, 23, 2 East 326, 2 May 1846.

The Requisites are

1. That the Instrument be payable at the end, not upon contingency.
2. That it be for money only, and for a sum certain, or for the payment of money, and for the performance of any other act.

Ch. 35, 3 Th. 12, 13, 173, 2 East 207, 5 Th. 485, 4 do 242, 2 May 1842, Cont. 227, Stra 185, 1294.

So if payable out of a particular fund, which may not be productive, it is not negotiable and can it be so. Ch. 33, 5 Th. 482, 4 do 242, 2 May 1832, 1563.

It must import a personal credit to the drawer (21)

(21) [Stra 185] Cont. 227, 1 Mes 242, 2 do 255, 10 do 294, 1 Th. 562) Not to a fund. It then has however that such an instrument is considered to may be declared on as a Bill of Exchange between the original parties to the instrument, as between the drawer and payee.

Ch. 32-3, 7 Th. 243, 5 do 485, 2 Th. 188, 20 E. 2, 1872, Cont. 18. That it is between the parties giving more than evidence of a contract, 1 Th. 125.
Bills of Exchange etc.

320th, 211 - 2 Oct 1871.
But the rule seems now to be settled.

There is an exception to the general rule when the event is certain, namely to either of the parties or the trade it may be good that the payable out of a particular fund be. Payable after such a ship is paid off - or in the event of a loss or cargo from a certain ship. Ch. 33.
Steve 24. Wilt 262. tidy 37. 222. 272.

And if the event on which it is made payable is one which must inevitably happen at some future period the bill (being for money only) will be a good one. Be payable one month after the event, if death. Or when an infant shall attain full age specifying the time when - Ch 33. 4. 151. 221. 37. 27.
Steve 37. tidy 37. For it is payable on the day when he would attain full age if alive.

22) The mention of a particular fund only, by way of direction to the drawer how to reimburse himself will not destroy or vitiate a bill. Ex $100. is my half pay to be due me within a day in advance. Ch 51. 12. 12.
May 1781. Edward 12. It imports a personal credit to drawer. Ch 51. tidy 54. For it is payable at all events.
So if words, intended for the purpose of pointing out the consideration of acceptance - be written out of my hand or estate in A., or being a portion of the value deposited as security for the payment thereof. 1 Ch 34. 2 May 1845. 7 Th 33. 1st Co. 27. Eaton supra.

2. For the payment of money only, there are orders payable in goods, &c. a bill of exchange. Ch 34. 5th 5b. Eaton. These instruments were devised for the purpose of facilitating trade, not as mediums of barter. 5th 50. Besides, if orders for goods were negotiable, they would soon perplex commerce by means of forged orders of appeasing the parties bound - &c. By transferring to a distant indorser.

Not only must be payable in money, but in money only, for same reasons. Hence instruments for money or goods - 12 for money, 12 for goods - some act to be done is no bill of exchange. Ch 35. 5th 50. 51 129.

But any order which cannot in any part be complied with, but by payment of money is for money only. 5th 50. 10 Med 28.

Bills of Exchange: 2e

It is not to be concluded that these instruments where deficient in any of the foregoing requisites, cite, are not of force. They are not bills of exchange. But may be used as evidence of contract between the original parties. Of this contingency has happened. If the fund out of which it has been productive (360) Hyde 50. 2 Bred. 1072. See Hyde 55. p. 20. that they may be declared upon as bills, be not termed the original parties.

The addition of any thing merely extraneous will not vitiate a bill. See, mentioning a reason for drawing is Hyde 61. New 74.

In case of foreign bills, it is usual to make three of the same tenor that if one is lost the money may be received on the other at 45.

But in such a case to prevent the same from being paid more than once, each part should refer to the other, to be payable on condition that neither of the others has been paid. Ch. 46. Page 15.

The bill should specify to whom it is to be paid as to A or B, or the Banker (Ch. 46). But it is laid if the bill does not dispute any paper by name, but mentions of whom the value is due. It is to be considered as a bill payable to him. Ch. 46. 1 North 608.

Page 72.
As to Bills payable to order, it is now well settled, that such a Bill is in legal effect payable to Beazer, & his assigns, to whom thePayee to be fictitious, but no others. p. 66, 70, 101, 108, Ch. 47. 8. 57. 6. 19. 201. 314. 182. 481. 176. 110, 313, 356. 576. 20. 194, 288. Figd. 208. &c. as a Bill payable to order it can not operate.

Such bills have been highly condemned & it is said the person endorsing the fictitious name would be guilty of forgery. Ch. 48. Authority upon Figd. 217. 227.

A Bill payable to one for the use of another is valued. p. 67, 68, Ch. 48. 112. Carth. 2. 29th.-357. Figd. 247. 676. 123. Figd. 168. 176. 110. 313.

A Bill to be negotiable must contain operative words of transfer. As to A or order, to the order of A. to A or his assigns. to A or Beazer. to Beazer or to the bearer, or the bearer, or the bearer's order. p. 3. 66. Ch. 48. 108. Beazer, p. 3. 370, 211. Figd. 36. 63-57. 251. 1212. 210. 353. Figd. 108.

A Bill payable to the order of A has the same operation as one payable to A or order. p. 103. Figd. 108. Carth. 403. Ch. 15. 134. 187. 2 Show. 8. 5 East. 476. 4 Com. 212. 246.

Now stated that the word, "value," can not reasonably be a bill or endorsement.

But to entitle the holder to an interest or damages, it is drawn or endorsed in default of acceptance or payment, these words are necessary. By Stat. 9 & 10. 75. III. 37. 36. 35. 34. 33. 32. 21. 20. 19. 18. 17. 16. 15. 14. 13. 12. 11. 10. 9. 8. 7. 6. 5. 4. 3. 2. 1. 12th. July 31. Ch. 93. 4. Sir. 910. p. 56.

If the bill is for accommodation only a that fact is known to indicate he can recover no more than he paid for it the less than the amount of the bill. Ch. 51. 18th. 21st. 20th. 19th. 18th. 17th. 16th. 15th. 7th. Acceptance for the accommodation of drawer.

But when a bill is drawn for money actually due from drawer to drawer, it is the regular course of business the indorsee the pay the amount due and the whole. Sir Chitty says hold the money plus above the sum paid first the case may be for the use of the indorsee Ch. 52. 15th. 12th. It is then the assignment of a debt due from the drawer to drawer p. 3.

27th. In all cases, in which the defendant aver the want of consideration he may aver that it was illegal (Ch. 52. 10th. 445) and also in many other cases. A. between the parties,
Bills of Exchange

Who are immediately concerned in the illegal transaction - the illegality of the transaction considers it a good defence &c. Grant &c. to recover it. Ch. 52. 1824. 6. 36. 18. 6.

And a 3rd person knowing the consideration to have been illegal at the time of taking it, can recover upon it. Ch. 52. 1824. 6. 7. 1825. 6.

It has been held however that a 3rd person who having put his name on the bill at the neglect of the holder has been compelled to pay it to a bona fide purchaser, may recover upon it. that he knew the consideration to be illegal. Ch. 52. 53. 1824. 7. 155.

I understand only not a party in interest.

And in part 2 any holder of a note upon a (25) fair consideration & having no knowledge of the illegality of the original consideration may recover upon it. Ex. A note given for bringing goods. Ch. 53. 10. 21. Ch. 25. 18. 6. 631.

This is between the original parties, it is void. Ch. 27. 220. 283. 1817. 6. 286. 8. 5. 4. 4. 7. 7. 6. 4. 4. 3. 8. 53. 80. 5. 11. 55. 1845. These parties being in pari delicto. Exception, where it is altered after it is due. Hild. 4. 1. 28. 4. 1. 28. 4. 1.

Exception also in cases, in which the statute law has declared a note to be void, for the
Bills of Exchange.

...of one of the parties, a holder can recover of him...when the consideration is ulterior or money won at gaming...for being bankrupt, certificate. Now the innocent holder can recover of the drawer or acceptor. They are not cases of tricks criminal, but intended to be protected by statute. Ch. 53, c. 42. & 43. 2D. 64. 52. 1st. 1257. 2nd. 35th. 1832 92. Eng. 708. 1532 274. The ground of the distinction is merely that if the drawer be never liable the mischief intended to be prevented would be let in, in the latter case not in the former case.

But in such a case the indorser is liable to the indorsee without notice. Elsewise, would notice make any difference as to the indorser? 211 Ch. 713, 726. New contract the mischief not let in "Essay." 1 Bill. Ch. 22. 1844 22. 29th. 24. Part. 34. or 244. 3 Med. 179. 9 Marsh. 1. Is it the maker's name were forged 2 Bill. Ch. 22. 3rd. 12.

Chitty says that the innocent holder can recover only of the person from whom he immediately received it. Ch. 53. Is. Why not? Can't must suppose no action will lie on the indorsement but that the action must be on the consideration of the indorsement. Is that the correct? As there is in fact no bill indorsed. But certiori may not the indorsement be declared as a bill?
Bills of Exchange etc.

The creation is invested upon assuming certain circumstances or terms passed to a bond from

The Union, Indorsee cannot recover at all.

2 Nov. 275.

Bills are sometimes made payable "to his advice". Ch 37. Art 20. In such case, the

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Dravo's name must be subscribed or

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Bills of Exchange like every

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The Union, Indorsee cannot recover at all.
Bill of Exchange

And in a case where it acknowledged in writing, that he borrowed and received money, and a note containing these words, which
proclaimed never to pay, it was unmistakably held, that it was a promise to pay.
2 Bkt 32. Chir 58.

It is on this principle of liberal construction, that a bill payable to a fictitious person, a law, an order, operate as payable to bearer.

Generally, the contract is construed according to the law of the country (lex loci contractus) where made. Ch 59. 60. 63. 83. Ev. J. accept.

takes place at Lophorn 347. (This example I know is not law. It has been denied 2 East 453. Vide 4 Wheat 72.) 2 Stp 733. 3 Co 148.

Exception as to time of payment, that is generally calculated according to the law of the country, where payable (lex loci) p. 85. Ch. 57. Brave 6251. 12 Ed 38. 645 155.

Reason of the distinctions: The nature and extent of the contract or agreement, are to be determined according to the acceptance of the words, where it is made.
The time and manner of performance according to the meaning of the language where the performance is to be.
Bills of Exchange

As to the remedy - the form or action of it is regulated by the law of the country in which it is bought - the lex fori - "Jeniuspedit".

So that the nature, construction or legal effect are regulated by the lex loci contractus, the mode of enforcing the right (ie the process, the form of the action or the mode of pleading or practice by the law of the state in which the remedy is bought, Cow 31-2 v. 1825 P.C. 98. 100. 154. 553. 733). 17 Ch. 241. 1 East 56. 3 Eliz. 164. 2 Boc 44. 1 Boc 128. 2 Boc 128. 31 Eliz. 138. 4 John 198. 11 Am 194. 11 Eliz. 3 Cow. 1525. 1 East 28. 5 Crouch 293. 382.

The Bill is regularly to be delivered to the Payee Ch 62. 1st part 70. And a person receiving it on account of a former debt for which he has not a higher security cannot, in law, sue for the original debt before the Bill is due (Ch 12) for receiving the Bill amounts to an agreement to give credit like that which - Ch 62. 2d part 357. 6th 52. 7th 64. 1 East 5. 186. 5 T. 373. 5th 422. 4th 442. 3d 480. 2d 592. 1st 600. 1st 602. 1st 604. 1st 606. 1st 608. with "Jeniuspedit".

If altered while in the hands of payee or other holder, in any material respect (as in law or date) without drawer's consent, he is discharged even as to a subsequent bona fide holder. Ch 62-3. 4 T. 320. 5th 357. 2d 62 441. 1st 62 225. 2d 62 227. his act when so altered. Even one taking any security must run the
Bills of Exchange on

risk of forgery or take means to guard against it.

So of acceptor & endorser if altered after acceptance or indorsement without the party's consent (36) not the instrument accepted or indorsed.

Secs. (25) in favor of a subsequent bona fide holder, I suppose) if altered before acceptance or it is then the instrument accepted or and the holder has been in no fault. Ch. 63.

Beaver Ch. 144. Near 38. 40.

And the consent of any party it seems will stop him from taking advantage of this alteration. Ch. 63. 462 320.

But the party making the alteration without consent can in no case recover as any one.

I conclude &c. Alteration by Payee before acceptance, bill then accepted. Action by acceptor by Payee. No. 272.

(33)

The drawer by the act of drawing & delivering the bill impliedly engage, to Payee & every subsequent bona fide holder.

1st. That drawer is legally capable of accepting (p. 39. Ch. 63. 71.)

2nd. That he is to be found at the place described if it be described in the bill p. 37.

3rd. That in due presentment of the Bill he
will accept. It is writing if required according to the tenor of it. That on due presentment it will be paid when due. Ch. 63. § 70. 12. Hyd 51. 2, 11. B. 378. 15. 51. 51. 18. 87. 12. Ray.

Same implied engagement by every indorser to indorsee as stubly must bond or pledge holder. 1 East 481. 3 Macf. 537. 4 John 144.

Exception where the Payee or Receiver repays by agrees to assume all risks of the note; does not hold to him who transfers the bill when a dishonor. § 16. 77. Ch. 63. 120. 109. 21. 9. 3. 5. 2. 70. 7. 96. 6. 1 East 44. 1. 19. 120. Hyd 5. 1. 2. 142. 12. 24. 242. 12. 128. 14.

Where it is transferred by mere delivery or by way of sale, not in payment of a debt to the prior or assuming it. But this exception does not extend to any one whose name is on the bill as drawee or indorser. Ch. 123. § 4. East 7. If transfer on dishonor is a transfer as above by the holder without his endorsement.

When indeed a debtor transfer, a bill without endorsement, he is not liable on the bill, he is, nevertheless, liable, in case of its being dishonored for debt.

If there is a failure in any of the above implied agreements, the drawer is liable immediately the day of payment has
Bills of Exchange

139. 31. Dunn 1617. 1 P. 42. 54. 55. 1 439.

The rule is the same as in the Indorser. 3 East 481. 2 Ma 537. 4 John 144.

(34).

Dr a r e n s is thus liable whether the Bill was drawn on his own account or another's. Ch 44. 382. 3 Beane 457. 371.

But suppose after the day of payment the Holder brings his action on the Dra r e w or Indorser for non-acceptance, without having made a demand for payment. What is the action? Ex 4 John 144. that it will lie Ex 3 East 481. 3 John 202. 3 Ma 537. 4 John 212. 42. 51. 51.

This obligation is irrevocable. Thus where a bill is drawn upon one in a foreign country, who by the law of the country is prohibited from paying it, Dra w e r is liable. Ch 42. 27. 378. 379. 47. 50. 50.

But the Holder may lose the benefit of these engagements by his own neglect. Ch 61. 53.

(35). P a y ment for acceptance.

It is in some cases necessary to accept the instrument, expedient for the holder if he receives the Bill.
Bills of Exchange etc

Before acceptance, to present for acceptance, no. 189. Ch. 66. Hyde 17. ault.

Where the bill is payable within a limited time, after sight, or after request, I suppose presentment for acceptance is necessary. But the time of payment will never come. Ch. 17. 8b. 20. Ch. 17. 158. De 65.

But in other cases, it is necessary (this is a convenience to the holder) to present the bill in full. Ch. 67. De 67. Ch. 23. 158. 712. 5 Dun 2670. May 46. Dom 5 March. Ch. 74. Post. A 143. 2 Trow 144. Hyde 118.

And where it otherwise would be necessary, however may excuse his omission by proving that neither the drawer nor endorser had any knowledge in the hands of the drawer. So by any other fact which shows that they have not been injured by holder's neglect. Ch. 18. 67. 102. 132. 202. 3. 158. 336. 569. See Hyde 118. 136. 358. 712. 185. 362. As that drawer or endorser has continued to the time of payment, provided that fact was originally known to the drawer, or other party. And, 158. 161. 278. 336. Lee do. 189. Case different but contradictory. Ch. 13. East 187. 7 do. 359. (C) see Bank & Cotton 2 60. 126. (in case of a note) 2 Dan. 343. 4 Cran. 16. 2 Hyde 45. 11 Hyde 52. Post 552.
The rule as to the time of presenting for acceptance, where the bill is payable after sight is that due diligence must be used by the holder to be presented within a reasonable time, under the circumstances of the case. Ch 58, 9. Hyde 17, 18. 2 H. 35, 56. Patk. 143, 7 H. 425.

So (as Chitty says, p. 55,) of bills payable at sight, that they must be presented for acceptance within 3 days of sight. But to 9, 9 not correct. The rule in the other books relates to presentation for payment. Ch 47, p. 35. Presentation for acceptance can not be necessary, unless days of grace are allowed. But they are generally not allowable where payable at sight.

What is a reasonable time is laid to be a question of fact, for the days 2 H. 35, 56, 7, H. 425 say. It seems to be a question of law (the facts being given) for the sake of certainty. This whether there has been reasonable notice in any particular case is a mixed question of law. Before the fact an act was taken (p. 10, 58, 87. Ch 69, 96, 137. Beany, pl. 229. 4, H. 118. Cony, 5, 13.)

Presentment should always be made in the usual hours of business. Ch 67, 8. Ch 67, 148.

Said that drawer ought to refuse or accept immediately on presentment. Cony. Most. 56.
It is usual however to leave the Bill with him for 24 hours that he may examine his acct. with drawer unless he voluntarily refuses to accept sooner. As 16. Chap. 2. Ray 281. Drawe p. 17. May 126. If he does not accept within that time the bill may be considered as dishonor.ated. Chap. 72.

But it is said that this delay is not to be allowed if the mail goes out in the mean time. Chap. 19-42. Am. Merch. 36.

If Drawee is not to be found at the place described if it appear that he never resided there or has attended, the bill is considered as dishonor.ated. Chap. 40. 128. 136. 152. 516. 153. Ray 743. May 27. 111. 112. Drawe Jul 22. 24. 26. 29. May 125. 127.

But if he has only removed presentment should be made at the place to which he has removed to the presentment should be if possible to the drawee himself p. 33. 83. Chap. 155-6. Ray 1087. Ray 58.

See if he has left the Kingdom or State. Holden not bound to follow him presentment at his house left. Chap. 18. 182. 511.

If Drawee is dead presentment should be made to his personal representative if it be found within a reasonable distance p. 80. Chap 21. 132-6. Post p. 146.
Acceptance

Acceptance is the act of engaging to comply with the request contained in the bill. P. 128, Ch. 71. So may be either in writing or by parcel. P. 43, Ch. 75-6. 280.

Acceptance by agent: if duly authorized is valid. But if required he must produce his authority to the holder. See, it may be considered as dishonored. P. 114, Ch. 23, 71. Deane, P. 87.

Doubtful whether holder is bound in any case to acquiesce in acceptance by agent: it multiplies proof. 167, 117, 269, Ch. 71-2.

Acceptance by one partner for both binds both (P. 15) But if a bill is drawn on two not partners, & accepted by one only, in the sole name of the other, it is not bound to it may be considered as dishonored. Ch. 29-73. 112. Bill 279. Deane, 228. Holt 297. March 16. ante 16.

If drawer is found to be an infant, insane; or otherwise incapable: the bill may be treated, dishonored. P. 124. Ch. 18, 71-2.

A promise to accept in future will operate as a present acceptance. Even the by parcel. Ch. 112. Leave the bill & I will accept it for it gives the bill credit & prevents protest or notice. P. 45. Ch. 75-6. 77. Bull 279. March 17. Deane 572, 38. 1609, 1. Life 64. 5 East 154.
Bills of Exchange etc.

To a promise to drawee to accept a bill to be drawn in future is binding if attended with any act of compliance, which may have induced a person to take it. Letter to drawer "I will only honor your bill" shown to indorser before he takes it. Ch 77. Corp, 571. 573-4. 1844-45.

Ad 74. 81. Blank. 454. 466. Litle 64 (51) 457. 3 Del Mar 1003. 2 WHAT.

Acceptance after the day of pay meant with drawee, the drawee and indorser would be discharged save unless duly notified of a previous non-acceptance or non-payment. Ch 73. 5. 81. Mod 410.

In such case, acceptor is liable to pay on demand. Ch 74. 25 Ray 304. 574. Int Marq. 129. Castle 457. 12. Mod 410.

Clem R 75. Scrib. 1 R 224.

Drawee has no effect of drawer, is not liable in case (41) accepting a bill after he knew of the drawer's failure to redeem the Eng. bankrupt law. Ch 74. 157-2. Park 116. 2 22 R 1341. For he could be compelled to pay once again to the drawer's assignees, cannot retain from them.

But if he accept without notice, he may safely pay the bill after notice. He will not be liable to the bank or any assignees. Ch 74. 157-2. 7 52 234.

Acceptance may be absolute, conditional, or partial. Ch 74. But unless the acceptance is absolute, the holder may consider the bill as dishonored. 1 R. Ch 74. 25. 163. 180. Park 116. 47. Not bound to act.
Bills of Exchange &c

... queries in any other than an unqualified acceptance for the whole amount of the bill.

If holder is satisfied with a conditional acceptance or one varying in any form from the tenor of the bill it may be so accepted if the party due notice of it to the prior parties, they are not discharged. 7 N. S. Ch. 74-579-81-2. 252. 440. 1152. 1194-72. 2 Com. 253. 2. Polito 48. 11. M. D. 190. 2. 100. 9. 1762. 182. Hyde 152-16-

What amounts to an acceptance is a question of law. Ch. 75. 1782 152. 186.

42) An absolute acceptance is an agreement to pay the bill according to its tenor. Ch. 75. Hyde 47.

Acceptances are now almost universally in writing; formerly verbal. Ch. 75.

The usual mode is by writing "accepted" and subscribing drawer's name, or by writing "accepted" merely. Ch. 73-75. or the mere inclusion of the drawer's name called a blank acceptance.

Holden that if a Bill is payable in a City, its

must by the acceptance be made payable at a

particular place or house there. Recent, protothetical

s. 52. Ch. 75-6. Long 275. 2. Cary 574. The drawer ap-

points the place.

Is this rule observed in practice?
In joint any act of the drawer evincing his consent to comply with the drawer's request will amount to an acceptance. Ex. 'See ...' presented 'day of the month' is a direction to a 3rd person to pay it - if written upon it or on another paper relating to it.


Writing not necessary. Verbal acceptance is binding. 

Ch. 169. Hardw. 34. 875. Rev. 440. 1050. Hold. 247. 1300-2500. 103. Hare. 65. 15. N.Y. 9-42. 3 Durr. 1674. Annu. 576. 2202. 9. 4 East 72. So (in favor of Holder) the no consideration for 72 - Ch. 77. 82. Durr. 1684. 23. To drawer (before acceptor & drawer) even when the acceptance is written this has been doubted. P. 8. 49.

Said to be a distinction between promise to accept in future or a consideration executed & one executed.

Letter laid not to be binding while it remains ex tempore. (Bagly. Ch. 77.) until it influences some one to take or retain the bill. (The promise intended in the rule is one to the drawer I suppose.)

And a promise to accept obtained by promise or misrepresentation does not bind Ch. 77. 3 Durr. 1684. I suppose in favor of the party practising the fraud as to the subsequent bond for the holder.

P. 28. Ch. 82.


Acceptance may be implied Ch. 76.7. But to con...
Bills of Exchange to

1. Neither such an acceptance, than must be
some act or circumstances from which it may
be inferred, that holder was, induced to consider
the bill as accepted. Ch 72. E 79. "There is your
bill it is all right," no acceptance unless it ap-
ppears to have been intended to induce the hold-
er to consider it as accepted. Ch 78. 1st 17.
Bapr 48. Hardw. 77. Comm. Il. 27. 2nd. 1782. 28.

44) But it may be implied from the drawer's keep-
ing the bill a great length of time Ch 77. 1st 61.
Hardw. 278. Post. 44. Assumption may be rebutted
Ch 77. 1st 61. 24 hrs, if the usual time allowed
were accepted.

So by any act which gives credit to the bill Ch 77. Date 279. 4th 80.

In engagement to pay the bill, not absolutely but
on some contingency it is called a conditional
acceptance Ch 74. 3rd 182.

Holder not bound to receive it but if he does
he should give due notice of the nature of the
acceptance to the prior parties. See they are di-
charged. P 46. 57. 54. Ch 74. 57. 72. 22. 103-
Hyde 1st. Post. 42. 47. Acceptance bound only if
20. Ch 180. 1

Ex. accepted to pay "a sum remitted for" on account
of uncle in ship where in cash from her cargo.
"a sum or uncle for so are sold" to Ch 79. 80
Powe 152. 121. 27th 49. Hardw. 74. 12 Apr. 49.47.
A conditional acceptance is required if a condition precedent to which the condition depends is not met. If the holder is not aware of the condition, the acceptance is void.

If the acceptance is in writing, the condition can be voided by any holder. A written acceptance will not void the acceptor, or any subsequent holder. However, if either the acceptor or any subsequent holder took the bill for a valuable consideration without notice of the condition, the condition will be void.

A partial acceptance is an unconditional one, but varying from the terms of the bill. The acceptance is void as it is not unconditional. If the holder is aware of the condition, it is called a partial or conditional acceptance.

If a holder is unaware of the condition, they may still reject the acceptance as void.
Bills of Exchange etc

When the acceptance is partial or acquiesced in by the holder, if he intends not to discharge the prior parties, must give them due notice of the nature of the acceptance. P. 44. 57. 76. Ch. 82. 85. 152. 182.

If he gives the prior parties notice of non-acceptance generally he waives the acceptance. This shows that he does not acquiesce in it, and an inducement to the other parties to make arrangements for their own security. P. 49. Ch. 82. 85. 157. 152. 182.

Whether the acceptance is absolute or conditional or partial is a question of law. 152. 182.

By an absolute acceptance the acceptor is bound to pay according to the tenor of the bill, by a conditional or partial one according to the tenor of the acceptance. P. 45. Dall. 42. 43. 764. 174.

Acceptances is binding in favor of a 3rd person (a payee indorsed) without consideration money to the acceptor, that fact known to the holder. P. 43. Ch. 950 951-2. 82. 172. 187. 5 183. 4 do 339. Ch. 118. 132. Miller. P. 83.

Hence acceptance by Sec. 1. on account of debt due from leg. or an admission of debt will subject him personally if there are no facts. Ch. 82. 3. 111.
ills of Exchange &c.

This obligation is irrecoverable & can not in general be discharged except by payment or an express waiver. Ch. 13. 38. 124. 2 B. 457. No of endorsement by Executor p. 69. Ch. 132.

If acceptance is in a foreign country by the laws of which it becomes invalid, Ch. 46. of no force here. Ch. 3. Case before of acceptance at leg. home p. 30. Ch. 59. 66. 68. 89. 118. 119. Bk. 88. Bk. 47.

May be waived or released by the Holder without a writing by mere record of such Ch. 83. 144. 197. Bk. 247. Bk. 49. "Contract".

And it has been said that what amounts to an express or agreement to discharge the same is a question for the jury. Ch. 83. Bk. 247. or 236.

Judge. For since handed that in fact nothing but an express consent would amount to a discharge by the holder (p. 46) no indulgence or delay is converted into a discharge. Ch. 86. Bk. 454. 47. Bk. 159.

A supply released by Holder to drawer, after the bill drawn, but before acceptance, is no discharge.
of the subsequent acceptance. For he was not liable at the time of the release. Ch. 84 - 57. 58. 518, 519, 520, 571.

An agreement to consider the acceptance as an end, was held to be binding. So a mere change in the payee's name to acceptor that the business was settled with the drawer & that he need not trouble himself with further decisions to amounts of the acceptance. Ch. 66, 251, 7, or 248. (Is this view upon an accommodation bill?) Does that make any difference?

So an entry in 47 is to effect "It's acceptance annulled." Dug 232.

It has been doubted whether receiving part from the drawer & taking his promise on the back for the residue at an enlarged time will discharge acceptor. Ch. 84, 156, 7. Es, p. 3, 34, 248. I think I think not. No case for waiver of no injury to acceptor, he being first liable. 4 Wil. 262. 15 East 57.

It has been determined that an alteration of a partial into an absolute acceptance won't be refused to pay. An alteration restoring it to its original form does not discharge the partial acceptance. 32. Ch. 85. Dug 222, 223. 4 Wil. 331. 491.
Title of Exchange

If holder agree not to sue acceptor if the latter will make affidavit that the acceptance is forged & does make it to bearer to it; acceptor is discharged the the affidavit is false Ch 85. Case 187. 16th 178. Bagby 458. For the condition of the warrant is complied with.

Where a future consent is given to acceptor is the prospect of profit on it are the consideration of acceptance, the holder's agreement to take the bill of lading from the acceptor discharges him. (p. 48) Ch 85.

So a conditional or partial acceptance is discharged by a formal notice of non-acceptance (p. 46. Ch 12.5. 172 182.) or notice as of an absolute refusal to accept. It is then treated as no acceptance.

Holding that if a drawer by acceptance makes the money payable at a Banker's to it; not near a limited time for payment, the acceptor is discharged, if he would sustain damage by holder delivering the Banker afterwards, pays. (p. 42. 82. Ch 85. 6. 2 Stew 1195. Bagby 78. It is.

The act of acceptance (when the terms of it import nothing to the contrary) implies that acceptor has effects of drawer. Hyde 156. Beam 457. 1705, 182. Pal 130. 12th Ray 88. Ch 191. 203. 205. If the drawer is compelled to pay he may ven. remedy in acceptance. Hyde 156. 1705 185.
Bills of Exchange.

If indorse acceptor has no effect of drawer & yet pays the bill he has his remedy on the drawer p. 33. 92. 93. 185. 110. Nya 136. Ch. 13. 41. 220. 205.

But as to all other parties (as the indorser) the acceptor is considered the original debtor & finally liable Nya 136. Sal 127. 131. 128. Ch. 187. 140. even tho' he has no effect of drawer.

If holder makes acceptor his executor and dies the latter is at law discharged p. 98. Ch. 131. 186. 192.

Nonda 184. 845. Sal 289. 286. 511. 12. 316. 10. For the right of duty are united in one person. Dow. Ch. 3.

In this case the other parties (as the drawer &c.) are also of course discharged at law their obligation being secondary to the primary one being discharged the secondary one is relieved.

Non acceptance is a refusal or omission to comply with the request contained in the bill.

Presentment for acceptance necessary only in case of a bill payable at a fixed time after sight p. 33.

But if in that or any other case presentment for acceptance is made and acceptance is wholly refused or offered only conditionally or partially notice must be given to the prior parties or they will in person be discharged. p. 44. 59. 60. 90. 102. Ch. 54.
Bills of Exchange.

Formerly held, that a prior party (as drawer or indorser) insisting on want of notice of non-acceptance must prove damage sustained by the omission.

Formerly held, that a prior party (as drawer or indorser) insisting on want of notice of non-acceptance must prove damage sustained by the omission.

Now settled, continue. Drawer is presumed (so far as regards the question of damage in the case) to have had effect in drawer's hands, & indeed to have given value. Ergo, holder must prove prior party (who left) has not sustained damage by the omission of prior affording such an inference, in order to subject the latter. 32. 82. 111. Ch 87, 205, 132, 3, 174. 408. 409. 171. 45. 2 184. 612. 19. 317. 89 129. 102. 141. 205-25.

Thus, if from date to the time of payment drawer had no effect in drawer's hands, he is prima facie not entitled to notice. Presumed that he has sustained no injury prior want of notice p. 32. 182. 35. Ch 87, 205, 112, 305. 712. 2 127. 111. 131. 101. 103. 332. 2 61. 57. 3 158.

But if he had effect, the fact that he has sustained no actual damage by want of notice, does not dispense with the necessity of it. 3 82. 183. 120 333. 7 132. 357. 18 357. 89 129. 102. 152. 517. 37. 259.
To it has been resolved, that the payee of a promissory note incurs no. with a knowledge of makers, involving the having been originally or continuing insolvent at the day of payment, cannot depend on the ground of want of notice of non-payment by maker. The indorsers liability being regarded as virtually primary. Ch. 87, 8, 2 F. & C. 326, 178, 410, 180, 322, 313 2. 2 C2nns, 342, T. & C 303 n. -
Combe & Cranche 161. - N. U. off. 52. 1 Carn. 126, 276. SC. 979, 13 East-157, 7 de 559, diff. but not contem. p. 35.

The indorser has effect in drawer's hands, yet if drawer sees none he (drawer) cannot avoid himself of want of notice. Ch. 85, 15th 517.

Securities lodged by drawer with drawer or acceptor, for the purpose of raising money, but on which none has been raised, are not such effects, as enable drawer to demand for want of notice. Ch. 55, 15th 516. No indebtedness.

But if drawer had effect 2e at the time of drawing the bill, no subsequent occurrence will dispense with the necessity of notice - the notice might not be of any use. Ex. death, insolvency, bankruptcy, or unknown insolvency of drawer. Ch. 85, 15th 141, Long 497, 375. 2 F. & C. 62, 7 East 559, 15th 334. - Hy. 131.

Drawer's liability not considered primary.

To obviate (i.e. he cannot be subjected without notice) if a valuable consideration paid, free from him at the time of taking the bill. Ch. 88.
Drain's having informed the drawee beforehand (or before 533) that he could not honor it is no excuse for omitting notice. Ch 59. 89. 134. 262-3. 26 556. 57. 58. 332. 260 515. 3 582 239. 1 50 405. 7 2. 255. 2 62 514. 89. 3 60 1005. 82. 3 582 1355. 59. 657. 222.

Drain's having no effect in drawee's hands affords a presumption that the former has sustained no injury by the want of notice. But this presumption, it is said may be rebutted by proof of actual injury. Ch 57. 59. 60. 50 7 13. 10 7 14. 598. 229.

If drawn or indorsed in a bankrupt at the time of drawee's refusing to accept or pay notice to him of the refusal is unnecessary. Civi l존. Ch 59. 3 35. 1. (Costs 1 183. 598. 229.) But notice about a be given to him of injury if known but notice to him is not notice to them.

So if drawn or indorsed. For holder is not bound to search for him. p 512. Ch 59. 2 60 514.

So reply of reasonable notice is excused by death or sudden illness of the holder if given a soon as possible afterwards. Ch 57. 598. 144.

If drain make a conditional acceptance the time of which are complied with by holder no notice to the other party is necessary. p 44. 56. Ch 59. 50. 101. Day 71. For it becomes ipso facto absolute. Or if pay of holder will engage to indemnify (54) the draw, engage to indemnify (Suppose these compliance to take place at a subsequent time. p 61. Ch 101.)
Dile of Exchange 12.

If drawee acceptor for post only, the prior parties are bound to the extent of the acceptance without notice, for to the extent, the acceptance is absolute post. Ch. 90. Sec. 2, to the residue, as to that the bill is exchanged. They are not liable without notice - Ch. 90.

Mode of giving Notice.

The manner of giving notice that a bill is dishonored is different in the case of foreign and in the case of an inland bill. Ch. 90. Art. 4. In the latter no particular form is necessary. Art. 116, \( x + 122 \). In case of foreign bill, when ever notice is necessary, a protest must be made. Proz. Ch. 90. Art. 126. Art. 14. L. Ray, 99. 6 W. 8. 1 Sal. 161. Bull. 271. 2 Tr. 715. 5 239.

Not supplie by oath of witnesses Ch. 91.

That being the conventional mode of proof established by public commercial law, it the only mode recognized by the law.

The protest is in writing to be made by a notary public Ch. 90. Art. 91. Show 164. The being an officer recognized by the law of all civilized states. The office is by institution of public law.

After refusal presentment is to be made to the notary public. If the drawee still refuses, the bill is to be noted for non acceptance. A formal declaration is then to be drawn on the bill if to be had if not-
Bills of Exchange.

on a copy p. 80. as where the original bill is lost called the Protest. Ch. 90. 1. Tyd. 136.

Full credit is given to the protest in all foreign courts p. 109. Ch. 91. Mol. 291. Skin 172.

Noting is only preliminary to protest and does not supply the place of it. Ch. 91. 271 713. 4. 175. Bull. 271 Tyd. 137.

Protest must be made by notary himself not by his clerk. Ch. 91. 471 175. Tyd. 137.

If however a notary cannot be obtained the bill may be protested in Eng. by any substantial person of the place (where it is hended) in the presence of two or more witnesses p. 36. Ch. 91 in the regular hour of business or at least between four and ten o'clock. p. 7. Ch. 91. Tyd. 137. 143. Ch. 95. Some Tyd. 144. must conform to the custom of the place where made. Ch. 92. 139. 161. Both pl. 155.

To be made in full where the bill is dishonored but if the bill is directed to one at A requesting payment to one at B. the protest may be made at either place Ch. 92. Map. 107.

A copy of the bill is prefixed to the protest Ch. 92. Both pl. 155.
Bills of Exchange to.

But a copy of the protest need not accompany the notice of a non acceptance. The notice of a protest must be given. Ch. 92. b. 2. 1765, p. 52.
2. Chap. 511. 12. 1801. p. 58. 1803. p. 45. See also
p. 155. That a copy of protest is to be sent.

Not necessary to send the protested bill Ch. 88. b. 7. 120.

Inland. Upon non acceptance of an inland bill, no protest is necessary to subject the prior parties, any act or omission drawn or refused, to a non acceptance. Ch. 93. b. 80. 1. Sol 181. 3. 59. 2. Rec. 99. 27. 3. 49. And such refusal may be proved like any ordinary fact – no prescribed form of proof.

Said (175. 169.) that the notice must express held.
* don't intention not to give credit to drawer.

As in Ch. 93. 7. 8.

At C.L. an inland bill could not be protested. But by Stat 93+4 same protest is required in a certain case, for the purpose of entitling holder to costs, interest & damages. p. 26. 80. 91. Ch. 93-4. 15th of
p. 143-4. By whom made Ch. 94. 15th 150.

But notice of non acceptance must be given in case of an Inland, as in case of a foreign bill Ch. 95. 15th 150.

In the case both of foreign & inland bills, notice
When no mail reaching by the first direct and ordinary conveyance is due, the there may be an earlier accidental conveyance. Ch 95. 2 N. B. 565.

It seem that in the last case of foreign bills, protest must be made in the usual form of bills, on the day of refusal p. 55. Ch. 93. 162. 455. N. 174. 2 N. B. 745. 4. Mars 112. 2. Eq. Rule 271. Ch. 95-6.

Delay excused by inevitable accident, as sickness, robbery, or some such cause. p. 36. Ch. 93. 266. 144.

Notice of non-acceptance (in case of foreign bills) protest must be sent within a reasonable time (p. 10. 36. 57) to the parties to whom the holder is to resort. Ch. 96. 7. 2 N. B. 567. Rule 271. Thy. 267. Whether it was sent within a reasonable time is a question compounded of Law and fact to be left to the Jury under the direction of the Court 6 East 3. Camp 248. 8 John, 177.

It should be given on the day of non-acceptance if there is one that day any post or ordinary conveyance ance. If not by the next ordinary conveyance p. 55. 91- Ch. 96-7. 153. 455. 174. 1. 168. 2. 20. N. B. 743. 2. P. B. 84. 2. N. B. 565. Thy. 336. 12. 9. 177. 1. 589. Within
Bills of Exchange x.

two months was formerly held by suff. Ch. 98.
Nov. 27. 1715. Oct. 152. 1512. 301.

If such prior party reside in the place wherein acceptance is refused, notice should be given in
receipts on the day of refusal to parties as a distance
by the same day's post if any Ch. 97. 1512. 514.

It has been held that notice required must come
from the holder 1512. 1514. 1521. Ruled contrary
by 1512. 1793. that notice by 1512. more is suff.
Ch. 98.

Sent. notice by one party having a right of action
on the bill may hinder to the benefit of the other
parties, who may have claims upon these standing
before them to make further notice unnecessary.
Ch. 98. 1512. 514. 1521. Ch. 98. 1512. 514.

It is expedient however for each party, after the
drawer to give notice for himself.

Notice (when necessary at all) to be given to
all the prior parties to whom the holder intends in
any event to resort for payment. p. 51. Ch. 62. 98. 7.
31. 51. 2470. 1712. 712. 714. 51. 45.
this does not dispense with the necessity of notice to
any indorser to whom the holder resort, Ch. 49, 1 P. 172.
Pea 202, 3 Dall. 175, Pea 49, 221.

Want of notice to the drawer is no defense to indorse
(See formerly thought otherwise 2d Ray 443, Sal 123, 3
p 124, 40, Ch. 49, 223, 2 Burr 469, 15 S. 334, Indorsing (60)
is equivalent to drawing a new bill.

The consequence of neglect to give notice of non ac-
ceptance of which see p 57 may be waived or avoid-
ed by mature ex post facto Ch. 102, 2.

Thus, payment of part by prior party amount to a
waiver of the obligation arising from want of reasonable
notice & admit his liability - Ch. 102, 132, 3, 158, 202, 3
Sw. 124, 125, 715, Rule 276, Penk 202, 180, 57.

So a promise to pay the whole (311) even if has been
held if a promise was made without knowledge of
the fact of non acceptance - Ch. 102, Burr 2674, 25,
672, 712, 257, (35), argues, undue promise.

But this doctrine appears to have been overruled
resolved that such promise implies an admission
that due notice has been given to support an aver-
ment of it in the declaration - 1 S. 334, 2d East.
231-6, 3d 185, 326, 2 East 469.

And it has been held even by S. Strong on that a pro-
Bills of Exchange.

...nixed by a prior party without knowledge of the
legal consequences of Holder's neglect does bind.

At the time the Holder gave further time to the
acceptor of the draft was notified of the fact, but
still promised to pay. Ch 102. 352. 181. 158. [Ed. 7. 2. Duy
457. 657]. It can not be Law. See 2 S. 454. 469. That
the party's ignorance of his legal rights entitles
...validate his promise.

Decided in the same case that Brance having
paid the Bill under such promise, may recover
back the amount from the Holder. Ch 102. 352. 206
the action lie?

In case of conditional acceptance want of notice
is cured by 'completion' (performance) of the con-
For the acceptance or them become, eventually, abs-
olute. p. 45. Ch 80-1. 112-11. Standard 74. Comp 571
1502. 182.

When a foreign Bill is protested for non accep-
tance, it may be accepted supra protect. p 123. 91.

(62) The Brance may thus himself accept for the honor

This is the usual course when the Bill is drawn on
account of third person at the drafter's urging.
to accept in his account, is willing to accept for the account of honor of the drawer. Ch. 103. 747. 157. 159. 159. 197. 199. So if unwilling to accept on drawer's account, he may do it for the honor given to the drawer in which case he should immediately send the protest to indorser. Ch. 103. 747. 157. 159. 197. 199.

This mode of acceptance operates to rebut the presumption (arising from simple acceptance) that the acceptor has effect of the drawer in his hand. 

The effect of such an acceptance there is, to give the acceptor a right of indemnity on the bill, of the party for whose honor it is drawn on all the parties before him. To induce a simple acceptance according to the latter, he, no right except as drawer or him on which account the bill is drawn. P. 115. 117. 129. 210. 747. 157. 159. 197. 199. On the latter, it gives no right of action on the bill. Such acceptance thereby reverses the obligation on the bill, a between such acceptor & the party for whose honor it is drawn, & imposes an obligation in favor of such acceptor & any of the indorsers in favor of such parties.

If drawer refuses to accept at all any other person may accept for the honor of the drawer &c. 129. Ch. 104. 747. 157. 159. 197. 199. Ch. 104. 747. 157. 159. 197. 199.

Acceptance for the honor of the "bill" is the same as for the honor of drawer. 747. 157. Ch. 104. 747. 157. 159. 197. 199.
And a bill previously accepted b prima facie, when offered by a responsible person (it being under protest not affecting him), unless he has such order from the party remote it being not to receive such acceptance. Ch. 104.

But this seems not to be law. Holder must not receive such acceptance in any case. Ch. 104.

18. Nov. 440, Styl. 154. If the drawer refuses to accept (according to the tenor) holder's right of action upon the prior parties is complete, in his refusing any other acceptance.

If after acceptance, b prima facie, to the drawer it is willing to accept the acceptor b prima facie, may with the consent of the holder perform it, (not without) the acceptor b prima facie will be as charged. Styl. 154. Sec. 457.

Holder should have the bill protested before he receive an acceptance for the honor of a party, p. 70. Sec. 5, the later drawee may object that the person accepting is not the one drawn upon, Chir. 105.

As to the mode of accepting b prima facie, the acceptor appears before a Notary Public with witnesses and declares that he accepts the pro-
Acceptance supra protest is as binding on acceptor as if no protest at all. Irrelevant to the holder on whose order it was accepted. Ch. 105. Sec. 112. 45. 2. 7. 575.


The liability of an acceptor supra protest to the holder and indorsers is the same as that of the party for whose honor the protest is accepted for the honor of the bill, or of the drawer he is liable to all the indorsers, as well as the holder, to all the parties subsequent to the drawer. Ch. 105. 1869. 113. 575. Sec. 45. For as to them he assumes the responsibility to which the protest subjected the drawer.

If the acceptor in honor of a particular indorser he is liable to all subsequent indorsers, or drawer. 575. Sec. 45. Ch. 105. For the extent of his liability is no greater than that of the party for whose honor he accepts.

N. B. On the other hand, the acceptor for the honor of a particular party acquires (by payment) a, or other parties, the same right as the party for whose honor to would have thus acquired, the same right so that party as the subsequent parties would have had in case of non-acceptances.
Each acceptor therefore has a right of indemnity to the party for whose honor it was all the prior parties, if he sustains damage may have his remedy by actions on the Bills. 162. 39. Ch. 133. p. 172. 1364. 47. 17. 264. Ch. 115. 18. 19. 119. Ch. 137. 18. 3. 155. 155. For a, to those parties he is, in the character of an Indorsee.

If then he accept for the honor of the drawer the latter only is bound to indemnify him. The indorsee is liable. The acceptor for drawer only by course can acquire no other rights no other, than those had. Ch. 106. 163-4. Tyde 155. Peak 457.

If for honor of Indorsee the acceptor's claim for indemnity exists against that Indorsee against all prior Indorsee as well as the drawer, but not with subsequent Indorsee for he acquires only the same right as the Indorsee for whose honor he had. Ch. 122. 194. Beane, 454. p. 25. Tyde 155. Pitt. p. 111-2. 112. 16. Ch. 116.

Of Transfer.

Bills payable to A or order, on the order of A, to A orBearer, or toBearer, are transferable, is negotiable in infinitum. p. 3, 25. Ch. 107. 147. 8. Tyde 155. 3. 115. 211. 29. 4, 17. Sun 157. 27.

So of Bills payable to fictitious Payees, or order to, or such parties as knew the payee to be fictitious. Ch. 109, 373. 109. 1 W. 2 Bl. 569. (p. 25)

When a Bill is not negotiable a transfer will have no effect upon the party making it, as it would if negotiable. 35. 33. 77. Ch. 51. 109. 22. Tal. 125. 7. 133. Thir. 412. 1 Tal. 303. 2 Be 492. Vol. 117. Dan. 1226.

Whether a Bill is negotiable or not is a question of law for the court, except in new cases - in such evidence of the custom may be used. 51. 41. Ch. 109. 28. Dan. 1219. 10 El. 295. L. Roy. 352. 2. Ca. 

In part a valid transfer can be made only by the payee, or other person having the legal interest in the bill. Hence the indorsement by another (even of the same name as payee) does not transfer the right. Ch. 110. 121. 2. 120. 28. 17 El. 587. In the first instance when payable to order it can be indorsed only by payee. But if a transfer is made, that indorsement will bind him as a guarantor. Ch. 131. 2.

Same rule holds of a Bill transferable by mere delivery (p. 772) as a Bill payable to Heavener, or payable to order, & indorsed in blank; if the person receiving it, knowing that the person transferring, has no right to transfer it, sees of a bona fide receiver for valuable consideration. Ch. 21. 24. 51. 201. g. 7. 1427. Rex. 102. 13 El. 485. L. Roy. 111. or 138. 2. 38. 738. g. 2. Dan. 452.

Then if a Bill is lost or stolen & finder or thief transfers it to a 3rd party, having no knowledge of the fraud, the holder...
can recover on it - as, in the case in regard to Bank
Bills of exchange

Bills as to Bills, transferable by Indorsement. — A
Bill payable toBearer — or to order if indorsed in
Blank is thenceforth transferable by mere delivery.

If some bill being payable to Holder remains, the right
of transfer is in his husband. Ch. 140, Siva. 516. 30th Feb,
1823. Pla 20. 96. 86. Mod. 22. 249. Fig. 10.

If payee or Holder becomes bankrupt the right of
transfer vests in person in the bankruptcy from the
time of the act of bankruptcy committed. Ch. 114,
Banks. 464. 27th Dec. 335. Fig. 107.

This is, according to the Eng. Bankruptcy Laws. But
according to our Insolvent Laws, the interest of the
Bankruptcy paper, only by his own voluntary act
The to the above rule 3 Will. 1. 2 Siva. 1260. 29 Domic. 1225.
1792. 487. 1st Dec. 622.

But if he has, before delivered the bill, omitted to in-
voice it, he may do it after bankruptcy. Ch. 111. 14850.

On the death of the Holder, the right of transfer devolves
upon his exec. or Adm. 247. 31. Ch. 111. 112. 7th Dec. 1261. 2 Siva
1249. 20th Dec. 157. 1792. 487. 1st Dec. 622. 2 Domic. 1225. Fig. 117.

If a bill is made or transferred to two or more the
interest or right of transfer is, in all of them collectively
not in one. But the interest or right (if they are
in partnership) may be transferred by the act of one.
Bills of Exchange etc.

5.18-7. Ch 18, 9, 112. Long 653. Hyde 106. But the one alone of the parties may indorse this bill, the indorsement must be in the name of all or in the name of the person to transfer the interest.

If payable to A for the use of B the right of transfer is at law in A only. The certain que trust has only an equitable interest. Ch 18, 25, 56, 85. Ch 112, 149. Carth 5. 2 Vent 207-9. 2064. Hyde 107-8. 2 Show 509.

If a Bill is indorsed to an infant the indorsee, to another the latter may recover of all the prior parties except the infant. Hyde 102. 466, 467. Therefore the infant, act of drawing or indorsing is only voidable. Else if void prior indorsers would not be liable. It would be a legal non-entity.

So infant note to pay premium of insurance is a sufficient consideration to bind insurer to his contract. The also clears infant and to be only voidable. If void then insurer would not be bound.

Bills are usually assigned after acceptance before the time of payment. Ch 112. This however is not always the case. Often done before acceptance. If the responsibility of drawer is unquestioned.

But a transfer may be made (or called the operative act of transfer done) before the bill is drawn at all. Ex. Indorsing a blank paper delivering it to Ch 112, 113. Long 496. 514, 178 DC 313-6-9, Hyde 89.

If it indorse a blank paper delivers it to B in which case B may draw a Bill payable to himself or
Bills of Exchange &c.

of or order. i make it transferable. such a bill (name indorsed in blank) is an indefinable letter of credit.

But where one's name is written in blank and, often without authority, draws a bill on it, he cannot recover on it - this a bona fide indorsee.

A valid transfer may be made after the time of presentation for payment - Ch. 115, 16, 163, 177, 430.

3rd. 5th, 8th, 9th, 15th.

But such transfer affords no ground for suspending the holder: the subject to the equity to which it was subject between the prior parties, if he has known the character of such equity, or perhaps if he has, edid. p. 78.

Ch. 113, 14, 52; 163, 293. 39. 83. 714. 223. 1720, 230. 1275.

571. 1712. 430. 319bar. 1516.

But the party who transfers a bill after it is due, can avail himself of such suspension as to a 3rd person who becomes the holder for valuable consideration, for the irregular transfer is the act of defendant being.

Ch. 114, 15, 75, 423, 430.

But an Indorsement after payment binds, as other party than the one making it - p. 78. Thus, when after payment by drawer, the bill was indorsed, it was resolved that the holder could not recover vs. acceptor.

(vice versa) Ch. 115, 76, 1720, 540, 1191, 46, 456, 470, 1761.

Ch. 184, 185, 187, 2.

This happens a payment made as the approriate, or at a subsequent time to the party made previous to its becoming due, then it is, indorsed in
the due course of business. So then the acceptor alone takes up the Bill, else he may be justly subjected to an
other payment.

A Bill paid in part may be indorsed over for the

The mode of transfer is governed by the legal operation of
the Instrument. So also by the terms of it.

The very legal operation of this form are the same.
Ex. Bill payable to fictitious person or order (p. 25)
Ch. 115. 16. 21d. 66. 605. is transferable, as one payable to bearer.
When transferred as all-

A Bill payable to A or Bearer, to Bearer, or to B, endorsed and
indorsed in blank, may be transferred either
by instrument or by mere delivery. p. 3. 25. 68. Ch. 115.

But a Bill payable to A or order, to the order of A or his assigns, or to the bearer's order, is not transferable in the first instance except by indorsement.

A Bill payable to A or Bearer is transferable by bare
delivery. So is one payable to order if indorsed in
blank by payee or any indorsee. But in the later
case the legal interest can not pass at all without-
an indorsement in full by payee, yet cannot be
negotiated without an indorsement by the indorsee.
But a blank indorsement by payee, or any other
subsequent indorsee renders the bill negotiable by
mere delivery. Ch 118. Ayl 611, or 633. 439-446. Hyde 89.
205-6. Ayl 155. 156 152 132.

No formal word, necessary to a valid indorsement.
But that the indorser's name be written on the
back, or any other part, by himself or agent. Ch 116.
Com 2 310.

Payee's writing a number on the Bill is not an
indorsement. Ch 116. 552 571.

Indorsement may be in blank, in full, or refer-
restrictive. Ch 117.

Indorsement in blank consists merely in writing
the indorser's name with nothing over it.
This is the most common mode. Ch 117. Hyde 89.

Such an indorsement does not purport to transfer the in-
continued in the bill; but it gives, holder, the power of
constituting himself the assignee by filling in an up to
himself. 62 "Pay the within to B", p. 175. Ch 117. 3126.
Ch 25. 55. Com R 311. This he may do at the time
of trial.

Holder may either fill this blank with an order
to pay herself, which constitutes him the indorsor, or with a receipt, which shows that he is only agent to the indorsor, 1 Pay. 95-6. 1 Sle. 125. 1 Show. 163. 2 Pay. 271. or with a power of 1 Sleig. 138 & 29.)

Hence while indorsement remains in blank, assent may be given in indorsor's name, cannot be objected to his interest is transferred to his name may be blanked out. Sec. 17-18. 1 Sle. 126. 8-30. 2 Boll. 275. 3 Pay. 275. 1 Sle. 138. 12 Sle. 149. 184. 1 Show. 163. 2 Sle. 1493.

Holder is a witness in such case, in favor for the bill 1 Pay. 95. 2 Pay. 271. 1 Sle. 149. Qn. If prove to be the owner?

A blank indorsement by payee makes the bill transferable by mere delivery (p. 168) for any one of the successive holders may fill the blank with an act of assignment to himself making himself the indorsor 1 Sle. 138. 3 Pay. 533 or 496. 39g. or 611. 1 Pay. 19. 205-6.

For can it's negotiability (the indorsement remains in blank) be sustained by any subsequent indorsement in full transferring the interest. For the Holder's (subsequent) may strike out the latter indorsement and fill up the former blank to himself at caprice. 173-4. 1 Sle. 18. 1720. 59. 201. Noll. 27b. 7 Pay. 209-6. 1 Sle. 181. 2. 131. 4 Sle. 210. 1 Sle. 225.

Sec. 1 of an indorsement not transferring the in- terest is, "to pay is for my use." - "my own account"
"as my agent," I for the interest remain in the indorse - this form of indorsing prevents it from referring to another, same rule (save) that the duty of indorsement transfers the interest, provided the prior indorsement is continued blank.


And if payee make indorsement in full a blank indorsement by indorsee will make it negotiable from him by delivering. Ch 118. 19. Page 158. 18th 182 221. (972)

But a bill payable to order is not negotiable by mere delivery unless indorsed in blank either by this payee or indorsee named 970. Ch 116. 7. No. 57. Page 88-9. 159. 190. 626. Long 621 - 632 - 617. or 589. And cannot be negotiated at all unless by an indorsement of some kinds by payee.

An indorsement in full is one expressing to whom it is made. Ex. pay the contents to A or order. Ch 118. Fig 89.

Such an indorsement contain in itself a transfer of the legal indorsement to person named in it. (Ch 115. Page 22-34.) and if he appears from the face to be only an agent of the indorsee.

An indorsement in full makes the bill further negotiable in the first instance, only by the indorsee's indorsement (972) tho' if he make a blank indorsement it is afterwards negotiable by mere delivery - it continues to while the indorsed.
Bills of Exchange x


The negotiability of a Bill originally negotiable cannot be restrained even by Payee, but by express words of restriction. The meaning of the words, "or order," does not restrain its subsequent negotiability. Conv A. 211. Chit 119, 120. 19th 297. 2 Dam 1814. Story 617 or 637. 15th 557.

And if Payee indorses in Blanket + it remains so, it can in no way be restrained by a subsequent indorsement. Tranferring the interest. pp. 4. ch 119.

Restrictive Indorsement.

A restrictive indorsement is one containing express words restraining the negotiability of the Bill. Ex. Pay 12. I only pay to A for my use. The contents must be credited to A. Story 617. or 637. Chit 119, 120. Rother 163. Mon 72. Conant 219. The effect is to stop the currency of the Bill.

The Payee or holder having the absolute power to vary thus limit to whatsoever he pleases, I thus stop its currency. Ex. Story 75. If it is to pay to A for my use I can not negotiate it, even by filling up a prior blank indorsement for it appears that he has no interest in it. Ch 119, 7 Dam 122. 19th 297. 18th 249. 18th 163. Rother 84, 90. 4th 18. 119. Story 617 or 637.

A transfer by indorsement is said cannot be made after acceptance. Lame for life than the whole amount remaining due.
Bill of Exchange

on the Bill. Thus if after the Bill has been accepted
the Holder indorses over one half of the interest to B.
this will not give B. a right of action in the Accept-
cor, unless it would subject the Acceptee to his
acceptee or more. whereas, by his implied contract,
be induced to subject himself to one only. Ch. 124.

But an indorsement for part would bind the In-
dorser - for it is his own voluntary act. § 62, 109.

But where a Bill is indorsed for part before acceptance
the Acceptee is liable to Indorse. The acceptance
in such case implies an engagement to pay the Bill
according to the Indorsement. Ch. 124. Deam, 266.

The Drawer it seems then can never be subjected by
such an indorsement. unless the indorsement was
made before the Bill was drawn. which is a very

But after payment of part of the amount the Bill
may be indorsed for the residue, for then the residue
in the whole that is due is an aggregate sum.
§ 69. Ch. 120-1. 260-6. 62. Salt 65. 2° Ray 380. The Ac-
ceptee will be bound for there is no two-fold obli-
gation imposed by the transfer

To complete the transfer the Bill must be delivered
To the Indorsee. § 37. Ch. 121. 61-115.
Bills of Exchange to

Operation of a Transfer.

The transfer of a bill by indorsement is a similar in legal effect to the making of a new bill to the indorser. It is, in almost every respect, a new drawer on the original drawer; the indorsee becomes the payee.

Ch 121. 53. 99 - 170. 1. 189. Sal 475. Salk 123. 3. 38.
2 Show 441. 95. 501. 2 Dum 674. 3. Salk 69.

On this principle it is, said, a promissory note indorsed may be declared upon a Bill of Exchange; it is essentially a Bill of Exchange; the indorsee being considered as the drawer; the maker of it, the acceptor.


Hence also the obligation to which the indorsement of a promissory note subjects the indorser in favor of the indorsee is the same as that of drawer to payee.

P. 33. Ch 122. Thus, if the maker's name is forged (P. 298) or if the note contains no word of transfer, the indorsee is liable to indorsee 2. Salk 122. Sal 125. 123.

Salk 478. 2d Day 185.

And this obligation may be discharged by indorsee neglect or otherwise, as may that of drawer to payee.

P. 46. 99. 60. Ch 122. 4. So by payment made to any other party, P. 59. 78. Ch 124. 115. 120. 89. 120. 146.

Transfer by bare delivery (it is, said by Chitty) is made for an antecedent debt; or for a debt created at the time, (a. for goods sold) indisputably, the party must...
Bill of Exchange &c.

...taking it in favor of his immediate Aesijnee to an obligation "similar" to that created by indorsement. Ch. 122. 3. 54. 200. 751. 54. 61. 52. 3. 48. 28. 13. 19. 22. 4. 48. 52. 1. 45. 90. 7. 1. or rather to leave the aseijner liable to pay the debt or the price of the goods if drawn a fail to pay the Bill (3. 12. 4.) how similar? The delivery of the Bill is not payment, but means of obtaining payment. Another essential difference is that a transfer by indorsement renders the indorsers liable to all subsequent bona fide holders. But a transfer by bare delivery subjects the Aseijner to liability in favor of the immediate Aseijnee only. See also Ch. 123. 13. 10. 202. 408. 519. 751. 3. 124. 13. 30. 18. 300. 1989 (distinction now exploded Ch. 131.)

Exception. If it is expressly agreed at the time that the Aseijnee shall take the Bill as payment of that he shall abide the risk of non-payment & not otherwise - Ch. 123. 4. 154. 751. 65. 6. Act. 151. Count 3. 130. - and a Receipt in full of its 60. g [such agreement] - Ch. 154.

If then the Aseijnee does, not assume the risk, & the Aesijnee fails to pay - the Aseijnee may recover of the Aseijner on the consideration of the Transfer ex. for the goods sold to. - Ch. 123. 131. 171. 85. 6. 28. 177. Ch. 180. 2. 48. 28. 3. 39. 90. - But not on the Bill. 90. - The Aseijner's name not being upon it - 15 East?

And in the name of the Aseijner (in case of a transfer by mere delivery) in suit on the Bill. He is not a party to the instrument. Ch. 123. 123. 3. 48. 76. Hence
Bills of Exchange or

There is no privity of contract between him & any subsequent Indorsee. Ergo no action lies on him except by his immediate Indorsee in supra. p. 33. 106.

Ch. 12. 29th June 328. Part 127. Dunn 1525. 13th 150. Eves 1600 March 3 1743

Again, The immediate Indorsee under such a transfer cannot be sued by the transferee if the transfer was on a discount by way of sale without his knowledge. If there has been no warranty or no misrepresentation it is then like the sale of any other article. p. 33. 66.

Ch. 12. 29th June 328. Part 127. Dunn 1525. 13th 150. Eves 1600

For in such case, there is no distinct ground of action, i.e. in the case of goods sold or a promise, del. Viz. Mr. Indorsee discharged by payment made by another party.

Ch. 115. 127. 128. 66. 178. 158.

Indorsee of a Bill is discharged by payment made by any prior party (supra.)

But a recovery of poss. of one of the parties to comm. on execution does not discharge the other parties. They all remain conditionally liable till the bill is paid.

So if the one taken in Exec. be discharged from a prior party by the Holder each part make a direct contract.

Ch. 124. 157. 182. 234. 1235. 432. 825. 24 May 69d. 7th 574.

Ch. 124. 157. 182. 234. 1235. 432. 825. 24 May 69d. 7th 574.

So if a discharge of one party under an act of insolvency (supra) 432. 825. For the liability of the legal prior parties to the holder, are in nature of several direct contracts.

If the Holder of a Bill transferable by delivery, loses it, or is robbed of it, it comes into the hands of one who is ignorant of the fact.
Bills of Exchange

On a good consideration, or before it is due, he may recover of the prior parties, possession in evidence of property in such cases. 568. Ch. 10. 24. 50. Dam. 45. 15. 16. 758. 427. 5° Ray. 75. 626. 3. 71-9. 618. 49. 617. 611. 63. 1. One of two innocent persons must suffer. 620. Their stands, the loss. Maxim is that "he by whose act or neglect or even misfortune the 3rd persons was unable to do the wrong by which one of 2 innocent persons must suffer, must bear the loss." Ch. 125. 274. 70.

But the thing or convenience can't recover, he can't hold as the loss.

If the holder of such a bill received it after it became payable, he is liable to be defeated by any equitable defect which existed between the prior parties, a, before explained, 58. 69. Ch. 158.

In such a case, if the diligence of the finder has not given a good consideration for it, but the diligence of having notice of the loss to pay it, he is not bound to pay the true owner. Ch. 125. 150-1. 452. 28. 116. 69.

But if the last bill is paid out of the usual course of business to holder, diligence (by simple mistake) may be compelled, it seems, to pay it again to loser. Ex Banker's check, paid to finder, the day before it bore date. Ch. 125. 150. 40. 157, or before due, the 151. Day, before due, will not discharge. Banker until made to the true owner. Ch. 158-1. or person legally entitled to the contents.

If a bill transferrable by indorsement only is transferred by a forged indorsement, the holder acquires no interest in it. Hence the original holder (is the true owner).
Bills of Exchange 

may recover of the drawer or acceptor the he should have parted it before to the holder under the forged instrument. p. 70. 50. Ch. 225. 46. 51. 4. 102. 23. 1 64. 60. 61. or 67.

By a rule of the Public Mercantile Law, if the drawer of a foreign bill (acceptor or not) loses it, when left with him to deliver it over to a proper person, he must give the holder (the true owner of the bill) his promissory note for the amount payable when the bill itself was payable. If he refuses, protest must be made for non-acceptance, & after wards, for non-payment. Drawer then becomes liable to an action. Ch. 128. 157. p. 168. 189. 12. 111. Bull 271.

As such rule at 4 Law. 8, to Ireland. Bills, 6427-8.

In all cases, if a Bill lost, if a new one cannot be obtained, protest may be made on a copy. p. 55. Ch. 89. 90. 128. 180. 183.

If I drawn abroad, (ie after acceptance I suppose) the holder may immediately protest the Bill for better security (if refused) he must give notice to the prior parties of the abandonment. p. 55. Ch. 128-9. 139. 743. 23. 111. 12. Steele, p. 22. 23. 26. 7. 29. (For if before acceptance there may be a protest for non-acceptance.)

This latter security is given by a 3rd Person engaging under the protest to be bound as principal for the payment. Ch. 129. Comp. 74. 75. Is 14. 15. 58. Mar 28. It is, therefore in nature of a second acceptance for the honor of the acceptor.
If the endorser is subjected by a subsequent party to compul- 
sion to pay, can he in a subsequent action against 
prior parties recover the cost of the former suit? Not 
on the special count, tho' he may be seen on the 
money count. 2 Th 27. 2 Pet. 235. a, money paid. 
I suppose p 97.

If holder has been drawee or acceptor & failed to st. 
claim date, fraction, can he in a subsequent action 
as endorser recover the cost of a former suit? It seems 
taken for granted in the following authorities that 
he can not p 99. 6 Tenmt 464. Th 35. 7 Th 480. 2 East 456. 
In - how is it a, as acceptor? p 56.

Prescription for Payment. The present rule is that 
the holder must present the Bill to drawer for pay- 
at the time when due, if the time is appointed, if not with 
in a reasonable time. And this he is to do whether the 
Bill has been accepted or not. x (p 34. 81. 109) Chit. 120. 1.202 
Park pl 129. 7 Th 581. 2 Barn 669. 1 Salk. 127. Stew 108. Sull 149. 
478. Hyde 120. 5. 206 Conn. 470.

x. The former distinction between pains for a prior 
debt or for a debt contracted at the time of giving the 
Bill (Ch. 131. Hyde 17. Salt 124. Deet 299. 12 Stew 203. 408) 
is now exploded See 182.

If he does not then duly present for payment the Bill, 
all remedies against prior parties. Chit. 170. 1. 2 Barn 69. 7 Th 581. 2 
1 Stew 155. Hyde 120. Sull 182.
The acceptor cannot himself excuse on the ground of delay in present for payment (or of an indulgence to any of the other parties) 147. 184. 183. 156-7. 156-8 48. See 235-247. If he is the first party liable he is no injury to blame. (Signore v. Biscoe)

It has been said that an action lies on the acceptor without presentment for payment. The action itself being a sufficient demand. Ch 133. Bayl. 1. 73 pr. 108 nr. 10 Nov 28.

But this proposition seems to be a very questionable one for 1st. it is a negotiable one he may not know who the holder is or where to find him to make tender. 2nd. is it enough reason why presentment should be made on negotiable indors in opposition to rule in regard to choses

In case of foreign Bills of the Court of Exchange has
altered (I am even after acceptance I suppose) the accep-
tor is to pay at the rate of it when the Bill falls due.

P. 89. Pinto p. 174.

If the acceptor engage to pay one or after demand
he may clearly insist on the want of presentment
Ch. 134. 2 Shaw 225.

If he appoints payee to be made by the person at a
banker's, he (as well as the other parties) is prima fac-
e entitled to insist on the want of presentment there.

Pero, if Banker is proved to have none of his effects, P. 80.
Ch. 134. 5 Shaw 115. Day 78.

Payment for presentment is to be made by the Holder
on his Agent - this facet per annum facit per se.
Ch. 134. 15 Shaw 115. 172 177. Bate & 179. 180. 2" Ray 743. Miller 286.

(being competent to give a legal acquittance) acts Chitt 134 -
if he must be bis join if but there is no suff. authority for
this see Chitt 157. 3" Ray 743 (190). it is sufficient to the because
Chitt 134. Pinto p. 129. not always.

For if he is not at the place named or if there is none
appointed, it is suff. (least) to present at his dwelling, or
at the place appointed whether he is present time or not.

2 Eliz. 3 172. 2 4 "p. 509 - 12 Mod 241. Amy P. March 37. 15th. A. P.
Chitt 134. 5. Mar. 104.
If the place appointed is the holder's own residence, there is no need of making an actual demand. If the acceptor is not there, it is said that inspecting his books is a suff. demand - what necessity for him going through this formality? Chit 135 - 2 27 Nov 369

If the acceptor has removed between the time of the drawing of the bill & that of payment, the holder should inquire for his new residence & make presentation there - p. 37, Chit 70, 135-6. Sib 1057, Day 6 58.

But if the acceptor has absconded (by which is meant eluding or concealing himself to evade creditors) no presentation is necessary.

If he has left the kingdom or state without absconding, presentation at his late residence is sufficient - Ch 131-6. 2 2nd Ray 734. 1826 2 511-12. Tyl 125-7.

No demand on the drawer is necessary to subject the indorser - p. 60, Ch 136. Sib 441 - 2 2nd Ray 493. 2 8 Nov 689 - (34)

Nor on a prior indorser to subject a subsequent one - Their liability being as to the holder co-ordinate.

If a note is not made payable at a particular place & the maker has a known residence within the state, demand must be made there to subject the indorser - & if he has removed out of the state a demand at former place is sufficient. 12 2nd 114.

But the time of payment be appointed in the instrument, it is not strictly payable at the time.
Bill of Exchange or

there being what are called days of grace. 42. 170. Ch. 12. 127. 146. Ann. 76. Poste. 170. A presentment for payment must be on the last day of grace.

When a Bill is payable on sight, or on demand, days of grace are not allowed because such Bills are subject to be drawn in favor of persons paying from place to place in order to prevent delay. Ch. 1-137-146. 1 John. 328. 2 Cairns. 345. 2 Cairns. A in Ch. 195. 4 Wall. 147. Saw. 251. 1 Show. 263. Poste. 12. 172. 198. Kyd. 10. 183. 395.

As to Bills payable at sight, authorities are divided as to whether Poste. 12. 195. 172. Pea. 256. 1 Show. 163. Kyd. 10. 183. Whether authority is that they will be allowed.

In such cases, to be presented to be presented within a reasonable time. p. 36. 37. Ch. 148. Poste. 581. 2 Show. 247.

The time of presentment when the Bill is made payable at a particular time after date, after sight, or allowance, depends on the appointment made in the instrument. Ch. 138. In these cases days of grace are allowed 42. 170. Ann. 76. Poste. 170. Ch. 125.

If a Bill is drawn at a place using one chronologic call style it payable on a day certain at a place using another. the time of payment is ascertained by the style of the latter place p. 36. Ch. 138. 195. 60. 64. 83. Poste. 135. 251. Show. 102. Kyd. 8. Ch. 103. Saw. 251.

If drawn payable at a certain time after date, or after sight or at distance, the day of the date in the first case and of presentment in the other is excluded. In other words, if payable such a time after date.
On or after the day of date, if that of presentment is excluded in the computation of time.

And if payable so many days after sight the day of presentment is excluded. 2° Reg. 20. Chit. 133. 143
172. 2112. Bowes, pl. 258 (Contr. Hailes 374 sub-law)
Sew. 1591. 70th pl. 13.15.

The law of the Case Law is different in other cases, as bonds, leases, &c. 2 Dent. 293. 10. 37a 623. 20
446. 5th Corp. 71. When time is to be computed from 'date' of an int. 5. Seems if from the 'day of the date' in the latter case the day is excluded.

But this distinction has been neglected to affect the apparent intention. For importance of this distinction see Corp. 417. Howell on Dow. 446.

If a bill payable at a time fixed after date has no date, the time is computed from the day on which it is tendered, exclusive. 3 Ch. 43. 1143. Day Cl 68. 2
Reg. 1756. 454. 337. Anti Dig. "Vat" 53. Bowes, pl. 93.

Days of grace allowed to the drawer are probably the same. The 40th of this month is originally from
2. D. 151-2. Chit 139. 143. 1526. 92. 9. 261. - Hyd 10-11-120. 5-

The number of days of grace is different in different places. In Eng. this Country it is three. In some

The number of days of grace is different in different places. In Eng. this Country it is three. In some

Some grace. In Eng. this Country it is three. In some
Hence if by the terms of the bill it is payable on Saturday the time of payment is extended by the days of peace till Thursday, ch. 130, or 140.

And the time of presentation is the last of the days of peace. If presentation before or after is a mere nullity, it will not hold prior parties, the notice
be, time fixed ch. 141, 156, 25.

Days of peace are computed according to the custom of the place where the bill is payable ch. 140.

So, to have Sunday, or holy days, are included in the usual computation of time ch. 140, 139.

Hence the last day of peace is Sunday (or in Eng. a great Holy day or Christmas). Demand should be made on the 2nd day if not then paid the bill is dishonored ch. 121. 2 Ray. 473. 125 & 829. Ty. 120.

On Promissory Notes, in Eng. 2 days of peace are allowed. In Court they are.

Warranty is the usual or customary time appointed by usage for the payment of foreign bills, as between the countries between which they are drawn. Ch. 141.

Foreign Bills are usually drawn in the way at one or more advances.

The length of the warranty is, diff. in diff. countries. Ch. 34. "Contract" 123. Ch. 141, in 30 days.
If a bill is payable at a month or months after date or sight - the computation is by calculation or linear months. Ch. 143. Bacon, pl. 253. Story 926. Purington to other instruments, in part. Ch. 112. 2 pl. 141. 6 pl. 224. 2 East. 333. If a bill is computed at a fixed time after sight, the time is computed from the day of acceptance (or present for non-acceptance) p. 335. Ch. 144. 6 pl. 212. One month. 87.

When no certain time of payment is expressed present - present - must be within a reasonable time - Ex. 2 when payable on demand. Or on sight p. 265. 51. 1 Ch. 146. 134. 7. 5 New York. 128. 910. 1795. 243. 106. 21. 168. Story 95. 2 pl. 515. 2 Story 926. 172. 183. (ante 31. 58.) a, to reason - able time in presenting or giving notice.

The time of presentment - being ascertained, presentment - must be within a reasonable time before the expiration of the day or in the usual hour of business p. 34. 88. Ch. 148. 69. Day 59. 67. 7 125.

For presentment for payment - the bill should not be left with drawer unless paid. If it is presentment's not considered or made till the money is asked for Ch. 149. New York 418. 910.

Payment should be made in person to only the owner of the bill or his agent - 8 Exo. If made to Payee after he has transferred it - it will not avail the party paying p. 78. Ch. 149. 60. pl. 126.

No to bills, transferable by delivery to Oct. Lee p. 78.
If pay able to A or order, for the use of B - payment should be made to A or his order. p. 68. 79. Ch. 112. 149
N. 147. 5. 2 Decr. 340. Ch. 113.

It's a rule laid down that when money is payable on a day certain, the party bound is answerable the last moment of the day to pay it in.

See "Nempeit." Ch. 152. 98. 7. 8 Decr. 287. 472. 173.
N. 121. 1. Nov. 1. 184.

This does not affect the rule in regards to Remittance, the acceptor is allowed the indulgence

Even as to foreign Bills, for as, the protest is to be made on the last day of grace the notice is to be sent by post one that day, the holder may insist on payment within the hours of business. p. 38. 58.

96. 7.

But in the case of Inland Bills, (as the reason of the last rule does not apply to them) it seems that the acceptor is indebted till the last moment of the day of payment. p. 90. 3. Ch. 139. 153. 162. 472. 170. Page 17.
N. 121. 43. 5. 174. But this is not. N. 121. 472 474.

If a Bill drawn here is pay able in a foreign coin, to try the foreign coin the value of which is after the time, reduced, it is to be paid according to its value at the time of drawing. p. 82. Ch. 154. 472. 172.
If the Holder compounds with the Acceptor without the consent of the other parties, they are discharged. For he deprives them of their remedy in acceptor. Ch. 155, 183. Code 35. 180, 176, 31. This they should be compelled to pay the residue of the amount. In Holder, as charged him whose liability is primary he discharges, whose whose liability is secondary.

Decide, he cannot claim beyond what he has agreed to accept. Seems if he only receives a dividend, the Acceptor being a bankrupt—ad valorem to the other parties, but he must give due notice of non-payment. Ch. 155.

This that if Holder receives of Acceptor life time the whole amount due in part satisfaction of demand without notice of prior parties they are discharged. Ch. 156. 30, Dec. 74. Nov. 715. Bull 273. Because it being our election to have the money of the accep tor.

But 24. The rule does not suppose the holder to discharge other parties. The other parties are not at all injured. It is all upon us their favor. A.Cum.

The also Bull 271-3-5. Nov. 68, 85. 6. (P. 49. 82) A.D. 156-160 714, 50 52, 104, 15.

Said to be doubtful whether a party bound can insist on a Receipt as a condition of pay. 28, A.C. 174-5. 30, Dec. 74. 274, Dec. 31, 10 Cent. 912. 45. 714.

No just reason for this doubt. A Creditor is never bound at Law to give a Receipt. 274, Dec. 31, Peak 174-180. 5, Dec. year 145.

A paid receipt involved 'a rec. paym. in full' not.
Bills of Exchange

meaning person is prima facie evidence that the

payment was made by the deceiver. Page 190, if paid
by drawer or endorser, then receipt should be for his
security in his name. Act 1878, 18, 249, Sect 25.

Monday, June 20th, 1831.

If payment is refused the holder must in due
immediate protest the bill if foreign or whether foreign
or inland give notice to the parties to whom he intends
to resort for payment. Act 1858, 202. If not, he de clare it
the first U.S. Law Journal is correct. But why is
prevention itself insufficient to protect the prior par-
te? 

In certain cases, under 85 of 64, 21, 5, Section 3, Bils may
be protested for the purpose of recovering interest or charges.
Section 65. Act 183-1.

For the rule relating to giving of notice to arrears
as to notice in the case of non-acceptance, Act 44, 51.
Section 16. For form of protest, see Act 1879.

If part only is paid, the bill is to be protested if
foreign for the evidence, a notice given in all cases as
a part when received or executed as in the case of non-
acceptance (whether foreign or inland). Act 186-16

The effect of protesting an inland bill under the Stat 9 of 10
of 75. III. is only to give the holder a cumulative remedy.
It is now necessary to protest inside a bill, notice written.
Bills of Exchange


But in case of an inland bill it seems that notice cannot be required in of course till the day following, as the acceptor is assessed the whole of the former day for payment. P. 88. Chit 147-153. 492 170. 10 Nov 2-9.

And where Bills of inland notice should be regularly given in hand (p. 93) on the day following that of non-payment, if there is a regular conveyance on that day, or the prior parties will in general be discharged. Chit 162. 3. 172 168. 9. Dec 773. 2 Dec 628. 857.

When a bill (foreign or inland) is dishonored payment must ensue protest, * may be made for the honor of the drawer or of any subsequent party. For the order in blank drawer may have accepted it afterwards


Is a protest made only in the case of an inland bill? Chit 103. 113. It is not so for the purpose of enrolling the holder to recover to this prior parties, the holder some to be to recover of person for whose honor.

But the drawer himself after having made a simple
Acceptance cannot pay for the honor of an Endorser. Being as to him already bound by his previous accept ance, since Ch 63. Dec. 1st 61. But as between himself and the Drawer, he may show that the acceptance was without consideration.

But if he has paid no effects of the Drawer he may, after simple acceptance pay for his honor & thus acquire a remedy on the Bill at his own time & in 42. 2d. 5th. P. 153. 5th. Caveel in Ch 139. 152 2d. 4th. Dec. 458.

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In this case he would have a remedy on the Bill without a protest (250.) the note upon the Bill - The effect of the protest is to rebut the presumption of his having effects. to shift the burden of proof & give a remedy on the Bill -

Generally, Payment for the honor of a party should not be made till after the protest of the Bill for non payment. Without this protest, payer acquires no right to recover on the Bill & any one. Ch 105. 6th. Dec. 6th 53. Mar 128.

But if the drawer having no effects of drawer pays without protest, he may recover against him as for money paid - P. 50. 62. Ch 163. 202. 5th. P. 85. 5th 6th.

But if the Acceptee for the honor of Drawer or Endorser has paid, his approbation of this acceptance he may legally pay without protest for non payment. For such approbation implies, an assumption that he had no ef -

But if the Acceptee for the honor of Drawer or Endorser has paid, his approbation of this acceptance he may legally pay without protest for non payment. For such approbation implies, an assumption that he had no ef -
Bills of Exchange.

These latter rules are predicated of Payment by
Drafter.

But a drawer to the may accept-anything also pay-
for the honor of a prior party: except protest -
But he never does it except under protest - for without
a protest he cannot subject any party to it.

A promissory Note, in nature of a Bill of Exchange.

A promissory Note is no bill. Laws, negotiable
are considered as Ireland, bills of exchange - the
in form they are different.

A promissory Note is a direct engagement - in writing
of payment, a promise of money to a person named in
it, or to bearer, or to order in

Wherever a bill of exchange is directed to a Bearer.
It is in nature of a bill of exchange drawn by one
man on himself. Ch. 165.

Held due to be not negotiable at Com. Law. the
enjoyed to be pay able to order or bearer. Ch. 164.
Not that promisor does not intend to make it non-
not negotiable, but because the law, if E. D., forces
less, in action being negotiable. They are regarded
not as instruments on which an action is lie,
but merely as written evidence of a promise from
a man to pay if the writing is such a case is
never declared upon. Indeed such a writing
is a promise to pay to A. at Com. L. the words...
Bills of Exchange

Order to be taken have no effect. 
July 25, 1874.
Bank 20.
$25.00
July 25, 1874.

Our Notes payable to order or bearer are now by
State 30 days after the date, putting a
land Bills of Exchange if they are converted
into instruments are made negotiable. (Statute
Repealed by 7 sincere) 
Oct 18, July 25 a (P 74)

An Instrument is a writing which itself creates a
right of action or discharge, one & away in, pleading
the discharge upon

In U.S. generally notes containing operative words
of transfer are by Statute made negotiable.

Hence rules relating to inland Bills of Exchange
are in general applicable to commercial Notes payable
to order or bearer. They are treated in every
particular except in presentment for acceptance
as the same. 

Now let us this formerly held some corner, that
days if grace are to be allowed on such notes
as an bill of Exchange. 

July 8, 1874.
Bank 25.

July 18, 1874.
Bills 274.
Derry 61-3.
Com 12
329.
7 478.
July 31-50.
On when payable said
a time after date 12.
if at right or on demand
it is due a. in regard to Bills of Exchange.
A promissory Note when endorsed precisely resembles a Bill of Exchange except in its issue term or pledge. The Indorser is the Drawer, Indorsee the Payee; the Maker the Acceptor. Ch. 121-70. 87-8. Bn. 171. 447. 125.

Hence it is said that a Promissory Note endorsed may be declared on (in nomine) as a Bill of Exchange. P. 10. 96. Chit. 121-171. 457. 149. 161. 19. 30. 2d. B. 743. Sal. 132-3. En. except a. of the Indorsee. But a. the Law Merchant is a most liberal code there appears to be very little question but that it may be declared upon as a Bill of Exchange to all parties liable.

Bank Notes are promissory Notes. But they are their own security. In particular State incorporating the Banks. In Eng. 1-5 1203. 2d. 68. 3d. Chit. 171-2. R. 445. 554. 601. 17. Sal. 283-

Not let us to be negotiable like the States of June A. 1707. 6 Nov. 293. 2d. B. 180. 3 Lev. 299.

But Bank Notes are for real, practical purposes treated as not a securities and evidences of debt (like in acting promissory Notes being payable on demand) Written payable to order or bearer. P. 10. Ch. 16. 7-8. B. 743. 744. B. 135. 392. 428. 151. 1707.

In promissory Notes payable by bare delivery but if indorsed they may be declared on the Bills of Exchange as indorses. Ch. 171. 2d. B. 743. Sal. 132-3. 472. 149.

In this respect they are governed by the same rules as Bills
Dills of Exchange on


Bank note, like bills in a little under the description of money or cash. But if not paid on due date and to the Bank, it is immediately liable to an action. Held as money, then treated as such in action — 9 Dec 437. 29 Dec 554. 26 Mar 335. Ch. 172.

But an action for money had and received will not lie as the former of these, unless he has received money for them — for they are not in legal tender. If he refuses to return he may be subjected to recovery — 123. Ch. 172. 6 Oct 99 — 26 Dec 528. 1289. 584. 5 June 257. 534 and 367 — Aug 47 — 17 Nov 219.

For a Bank Note, strictly a tender — if objected to at the time as not being money, but if tender and not objected to then the tender is good — 37 Dec 554. 109. 930. 318. 2 Dec 8 Oct 528. Long 682. 892. Ch. 172. 9 Dec 437. See "Tender" —

— 96 —

No particular form of words need operate as a promise in any note of any kind. If it contains a promise to pay money, it is sufficient. 519. Ch. 172.

The note is made payable to order it is negotiable. At this day the term promissory note signifies a negotiable note —

Hence a Note promising to account with 8 or 9.
Dills of Exchange 12

But the mere written acknowledgment of a debt without words amounting to a promise will not operate as a promissory note. See this memorandum. Do it is not considered as a promise to pay but prima facie evidence of a debt. It may be given in evidence in a suit in Scornship, Ch. 132, 18th 446. (This form was formerly used in Eng. to evade the Stamp duties. It is now considered as a common memorandum.)

Requirements to a good Promissory Note.

They are the same as those to a Bill of Exchange, & for the same reasons. It must be pay-able at a fixed time, not as a contingency, & in money, only, not in specific articles, not part in money & part in chattels. See 239, 73, 82. 4 Mo. 262, 133. 8 Ann. 372, Elia 181, 1271. Comb. 227. 47, 149, 70a, 243. 733. 5 T. L. 228, Dill 272. 206 1792. Bly & 53.

If any one of these requisities not payable, this is said that it may be declared upon as a note between the original parties. See 752, 242. Ch. 49. 53.

By the Act of Court, no action can be brought on a negotiable promissory note but within 6 years, after the right of action accrues. See in N.Y. 64.
The time the Maker is out of the State is not computed as a part.

Remedies on a Bill or Note. (Sufficed.)

Sufficed is the usual action on bills & notes - said to be the only remedy on the instrument. Where there is no privity between the parties. If there is privity, Bills will also lie. Hence Bills will not lie between the Drawer & Indorser in consideration as before. All is founded on legal indemnification. Ch. 179.

The Holder may in suit maintain Sufficed on one of the prior parties - usually on one Bill of Exchange. First, it is to be made if all, when & may sue any one alone, or each of them in a several action, &c. Ch. 179.

Thus, the action lies for Damage to Acceptee or Drawer for Dishonor or Insufficiency. Drawer take prior indorsers.

But the Assignee by delivery can maintain no action to any person whose name is not on the Bill. But he may recover as the Assignee the person from whom he received it on the consideration, that was on the Instrument. An action on the last will lie only to some one of those whose name is upon the Bill, Ch. 122. 7th, 1792. 2d Mo. 9, 18. 12 Mid. 244, 415, 521. Lib. 255. 57th. Ch. 122. 3d, 150. (Ante 77) See ante as to the obligating right of the several parties.

But the prior parties can not be joined for each has an
Bills of Exchange \\

independent liability.

If the drawee after accepting refuses to pay, the
drawee (if he has been compelled to pay) may main-
tain an action against him on the bill. 

Ch. 183 (Chitty says action will lie for non-acceptance. 
Totally incorrect. Ch. 141-203) Part III.

And in case any party having been compelled to pay
may maintain the action to any of the prior parties on the bill, 754, 571, 641, 150, and 80.

When a bill or note is transferred without indorse
for goods at the drawee may sue his immediate
indorsee on Am. money count.

And he is the acceptor for the accommodation of the
drawer has been obliged to pay the bill (as he maybe)
he may recover on the drawer or a true count
unless it was for the honor of the bill. If so, he may
recover on the bill. Anti 52. 12. 92. Ch. 180. 120. 1
203. Frye 156. 198. 178. 289.

* The term "for accommodation" signifies that the
party signs, accepts, or indorses without being under
any legal obligation to the other, but merely to
⽴ his name in order to enable the party to
raise money (or receive credit).

So it lies for a stranger being paid upon order
as the party for whose honor he or the prior
Bills of Exchange

PARTY

In such an action, the action will not lie on the Bill or
the party who became a party after the Holders. But a
party after the Holders. If I ceased to
rier, it. I could afterwards recover on A. Or I. Or I.
That rule cannot hold in favor of
the party or any of the parties before the

The action lies not in the party, from whom the Payee
immediately received the Bill, unless he paid a val-
eable consideration for it. Ante 8. 77. Ch. 9. 51
81-181-158. 7. 121-350. 871. Dury 5. 4. 120. 2. 185. 11. 304
190. 26, 137. 42. 44. 2. 8. Ante 8. 87. 47. 15.
But consideration is examinable only, as between
the parties, in immediate priority.-2 W. 1st 91, 92.
Consideration is examinable only, as between
the parties, in immediate priority.-2 W. 1st 91, 92.
2 Phill. 22. 12. 12 John. 52. 9. 36. 15. 44. 27. 85.

If the Holder make the Acceptor his defendant,
than the right of action to all the prior parties, is
being immediately, Ante 80. Ch. 131. Parte 191. 192.
And the primary liability being discharged, the secondary
must be. It is sufficient here the debt is clear.
Besides it destroys the claims of all the other parties
in the Acceptor.

(99)

Holden may at the same time commence an
action on each of the parties, who are liable
on the Bill, but, the solvent, by one suit,
discharge the others, is of all except the Co.

(99)
Dile of Exchange

But the rule admits of a diversity in one partition of the same case. If the action is brought in the name of a party or of all parties, or the Acceptor pays the whole amount of his own debt, he can be compelled to pay the costs of the other suit, for he is thereby liable to it as his joint debtor: and any one of the others can sue, etc. 4 T. 591. Snr 515. Chit 193. But this rule does not hold between the other parties. Lit. De mortuis nil obstat.

The English having recovered judgment in all cases, may have execution of the funds of all. But he cannot have more than one fieri faciens, etc. at the same time, while that remains operative. For he cannot have two fieri faciens. But if the first is returned nulla bona, he may then have another. 4 T. 595. Chit 183.

If after judgment two or more executions have been levied upon the property of the debtor, each creditor is entitled to a share of the assets.
The Declaration.

The action may be brought be founded either on the bill or on the considerateation of it, or the consideration while the drawee (the holder) gives for it. Be good title. Money paid at Chit 184234.245. Draw 223. 1516. 2817. Copy 132. Age 56. 177. 177. 372177.

In the latter case the drawee declares in the common count. But for money had & 260. Paid. Laid out on goods sold. Labor done. Pub. 165. 111. At 154. 372. 177. Sod. 124. For forms see Chit 232. 245. Count of both kinds are usually joined.

Formerly it was usual to allege the existence of the drawer in declaring a Bill of Exchange. Now, in cases where it is unnecessary even to refer to it, at 184 57 234. 14th May 21. 175. 83. 1542. Carter 88- 2 189. 270. Age 177. 9. 86. 3 177 226.

In declaring are premises it was usual to allege that the drawee became liable by virtue of the bill of exchange (the 185 245) that the declaration may not be supposed to be founded on the same. I do not see any utility for this form for the judge would have to refuse it as improper.

It is not necessary in a count upon the instrument to allege a consideration it being implied (ante 9 4512) prioned fiance by the instrument. At 9. 5 115 6. 185 9. Age 40. 62 8 457. 11487. 24 Aug 9 588.
Bills of Exchange.

No, it is necessary to make proof of the instrument, as the instrument not being in specially the having some of its qualities. Ch. 185. 151. 586. 457. 338. In practice however the C. will compel the B. to give a copy of the

If the B. is not. The take effect according to its force. It should be declared in according to its cause operation. Be payable at petition, payment or a due declared upon as payable to bearer (ante 23) 106. Ch. 45. 58. 185. 6-7. - Lord 147. E. Ch. 80. 372. 176 292. 381. (357) 174. 331. 576. 2. 262. 22.

To payers of a note be made payable to his own order may declare or he, make payable to him - help. I. And 25. Ch. 187. 2 Shev 8. Hyp. 108. Earth 413

For securing this usual in actions on bills to alleg a promise to pay, describing the B. - how the B. if he has became parties to it, & showing larger liability or sufficient without avering the promise. Ch. 186. 7. 236. Ch. 579. Shev 126. 34. - Hyp. 196. 2. Day 538. 17. 1. 4. 157.

The law raises the promise on the custom of land. & c. has been raised drawing a bill is equivalent to an express promise. (36).

Note. I. He says this rule is an anomaly, it is only useful but necessary in all other cases. This is a departure from the principles of pleading.

"By presumption not necessary this usual to state the fact) for "Qui facit facit iudicium facit iuris."

"
The drawee may declare to his immediate drawee, as one a 
order, in a Bill of Exchange, drawn by leg- 
the payee to himself until 76. Chir. 187-8. 12v. 190, 2 149, June 174. 2° Pay 742 (the may well 
the drawee, 149. Hold, to the name of the be 
drawee. Is it blank?) But this is not usual. 
The Order & the Indorser are generally stated 
as they are in fact.

In an action in Drawee or indorser. Off must 
the general allege presentation for pay. (In the 
case may be) presentation for acceptance, 
refusal, or refusal & also that regular notice was 
given — unless he shows that notice was, unnecessary. Anti 57. 2 3. 125 194. Chir. 188-9. 125, 24, 54. 158, 54. 1966: 5. June 1207. 1782 17 112. 17 45. alter the delivery of the bill after 20 
then 1252. 

In the Com. Court, the instrument (as between 
the parties, post 186) may be advanced as some 
evidence of the debt, including if's, which 8 or the 
defendant's able to rebut by appealing testimony 
(P. 740. 104) Chir 172-185, 92. 18. 76 624 2 25 723. 
176 68 12. The Bill being only prima facie evi- 
cence when they need.

There are frequently joined with a count on the 
Bill to & 12, according to enjoin Chir 159.
Acts of Exchange on

...they may be used alone to supply the place of a count as the instrument. This is seldom done unless the instrument is defective. Ch. 189, 203-4. 3 F. 174, 2 Show s. 01. For it is, abandoning better for worse evidence.

In these cases, also, the draft may go into evidence of the consideration; but they proved his case by

Ch. 189, 3 F. 174, 70, 241. 15 Ch. 245. 1 East 148. Bull 137

This is 719. For the Bank, recovering the original debt.

Ch. 189, 90, 186, 245.

In certain cases (ante 103) the instrument may be given as evidence in support of the money owing. Ex. an action by the payee on the drawer of a bill on maker of the note, it being evidence of the money owing. Ch. 190, 5 725. 1 Bay. 98.

10 Bay. 758. 3 Dim. 18; 16, 25. 6 T. 123-5. It formed part of the evidence. Ch. 191.

So as an action by Indorser by his immediate indorser. Ch. 190. Bay. 96; 1 Sam. 373.

Said that a bill or note is prima facie evidence of money paid by the holder to drawer or maker. Ch. 131. Bay. 96.

But it is paid to be prima facie evidence of money had and received by acceptor to the use of the holder as due. The former being presumed to have drawn a bill on money. Ch. 191. Bay. 96; 174 Ch. 239; 107, 26, 602.)
It is said that a Bill accepted is Eur. of money paid by the Holder to the use of the Acceptee. Denied by flere Ch. I. 171, 105, 602, page 95. Ch. 171. No action on privy between them.

Can a Drawer after being obliged to pay come to the Acceptee? Except in an action on the Bill? Said that he can not. Ch. 172, page 105. He can not in Eu. Support a money suit by the Bill. How is it not money paid for the use of Acceptee?

If a Drawer not having effect of Drawer's pay the Bill (even without protest) it is evidence of money paid. Laid out to pay the use of Drawer. The money receiver it in an action be paid to


The Drawer in the case if it was an acceptance without protest takes the “on us protesta” - Therefore he must prove that he was induced to Drawer for the presumption arising from protest. Without protest is that he was induced.

A Bill or note is prima facie evidence of money had and paid by Drawer or Maker to the use of Holder. Ch. 191, 173, 578, page 95. Ch. 205, 136, 332. pues 1516. 18, Eur. of money paid from Payee to the use of him whom Payee should appoint to receive it.
And it is held that acceptance is evidence of an
account stated by the acceptor with the holder.
Chit 191-2. 1760 Ch. 239. It prima facie ev.
That is, according to this Rule acceptance begins
voluntarily an account current rendered.

Evidence in Findings or Bills.

The evidence is proven by the Oath.
And in all other cases, necessary to prove what
is paid by issue or no more (Ch 199) is whatever
is essential to the right of action or this is to be ad-
mitted from former rules.

Under the Joint Issue there must prove every
material allegation Ch 200.
Hence he must prove that the Bill was made
in writing or that its legal operation was. So that
that proof becomes necessary to it as alleged (ante 101)
Ch 185. 5th 207. 18th 14-15. Contr. 505.being 667.336.176.
335. 133. 4th 471. 611. 15th 97.

As to Acceptors it must be proved that he ac-
cepted verbally or in writing (ante "acceptance"
Ch 201) and if accepted by Agent that he was
legally authorized ante 39 Ch 209. 24. 207. 15th
14. 15. If the acceptance was conditional
that the event on which he had taken place
ante 45. It is in Ch S. No. 212. Contr. 571.
Bills of Exchange to

As a written or authenticated draft or hand writing of that of his agent must in some way be proved. 29th Sept. 1803 - 1st Nov. 1803. Compulsory his signature is found 15th Oct. 1803.

Against a presumptive transfer of the draft by delivery only proof is necessary that he delivered the bill to P. on 6th Sept. 1803, 20th Oct. 1803. 1st Nov. 1803. 15th Nov. 1803. 20th Dec. 1803. 31st Dec. 1803. 20th Jan. 1804. This is sufficient the mere production of the instrument is enough evidence of the fact. 20th Jan. 1804. 1st Feb. 1804. 21st Feb. 1804. (This is sufficient the mere production of the instrument is sufficient evidence of the fact. 20th Jan. 1804. 1st Feb. 1804. 21st Feb. 1804.)

And under no peculiar circumstances, than the bill (not being original copy) or some instrument to which the bills refer. 20th Jan. 1804. 1st Feb. 1804. 21st Feb. 1804. 20th March 1804. 1st April 1804. 15th April 1804. 20th May 1804. 1st June 1804. 15th June 1804. 20th July 1804. 1st August 1804. 15th August 1804. 20th September 1804. 1st October 1804. 15th October 1804. 20th November 1804. 1st December 1804. 15th December 1804. 20th January 1805.
And if first indorsement is in full (the bile arey 103) pay able to order - a subsequent holder must prove also the indorsee's indorsement as well as the action by acceptor as to the party indorsing - Act 210 - 16 - b 59 - 174 - 19 - 3. Otherwise no title since 6 years in the Dif.

To doubt why a, so or reason, a joint indorse of
both cash.

But if first indorsement is in blank it is not nec-
essary to prove any subsequent indorsement a
so the acceptor for the first may be piled
up to holder - But in this case it is laid
the indorsing one's must be proved (2n). If
they are in blank Act 250 - Act 17 - 27.
Chit 118 - 201 - Long 622 - ov 617 - 209 - 206 - 207 - 208
Plead 12 208 - 189 - 182.

So if person is intestate no indorsement need be
proved to to these parties who knew of the fact
at the time of becoming parties - Act 25 - Chit
181 - 2 - 157 - 572 - 178 - 182 - 481 - 174 - 313 - 381 - 569 -
474 - 194 - 229. Plead 206 - 208 -

When indorse in indorse a, skip If must
prove due diligence to obtain the money from
acceptor or endorse - See us breach of Con-
tract or this part - Act 20 - Ch 183 - 202.
Chit 9 - 57 - Long 658 - 586 - 267 - 176 - 172 -
17 act 2.

When indorse in indorse a, skip If must


And in both cases, in said notice of dishonor Ch 81. 118. 202. 107. 45. 50. 281. 156. 72. 202. 107. 152. 103. 110. 116.

In case of protest bills (where notice is necessary) a protest for non-acceptance or non-payment must be prayed. This is a necessary part of the notice


But the protest form itself—a production of it—


Excepting to this rule (clp.) Where Branner has no effect of Branner it is certain other cases the


(110) In actions vs. endorsers not necessary to prove


liability is co-ordinate to the holder.

But Branner has no effect of Branner it is certain other cases the

If debtor having paid a bill but accepts, drawee or a prior debtor, he must prove that the bill was returned to him, or that he paid it, not go. Chit. 203-9. 20th May 1723. Otherwise he shall no title; drawee must prove the same facts, when he sells the acceptor.

If acceptor of an accommodation bill has drawn he must prove in addition to proof, handwriting, writing, payee by himself, or something equivalent, as being imprisoned under an execution, or that he had no effect of drawee's. Ante 57. 185. 11. Chit. 203. 5-91. 163. Thyd. 156. 370 c. 18.

If drawee having been obliged to pay the bill (111) the acceptor he shall prove acceptance, due
a record of payment upon acceptor it referred
the return of the bill to payee by himself.
Ante 97. Chit. 203. 11. Mod. 367. 1706. 155

But he must prove that he had effect in
acceptor's hands, the owner proves it on the
175-2408. 32832. 2. 174-112. 112. 16 the accep-
tor alone being according to the tenor.

If defendant can not support his count on the bill he may resort to the Common Count which are founded on the consideration of it. Chit. 184-9. 204. Thyd. 177. 58. 17. 177. 370. 174. 185.
Bills of Exchange.

Rule in Watson v. Shelly (15 T. 291, Ch. 204, Peake, 61.) that indentures not interested in and competent witnesses to invalidate the Bill.


Wag 17-381. 145, 158. 267.


Held, even in times of Watson v. Shelly, that in an action vs. Maker of a note by Indorse the Indorser is a competent witness to prove that it is paid. Ch. 224. 5. Peck 6. 52. 117. And, as before, money laid not to prove it void.

And in an action vs. the Drawer of a Bill (no notice having been given to him of non-payment), the acceptor is a competent witness to prove that he had no notice of Drawer (Ch. 205, 16th 332) of this, to excuse the want of notice. For acceptor as to interest is balanced (if at all) in one event to Holder in another to Drawer.

In an action vs. the Accepter the Indorser is not a competent witness to prove that the property is in his own right that the indorser, as Peck was without consideration, Ch. 205. 16th 85. paid void.

And it is Held, as a person whose name is on the Bill as Drawer cannot without a release testify that he did not draw it Ch. 205. 12, 324. 324. 324. 324. 324. 324. 324. 324. 324.
In an action on the Bill the Plff must in law produce the Bill itself, p. 115. See if best. Then, a copy or evidence by hand of the contents is admissible. Chit. 205–6. L. & N. 1731–446. 1641–50. Bank & 115.

For distinction see "Pleadings" p. 115.

In an action vs. Acceptor if he accepted after the Bill was drawn it has been in the production of the Bill is necessary of it having been drawn. The acceptance admits the drawer's handwriting. Ch. 206. Stat. 42–46. 948–


Is that in each case, proof of the drawer's name being forged as in defence for acceptor is a bona fide holder the Rule 370. See if of acceptance without sight of the Bill. (10)

Same distinction holds as to Indorser when the action is vs. him (10) When the action is vs. any other Indorser than this Paper? —

Payment of money into Court is an admission of receipt of deposit. Ch. 208. L. & N. 1737–446. 1845–12. 347–5. Burr 2137–

But no offer to pay or part by way of compound is no S. Ch. 208. Rule 234–
Bills of Exchange.

When Payer claims a Holder by bare delivery, the mere production of the Bill is insufficient evidence of his title. See ante, under suspicious circumstances. *Ante 169.* Ch. 209.

If he claims on a Bill transferrable by indorsement only, or if the Case may be a subsequent one (ante 169) Ch. 209. As above, this first to be filed.

(115) If the holder having paid a Bill given in protest, because the protest is prima facie evidence of his not having any effects of drawer's. *Ante 209* 10 185.

In an action for a forged bill, as drawer, or indorser, the protest is said to be sufficient. *Ante* 3 present must be proved. *Ante* 109. Ch. 210. Rule 270. 492 175. Ch. 20. 74.

The bill drawn must be produced regularly in this trial for the whole declaration must be proved. Rule 270.* 113.

But in an action on an Inland Bill, the Bill itself must regularly be produced. (ante Ch. 20. 165. 2 May 731.) For the purposes of proving presentment, refusal, as well as the refusal of it having been made as for there is no protest.
Proof that a letter containing information of the Bills being dishonoured was put into the post-office or left at debtors house is stiff evidence of notice given Anti 59. 189. Ch 95. 210. 214. Ota 509.
Poth ch 145. 15th 5. Daimah 193. 2 Prov 199.

Due to let in this Evidence notice must be given to debtor to produce the letter. Ch 210. Ota 145. Poth 80. 107. Ota.

Action of Debt on Bills.

The action of Debt on simple contract was for (117)
recovery of common use afterward, disused on
account of the Wages of Law. Ch 209. 30c 155.
241. 9. Ota 155. Because formerly, the whole
hence demanded or nothing must have been
recovered. 30c 155. Day 209. 2 Ota 70.

These difficulties are now removed 2 Ota 1. 122.
Day 1. 9. Ota 155. - Wages of Law is
not allowed, nor is it now necessary to recover
the prior amount demanded.

The action has lately been revived & Chitty
lars. It is now a common action to recover
money on simple contract - Ch 219 to
200. Poth 249. - 2c. It is not in force but use
1c. now that it is now a simple & effectual
evidence.
It has been held here that debt lies not on a Bill of Exchange in favor of Paper or Acceptance (2551 120 Ks 1851) and the 220 Aug 1851.

I. Because no privy of Contract

II. Thinks there is privy of Contract beca

how can a payable lie? 25 May 88.

But if A decline money to B to be paid to C may make a note to B. (18 + 2 Bills 441

Besides the acceptances amount to a promise to pay. The Holder. E.g. there is legal privy.

220 29 May 88. Comm B to A.

Again. The Bill is an assignment to payee of a debt due from drawer to drawer. the legal interest in the debt is transferred.

This action has been so long decided that it does not appear to be settled in what shape of case, it will apply to 18 74 98. 138.

II. Said debt will not lie because agent.

of acceptor is collateral in its pay to drawer does not. But this is incorrect. The acceptor's

first lie to (see obligation of acceptor ante)

And it seems that whenever the Comm. Law or custom claims a duty or rather an
Bills of Exchange etc.

obligations to pay money. Debt lies, Ch 120 1st.
 Honor 4th. And 10 A. L. on. Where Comm. Court
 will lie. I conceive Debt will lie

Holden their Debt lies as the Maker of a Recei
vancy. Note Ch 21 1st. Mod 38. Base 94 1st
in 1807. On except for the Payee
But does not the same reasoning hold, as
in the case of Bills supra?
A contract of Partnership is one by which two or more persons unite their money, goods or labor for the purpose of making profit, upon an agreement that the gain or loss shall be divided proportionally between them. 


And he who agrees to share with another in the prospect of business, makes himself liable to third persons for all losses even though there be an express agreement between the two parties to the contrary. For though he give credit to the several profit of the trade, he is obtained for the common benefit all who share in the profit. Therefore it is but equitable that all who share in the benefit should be liable for the loss. Web. 27-8. 35-4. 5. 73. 1. Davis 345. 174057. Cor. 814. 12. 446.

So that the parties transact business in separate houses, under different names, without an agreement to share each other's profits, but not each other's losses. Web. 27-20. Cor. 814.

Such an agreement, however, is void (excepting one of the parties from loss) as between themselves, for it is said that the law
Partnership.

A complete party would be that case where no
interest for his estate - Watts 73, 1702, 85.

But by Stat. of this State, limited partnerships are
allowed, in which a party complying with the re-
quirements of the act, can be subjected only to the as-
sumption of his original stock. Similar Stat. in NY.
In many parts of Europe, such partnerships are
allowed - Watts 75.

These "secured" are stocks as are intended to
give publicity to the limitations, vice Court. Stat.

I intend to treat of Partnerships hereon, as they
exist at C. Law, or rather Law Merchant, which
is a branch of the C. Law.

Partners are joint tenants of all the partnership
stock at first, not only of the original stock, but
of all that is afterwards acquired in the profit
of their joint business - Watts 17-18, 116, 32, 139, 242,
Cooper 449.

Law or more factors holding property by a com-
mon or undivided possession are not of course
Partners, to make them such, there must be a
contract of C. Partnership. Thus, joint legatees,
heirs, or purchasers, of one of the same subject-
areCook as such partners - Watts 19, 32, 57, 149.
184. - Note 114. See "Joint Tenants."
The Partners are jointly answerable for their partnership debts, and if any of them dies, his heirs are answerable for the debts of the firm. If a partner dies, his estate passes to his heirs, and not to the other partners.

A partner who advances money to a trade or enterprise in which he is interested, may make himself a joint partner in favour of his Executors, without intesting it.

The criterion is this. If the lender in such case is to receive a certain fixed premium for his money, he is a lender. If a certain share of the profit, or an amount depending upon the success of the trade, he is a partner. Wat. 27-31; 106, 299, 747. But the latter proposition holds only in favour of the lender.

Partnership is constituted only by voluntary agreement. If there is no express or implied contract, or mere mutual consent, joint capital for general trade or for any particular branch of trade, there is no partnership.

And be no written agreement for entering into Partnership. If it is sometimes held negligently agreed to in Equity. Wat. 32-3. 2 Co. 33-3. 3 Atk. 383-4.

If an agreeable agreement is made to this purpose, then it is said to be a
Partnerships

returns equally. Wat 2,8. Conclusion: If the investments of capital are unequal? Rent 3, 3, but in pro
portion to the several shares, if the capital stock
Wat 21. And that is the meaning of the rule.
This rule provides only as between themselves, for as
to third persons, they are both liable for the whole
amount due from the concern. Wat 34.

But to make one liable even to third persons as, Wat
2, no, these cutters must have been an agreement
that he share shares profits or loss with another so
he must have permitted the other to hold himself
to the partner as a partner. Wat 40-41. Long 371. (With
as Dams) Long 793.

Then if two partners advance their several money
in the purchase of a lot of goods. (A cargo for
example) not as stocks for a joint trade but for
the purposes of profit but with a view to divide
the property that each may have his share to his
own separate use, they are not partners. Wat 24.

So if A B C agree that A shall purchase certain
goods in his own name so that A shall each than one
third of the purchase at first cost they are not part
ners, by this contract. The agreement that A shall
have only as sub-contract (N) The property is but
joint stock

...
Partnership

with another not only in the business but in the use of the property. To wit: 45173 37. Long 371.

Sence if one Partner on retiring from the Concessions money to the other a lawful interest with an additional annuity for a certain time, the transaction is not a continuance, or renewal of the partnership the interest on being independent of the profits—To wit: 44-2 3 5 998.

State if the annuity had been expressed to be in lieu of profit—To wit: 45 4 8 5 3 33 999—so does—I said where the retiring partner sold his stock to the other for a term certain, as an annuity (as we before) in the annuity was virtually, a purchase of the re- tiring partner’s share of the accruing profits—

If one of two joint merchants dies, all the parts and their interest are breathing at law to the survivor. Hence the Dec’d.” Of deceased partner cannot join with survivor as M.P. in an action to recover a debt due to the partnership. To wit 49, 109, 124, 125. 408, 8th No. 270, 222, 257. and “Pleadings” of “Dirt” 7th Note?

Statute of the right of heirs present interest of the deceased partner to transmit to his Executor. And the law receiver is, to the share of the deceased partner trustee for the Estate. I must account for whether Receiver (3d) To wit: 24, 194, 124, 245, 5. Executor.
No co-tenant can the Exce. of the deceased partner join as a deft with the survivor by a partnership decree. For the whole liability at law remains on the survivor. And besides, the survivor would be charged by the judge de bonis propriis, the Exce. de boni titulorum. Thus the Exce. may be compelled to contribute. 17. 49. 15. Exch 170-1. Comb 474. 5th 444. 6th 13. 229. 390-2865 60.

But the Exce. may be subjected in Equity. 20. 44 20. 201. 292. 277. 49. Only restitution is unattainable from the survivor.

Now for the other cases one partner may bind the other by drawing upon him, or accepting bills of exchange. See Title 10, Bill of Exchange 15. 29 20. 244. 57. 6th 126. 4th 15. 18. 5th 117-8.

In case of Trading Corporations, no one corporator can be bound by his sole act, but the corporation. 20. 44 20. 201. 159. 173. 4th 126. 442-5 9th 798. 12. 435-17 201. 159. 152. 5th 198.

For the body politic can only be bound by a corporate act.

On the other hand, the individual members of the corporation are not personally liable. Nor is their private property liable for the debts of the Corporation. 20. 44 20. 201. 159. 272-3.

When a Bill drawn by two partners (not otherwise partners) is payable to their own order, they by the very act make themselves partners quasi the intestate. in it.
Third of Partnership.

Partnership in trade may be either General or Particular (6) where called general where formed for the ordinary purpose of carrying on trade. Where it extends only to some particular concern or single dealing or admixture, it is called particular or where it extends only to voyage to and from 172-73-4-2. In both cases it has effects only personal chattels - Law 58.

And the property or effect to which it extends become the joint property of the partners or the execution of the contract of partnership, whether written according to the agreement or not.- For the reflection of each is the reflection of all - Aita 2. Law 52.

But the names of incorporated trading companies are not Partners, the individual corporators are not known in law & individual corporators can not bind the company by their acts - Aita 5.

Partnership concerns are governed by the Law their charter & the general law of Partnership is a branch of trust code - Law 52. Aita 11-12 & Note 11.

In partnership concerns Courts of Equity have acquired a concurrent jurisdiction with Courts of Law. The power of compulsory division has led to Equitable jurisdiction in the matter of account as incident to the cognizance of accounts that of Partnership has persisted - Law 61. Aita 43-72. Where 192-277. Frauds in Eq.

Jurisdiction in matter of account is now exercised almost exclusively in Equity - Account is the usual remedy in Aita.
A contract entered into by one Partner in the name of all, will bind all as to what concerns the joint trade. But if any one makes a claim or protest that he will no longer be concerned in the partnership, he is not liable to a third person trusting the partnership with notice of the disclaimers. - *Wat.* 15, 11, *Sal.* 292.

So of a Bill of Sale of Partnership property by one is a sale by all to payent to one of a payent to all. - *Hunt.* 6, 2, 8, 118, 12, *East.* 47, *Com.* 445.

This distinction lies here is, that the act of one party binds all. If it concern the joint trade, notice of it concerns the party acting only. - *East.* 48, 20, *Wat.* 49, 50, 61, 18, 142, 5, 229, 232, *Sal.* 290, 126, 6, *Bull.* 200, 7th in 3, 68.

This as a general proposition is correct. But take a case that a partner borrows money, buys from a кредит contract, a debt actually on his own behalf & for his own use, but ostensibly for the partnership. The other party contracting does not know that the debt is contracted for the benefit of the partnership. Are not the other parties bound? I think so clearly.

A Partner not appearing ostensibly, a debt is deemed a dormant debt of looking partners. But when discovered he is liable to the same extent as an ostensible partner. - *Wat.* 13, 4, *Dow.* 371, 1032.
To constitute a Special Partnership, there must be (8) joint or there must be a community of profit of a, and in general partnerships. 2827.

Part owners of a Ship, contracting for the carriage of goods or freight for a particular voyage, are deemed Special Partners as to that particular concern. 2827.

29th 148. 10th 112. 2 Story 384. 2 John 359. 2 Coke 248.

That owners of a ship are all such tenants in common at least such as the rules of the Maritime Law (2827) say 2828. That is 2828. 1 Coke 358. 2 Sein 228. They are called tenants in Common.

Since each joint owner being possessed of one part of the ship, any one of them, even by C. D. take goods in exchange to prevent a voyage projected by the others. 2828. And hence is the rule of C. D. respecting all joint tenants, for there is no exercise remedy between them.

But owners of a ship as such are not partners (as such). For a ship in ordinary case, is not built a ship in trade, the words implying if Parties build a ship as Partners, then the partnership extends to the Ship.

In the case supra (where one joint owner takes in goods) The other joint owners by carrying into a stipula-

cation in the Court of Admiralty. C. I. e. a Recognizance
9) By the securit the first owner who lend the ship to hire are bound to indemnify the disfarting parties.

If the ship be lost or in the sick ship of those who subscribe - Castle 6: 1st. 2575. 1st. 7: 16th. 269. 12. 25. 79. (The probably be would receive as compensation for the use of the ship - not any share of the profit of the voyage.)

And on action lie in the stipulation in the 6th.

- Generally Cause, in which it was taken. This at least seems to be the better opinion. Clearly 255. 77-79.

20th. 235. 1285. 1st6182. 1st. 25. 259. 415. 1st. 25. 235. 1st6182. 1st. 25. 259. 415.

If a joint owner disapproved of a proposed voyage, but does not expressly forbid it - he can have no interest the ship he lose in the voyage. If he does not expressly direct he is deemed to assent to it. 255. 77. 25. 25. 79. 25. 25. 25. 25.

And in this case if the ship returns, he is entitled to an account of what is earned - a share of it. (29)
Partnership

...using a separate action, of a conspiracy phối in stealing or taking her away, so that each may recover his own proportion for himself, it being, in the present case, the rule in this case, (Wat. 73. F'ly. 157. 4 B. & C. 29. 1825, 3 Term, 228.)

Cont'd a. to other joint tenants by Common Law.

In case of Partners in trade, each may dispose of any or all of the effects of the partnership. (ante.) For each is the agent of the partnership with such power as within the general sense of trade. (Wat. 62. B. & C. 80. 113. 1827, 4 B. & C. 445.)

So also, one acting in a partnership concern may commit an act of bankruptcy to as to subject the company to a commission of bankruptcy. (Wat. 105. 110.)

A ship master is not as such a partner with the owners. He is their agent, and in the choice of hire each owner has vote, influence in proportion to his share. (Wat. 60. 1. 116. 4 B. & C. 918. 4 B. & C. 322.)

When a partnership is formed by one party, doing the actuating money or effects, or the other labour or trade the latter does not always share in the principal, but only in the profits. (Wat. 102.)

Each partner in acting for the whole is bound to the same care and fidelity as he would exercise in his own individual concern. (Wat. 103. 4 B. & C. 516.)

or rather as a man of ordinary prudence would exercise in his individual concern.
And if any loss accrue, that is, 1 concussion of such passing liability he is answerable to the other parties for the loss - *Wat 113:14.* So if he owes his authority to a loss entire - *Wat 115.*

But he is not liable for losses happening without his fault, or from a mistake in judging - *Wat 115:15.* 

Vide "Partnership."

The usual right of each partner to sign for the whole company by express agreement be confined to one of them - *Wat 115.* And this is often done in business partnerships. If this agreement is known to those who deal with the company it will be binding. I trust of another, or it is of course between the parties themselves.

Partners are preferred over any other creditor (by the whole or by the whole or at 12%) but nothing can be the exclusive ultimate claim of either except by agreement of the residue after a balance of account stands between them. *Wat 116:128, 140, 298, 978, 6th 8 96, 7th 148, 9:91.

A or B partners in equal share, their value of the partnership property at the dissolution $20,000. But I owe this partnership $10,000 - part of the $20,000. Then $20,000 - $10,000 = $10,000 property on hand to be divided equally. But B has a lien on ½ of 1½ the $20,000 (1½ of the $20,000) for the partnership. I owe the creditor partner has a lien upon all the effects for what is due to him from the other. His representation have the same right to lien - *Wat 124:6, 208, 242, 252.*
Or this - Clear value of the stock at the time of dispo-
se -KTing $30,000. $50,000. which added makes
$20,000. partnership property - of which it is to receive
$15,000. 1 $5,000. But as I have already received 25,000
(amt. of his debt) I of course take only $5,000. All
amount of stock on hand it is the remaining $5,000.

If Executive of 'one partner for his private
debt - the partnership's effect may be taken upon it
but only one undivided half of the whole (where
the share one equal - i.e. only the debtor's share
of the interest) and what is taken can be sold by
the Sheriff. (see 200-301 2 65 305 3 69 that no more
can be barrier in court) And this Purchaser is
tenant in common of the property sold with the
other partners. 20 at 120. 128. 146. 184. 197. 198.
(See 188. 249. Comp 445. For the sheriff cannot make
a division of the effect.

But the Debtor's share cannot be definitely ascer-
tained till the account of the Partners is settled
of their account - title then. (So of land in certain
cases. (26) Recent must be had to a Court of Equity

So, after a dissolution by consent, the legal inter-
est remains as before, but the partnership is at-
an end - the partner are still joint liquidate the
out partners - 20 at 120. 40. Comp 449.

If dissolution of the Partnership does not change the
The first line we make division of the partners' share effects. The interest of the partners remains 0 before 1845. 1849.

And the separate creditors of one partner shall affect the partnership stock any further times. The partner indebted himself debt. It can take no more than in their owned - Watts 124, 2, 9-40, 1792 242-52, 2712 293.

Same Rule The one becomes a Bankrupt.

The share or ultimate interest of the several partners are usually ascertained by a Rite in Chancery.

And if one of the Partners become Bankrupt, this often may for valuable consideration without fraud, desert all the partnership effects. For his share, over, the effects of not impaired as he should afterwards suit the bona fide vendor will hold of the allegiance of both partners. Watts 140-5.

If one partner takes out of the partnership move than his share of the stock, his separate estate is liable to the other for the effects. Watts 148, 157. 

But if partners become bankrupt, their allowance is to be divided according to the proportion in which their respective interests (joint or separate) have contributed to the joint debts. Watts 152, 172, 137.
Partnership

If one partner has received money belonging to the other, or wrongfully carried it to the partnership account, the latter may recover it from the former in debt's afcount, for money had & received. 232. 256. 173. 256. 46.

But if one receive money due to the partnership, the other can't maintain a ejectment for it. Many part of it is the case; a balance is struck off. 276. 278. 280. 177. 221. 280. 296. 27.

And when after the death of one partner, moneys due to the partnership is paid to a third person, the surviving partner may recover it, as received for him, in his individual capacity, and not as surviving partner. 206. 157. 272. 476. 324. When the money is, &c. the whole right to receive it, is in the surviving partner.

Even after a dissolution of the partnership, one cannot maintain ejectment of the others, for a moiety of the effects. For they are still joint tenants, the rest partners. The right of each is only to his share remaining after a balance struck & paid 140. 124. 287. 294. 339. 474. 532. 21.

Partners, how far affected by each other wrongs.

If an illegal contract is made on the partnership account by one partner, even without the knowing of the others, they cannot maintain an action upon it. Ex. Breugling
contract. 2796 (Vol. 574) 376. For the Law cannot
be violated to protect the innocent parties from
harm.

Since in the cases where the contract is intended
to evade our laws, the contract was made in a foreign
country, if it was between citizens of that country. (91)

Hull as to a contract made abroad, if the off
was a foreigner, it was not himself an agent in
the prohibitory act. (92) 9. Good told abroad
by a foreigner knowing that they were to be trans
ferred here but not a party to the act of smuggling,
for he was not subject to our laws.

A contract arising consequentially out of illegal
maritime concern, see Contract, 1 Webb 117-77
375 415. But 1869.

If parties engage in a smuggling transaction,
all of them who are privy to it are liable to
punishment whether they are all present to
gettin in or not; or any one of them may be pros
ecuted alone. 205 181-71. Bank v. Bank 98. Com 1268-
85.

But if one party only is engaged in such a
transaction without the privity of the other
(towards partnership account) the latter are
not liable to punishment. 92. The
smuggler escapes civilization by the illegality of the con-
tract. (93) The offending party however would
be liable in such case for any damage or
stained by the other, as an agent of any kind
would be liable to his principal.

Parties, engaged solely in the lawful
Trade are liable to the Bankrupt Laws - a partner
in a lawful trade are 18th 194. 21st 199.
Cost 12 17
For the Bankrupt Laws are made for the use
of the Creditors not the Debtor.

If a Contract purporting to be a Contract of
Partnership, is in reality a Credit for fixing
on other unlawful or unauthorized end. It is not binding. As for
example, A lends to B $1000 for the purchase
of goods, on 12% note payable on demand to
or agreement, that A should have 1/2 the profit
on the goods - or this with intent to obtain illegal
interest - A cannot recover any part of the prof
18th 195 201. Comp 793. 672 355 310.
Title "Alcony."

Accounts between Parties how settled.

On a settlement of accounts, between
partners each is allowed on the account what
he has brought into the common stock & what
with what he has taken out.

A balance founds between two or more part.
Partnership

In cases of any one of them is owed therefore all due to the other or others, but to the Company so that the half or other prorotional part of the balance will belong to the better partner himself. Ex. I do put into the whole stock equal sums for $1000 each. I have taken out $200, but it is nothing. If they owe the Company $100, but he owes it but $50.

The Statute of Limitations does not run between partners. Yet after their dealings have ceased for a long time (as for 20 yrs) Equity will not decide an account, but leave the controversy to be settled at Law. Wal 212. 223.

Bill by A 224. For the power of granting an account being discretionary with the Court they will refuse the Bill for its insufficiency.

Where the account between the partners is to be liquidated the remedy at Law is by action of account. But the same usual remedy is now by Bill in Chancery. Bill Account 20c. 48. 228. A Lit 72 a. 38c. 437. 481-2.

In Court, one party has made the action of account sufficiently remedial.

But after a balance thence the party in whose favor it is owed, maintain a suit for it of the other. For thus there is some
of remedy for an account. This isifficuous in an intermate Companysent. Wal 221.
If it be agreed in the article of Co-Partnership to submit all controversies between the parties to Arbitration, the agreement may be pleaded in bar of a Bill in Equity provided the submission gives authority to the Arbitrators to examine the parties as well as witnesses under oath.

Else it is no bar, where a discovery is sought in the Bill. Because without such authority the arbitrators would not command all the sources of information which in Equity are deemed necessary. 1885, 277-8. 2 Atk. 750.

If Partners borrow money which goes to the use of the partnership, the advanced upon the false bond of one of them & they become bankrupt, the lender may come in under the joint commission it against the firm. (1884, 229. 1st 225) the money went to the use of the firm. If law however the Creditor could recover of the partner giving the bond only. 1885, 226 & 229.

If two partners agree to pay money equally out of their respective private funds, but acting only for the benefit of the firm they must be sued jointly on the contract. 1884, 229, 32-17 & 231.

For the rule relating to the joinder of partners as defrs or defrs in common cases of the kinds in which advantage is to be taken of their non-joinder
In "Plead. & Pleading" 763, 233, 245. 1810. 53, 231. 2 Oct 2 45.

[Page 324]

1. When parties in trade having joint & separate creditors become bankrupt or where one of them becomes so, the only established equity for applying their joint & separate property towards the payment of the different classes of creditors are.

I. That the joint property is to be applied to the payment of the partnership debts, & the separate property of each partner is to be applied (in the first instance) to his sole debts.

II. If there is a deficiency of joint property for the joint debts, it is a surplus of separate property (as where the firm only is insolvent & an individual partner not so) that surplus is liable for the joint debts.

III. If there is a surplus of joint property after payment of all the joint debts (as where one of the partners only is insolvent & the firm not so) there is made only of the joint property as belongs (after a balance of accounts) to that partner (i.e. the insolvent) is liable for his separate debts.

IV. But if partners becoming bankrupt are (19) bound in joint & several bonds, the obligor may elect to come upon either the joint or separate property (For he may claim a debt due to the firm, or to each partner severally) but not upon both except when there is a deficiency in the fund while he elects a full play in the other - Wall 249. Note 167. 2 Chan. Co 129.

If on a dissolution of the partnership the partners agree that one of them shall take all of the effects then all the partnership debts at they give public notice that all the creditors are to look for their claims to that one partner, this does not prevent the Creditor from recovering all the Partnership. Further act of the partners do not bind the creditors. Wall 251-2. Star 263 - 2 Eq Co 167. 14. 633. 2 1080. 383.

So the a Creditor has, after a long delay - his delay is not continued as an object to the agreement of the Partners. For a Creditor has a right to sue at any time till barred by law (25).

If one partner having money as Exec. or Trustee brings it into the trade with the others knowledge, it becomes a debt of the joint
Partnership

proposition. It is without the other's knowledge. It is a breach of trust in the Exc.

so as to the other Partner it will be considered the money of this partner advancing it.


20.

Any subsequent to a sale of goods to one party one such contract may be evidence that they were purchased on a partnership account.

Ex. A & B being Partners I purchase goods for myself but brings them into the trade as joint property. Writ 25th 1820.

But if it is clear that no Partnership existed at the time of the contract, no subsequent act by a person afterwards becoming partner with the hundiauer will make such person liable for the price. If no such act can make him liable, in relation as partner at the time of the contract (20)

Thus A & B agree to become bankers in partnership & that each shall bring $500 into the common stock. A borrows $375 of J. S.

I brings it into the Concern. the act does not make A liable to J. S. for the loan. It is the separate debt of A. not a partnership one.

- Oct 30th, 1820 Dec 26th 1820.

20.
Partnership

[Handwritten text]

And when no time is fixed, any one partner may withdraw at pleasure, except under a contract to remain, which would render the act inipicatory to the honest to the other, as in the midst of some important adventure, or case of danger while his withdrawing might defeat or endanger it. 2 M. 273. 4.

But where a time is then fixed, he cannot withdraw at pleasure. For the law in such particular cases, when he was bound by his original engagement with his partner, it liable with them to third persons.

But a fraud and an unreasonable decision (as in such a conjuncture as most render dishonest to the others, partners) is not allowable. It being whether a term was fixed for the duration of the partnership, or not - or he would not only be liable with the other partners, to third persons, to their losses, but a third once might have been answerable to the other partners for losses occasioned by his abandonment of his duty to the Company, &c. By neglecting when abroad to abanobin to the object of a voyage, or journey, which he had commenced.
Partnership

- mened on the company’s account.

These Acts, which involve much discretion in the application, are enforced principally in equity.

Partnership may be dissolved in either of several ways besides that of mutual consent as follows:

I. By effusion of time, when its duration, fixed by contract.

II. If dividing all their joint efforts or holding them jointly after a final liquidation of the partnership account. 

III. A partnership contracted for a single dealing, or adventure is of course dissolved by the completion of settlement of the concern.

IV. It may be dissolved by an award of arbitrators or by a dissolution of the constitution of the arbitrators are empowered to award a dissolution. 

(23) V. So by the bankruptcy of the firm, or of either of the partners. 

The Commissioner being a statute agreement of the bankrupt’s property to assignee.
Partnership

[No such rule under our Insolvent Laws.)

A commission of bankruptcy is in nature of an execution & under a commission of one
partner all the joint effects may be taken by
the Receiver. 20 at 283-5. 12th Com 113-

VI. So, by the death of one of the Partners,
the rule holds that the Partnership is comprised
of three or more partners. Even in such case,
the partnership is entirely dissolved under
there is a beneficial agreement in the articles
of partnership that it shall continue be
between the survivors. 20 at 294. For the con-
tract is not that any number by them the
whole number shall constitute the Company.

But a temporary arrangement (mental)
of one of the partners is not a dissolution
(If a recovery is probable is it a sufficient
cause for dissolving the partnership?)
20 at. 345-6

But even in case of partnership of two men (24)
there will be if it is stipulated in the articles
that on the death of one the partnership
shall be continued, with or for his execute-
antes, it will continue of the agreement.
It leaves may be enforced in equity.
20 at 295, 297, 276, 33-
VII. Partnership may also be defeated by an attainder (of Treason or felony) of one of the Partners. The attainder, being a civil death, has the same effect for this purpose as natural death. 25 & 26 Geo. 3, c. 293.

But it is said that in a partnership of four or more (i.e. tenants-at-law) the death of one is not a dissolution of the Partnership. For as the representation of the deceased Partner are bound by his covenant to the landlord in lieu of the engagements between him and the lessors, their rights also devolve upon them. 25 & 26 Geo. 3, c. 293.

This proposition is expressed in terms too general to be well understood, that the rule may still be well understood.

If after the death of one partner the other continues the trade (with the former's stock) he shall account with the Executors of the deceased partner for the profits. 20 & 21 Geo. 3, c. 141. 10 Geo. 4, c. 28 by 25 & 26 Geo. 3, c. 722.

And on a bill for an account of a partnership, where both partners are dead - the Court will appoint a Receiver. 26 Geo. 3, c. 272. 24 & 25 Geo. 3.
Insurance is a contract by which one party in consideration of a stipulated sum undertakes to indemnify the other in case of certain risks or losses or the happening of some event or rather in damage from such events.

The party thus undertaking is called the Insurer, the other party the Insured. The sum paid to the Insurer is the Premium. The instrument containing the contract of policy of insurance.

The species of insurance are three:
1. Marine Insurance including Botomcy and Assurances.
2. Insurance upon Lives.
3. Insurance against Fire.

Of Marine Insurance.

Marine Insurance is made upon some interest of the insured in ships or goods on shipboard against loss or damage from "perils" of the sea, that may be either for a given voyage or number of voyages or for a limited period of time. The word "perils" in insurance denotes the happening of the event or misfortune apprehended.

Its object consists in promoting security commensurate by so dividing losses that they fall lightly upon many rather than heavily upon a few. 

March 3.
The Law of Insurance is a branch of the general Law of the Law Merchant (and the Law Merchant is considered as a branch of public law, being founded on the customs of Merchants, or mercantile dealings not in any particular country only, but in all commercial countries in general.) Mar. 19. 21. 80. 96. 248. 82.

There are however particular mercantile usage prevailing in each country varying (where they prevail) the force of law. And contracts of Insurance made there are contracts having been made with reference to them. post 85. Mar. 19. 21. 28. 91. 49. 305. 272. 392. 304. 71. 547. 926.

These a usage may be proved by witnesses or explaining of a clause in a contract of Insurance. But their opinion of its meaning is not always admissible. Post 264. 304. 347. Constitution being matter of law. post 85.

In short these usage have the same relation to the Law merchant as particular customs have to the C.-L.

The Law of Indemnity is to be found in the ordinances of commercial states, in the locality of the learned. March 19. 23.

Foreign ordinances are not strictly authoritative here the they are to be respected as explaining the usage of other countries in relation to a contract which is governed as part by the principles of public law. March 19. 20. 852 107. 562.
Insurannce.

Partial.

Who may be insured?

In the 1st place pretend whether

citizens or aliens may obtain Insurance here upon

their property, or in the common phrase "be insured".

N.B. 30.

Upon the question whether Insurance of the property of

an alien enemy is lawful, opinions have been


172 84. 6. 55. 28. Contracts 29. N.B. 30.

Upon the Contract of Insurance the opinions are

evenly divided against the legality of such Insurance. Marsh 31.

Peel 13-14. In 1st, the most able jurists have been

divided in opinion upon the point. N.B. 31-35. Peel 12.

290-50. 172 84. 6. 55. Mansfield & Hardwick, two of

the greatest that ever lived, thought it lawful as being

expedient.

The whole question appears to have been treated in 1st, as

depending upon principles of policy. For the reasons upon both

table, the authorities before me. The latter opinions in my

judgment the contract on this ground.

In the decisions of the Sup. Ct. N.B. would lead us to

suppose 30.

The principle of the C. L. that all voluntary binding

with a public enemy is illegal strongly opposes such an


172 84. 6. 55. 28. (N.B.)
See (8:2, 9:2, & 32:33) have been prohibited by
prohibiting such insurance - but both were temporary
have expired. May 30. 1817. 199.

The general question therefore remains, whether the
the late opinion I believe are as the legality of policy of
such contracts. May 28. 1817. authority last page.

At any rate no action can be maintained by an alien
enemy during the war whether the contract is made after
before the commencement of it.


The rule is the same that an action is brought by an
agent who is not an alien enemy to the only creditor
the alien if more than the amount insured.

See a Neutral the residing in an alien country being
in Partnership with an alien enemy. may insure his in-
1st. trust in the joint property. May. 38. 1792. 412.

Who may Insure -

At Ex: any individual or company
may Insure the property of others to his own hand. May 40.
1821. 215.

No Ex. any individual may insure on his own individual
account - but the Stat. of 1814, prohibits by any other cow-
pnies joint & two while in pursuance of this act are 21.

The Stat. of 1814, prohibits by any other com-
pnies joint & two while in pursuance of this act are 21.
This 1st extends to secret partnerships, insuring in the name or upon the ostensible credit of one of the partners only. If no one pays more than his proportion of the loss he cannot recover a contribution from the other - see 42, p. 579. Sec 8.
"Contract 39."

But such insurance is void in between the partners, the insured if he knows of the partnership, and its effect is the insuring who is ignorant of the partnership less 65. 622. 625.

And such insurance may be made in English when a joint capital of each insurer is liable only for a fixed part and in any event for the whole - Mann, 45-7, 1602, 519.

Subjects of Insurance.

Marine Insurance is usually made upon goods, ships, freight, or bottomry, loan, man.

But there are certain articles or interests which for reasons of public policy cannot be legally insured at all or only under certain restrictions, see 48.

1st General Rule. Insurance cannot lawfully be made upon goods, ships, or cargo intended to be imported or exported in violation of the laws of the country or the laws of nations (p. 425), as the insurance if binding would promote an unlawful commerce.
Insurance

This rule is the same, that the insurer is apprised of the illegality of the trade, and indeed from any prior warning him, but from
just principles of policy. Besides, in pru delicto potius emptor.

Of course if he is ignorant of such illegality.

Of contraband goods or * goods are said to be contraband or prohib.
itive when importation or exportation is expressly prohibited by
Law. (as Exportation of tobacco from the Provinces of the importation
of certain manufactured gases, 1830, Part 232. Sec.

Insurance upon contraband goods is void. Rule of public policy.

And where goods (contraband or not) are exported or
imported in violation of Revenue Laws of the Country,
they are called Smuggled Goods (1825, Sec. 39.) And in
both cases, Insurance upon them is void (Part 232.
244. 1830. Sec. 68.) Goods attempted to be exported or
imported in evasion of a duty imposed by law.

By Stat. 40. 5 1830 every person to the contract
is also subject to a penalty. 1830. 37.

Whether a trade prohibited by the laws of one
Country can be insured legally in another is a
question on which foreign jurists are divided
in opinion. 1830. 37. 2.

I G. thinks the Eng. Law is considered as our own.

There are certain articles of property the exportation or importation of which may become unlawful in a state of war which would not be so in peace.

All unlike stores & arms commissions are unde-nominated contraband of war, & when sent to either belligerent party by a neutral are liable to the laws of Nations, to capture & confiscation by the other party. Such commerce being inconsistent with a state of neutrality. Insurances upon property contraband of War is illegal. Notes or their securities pitched. War. Trees. Necessaries for building ships are generally considered as contraband. 2 Deale 33. C. 7. 342. Mar. 63-1.

Providing also when sent to a place belied are laid to be contraband. Mar 14. 2 Field 13. post. 40- &

And all Commerce of a Neutral with a town or place belied, invested or blockaded is prohibited by Law of Nations. Mar 14. Pat 63. C. 7. 3117.

If a blockade is duly notified, merely, sailing to the blockaded port is a cause for capture & con- suffocation. After such notice insurance is useless.
Insurance

Insurence upon articles, stored in harbours of neutral states, and to be taken out of the ship by the commission itself, of the belligerent power. And assistance to the exercise of this right, by a power of seizure and condemnation. Mar 15-360

War b 1. C 7. S 114. 279 324.

Without this, navigation does not signify.

Insurance upon articles, stored in harbours of the enemy is void even that they are carried by neutral ships. Mar 66.

The Rule is the same as to the Insurance upon any commerce carried on in violation of an embargo lawfully imposed. Mar 66. 7, 106 27.


And an Insurance upon goods purchased by own citizens of an enemy, in an Enemy's Country, is illegal & void. Mar 15. 872 548.

Contra 1000. 345.

The trading with an enemy without license being illegal. Would this rule be the same if the goods were purchased in a neutral country?
There are certain goods, property or interest which in their nature cannot be insured.

Seamen's wages cannot from a principle of policy be legally insured. The object of the Rule is to prevent detention in case of disaster to interest them in the preservation of the ship.

Also 73-2. 30th June 1912. 18th May 157, 28th 288. 10. 294.

Note. If a ship or voyage is lost the seamen are not entitled to wages intended to secure their assistance or fidelity in time of danger.

You can any thing in nature of seamen's wages be legally insured. Ex. Privileged property allowed them by way of comutation, this not called wage. 30th 14-8. 26th 187, Chroniger 40.

But they may receive purchases abroad with their wages. 30th 75.

And the wages of a captain of a ship may be the subject of Insurance. There being a confidence reposed in him. 28th 190. 10.

Upon the same principle it is held that the governor of a fortress may insure his property by an enemy during War. Park 12. May 75. 30th June 1905. 18th May 593. 1st 71.

On principle. For the insured is required
to give the underwriter, on the policy a full ac-
count of the case of the ship. Stamp circum-
stances, &c., which in the case would expose all the secrets of the vessel.

Freight, which here means the hire of a vessel to the price to which the Owner of a Vessel is entitled for carrying the merchandise of others, may be lawfully insured, by the Esp. Law, Sec. by the French. 2 Esp. 75. 1173. St. 1351. 372382. 2 Esp. 293
Park 9.

Insurance upon the Importation of Slaves, in the U. S. of Tons, 12 11/2 with 11/2 Insurance on 418. 117. (Post 27.)

In some countries, capital profit upon a cargo or upon merchandise is the subject of Insurance, being not to insure purely but to fund as such.
Enr. 75. 1173. 2 N. 226. 372. 329. 3130. 310. 3 Esp. 217-9. 75. 76. 1172.

In Eng., although it has not been decided judicially that profit so arising may be insured, it has been decided, that an Insurance upon Ship or Goods, the goods valued at $100, being the profit expected to ensue on the cargo, is valid.
2 East 544. 75. 83. 85. 11112. Park 293-9.
2 N. 293-4. 212-13. 3130. 75. 76. Enr. 75. Post 1312.
Insurance.

It has been decided in Court that profit may be issued. 3 May 189.

In this case, the policy was a valued one, therefore whether the rule would be extended to an open one or indeed whether in the case of a valued one it does not furnish a mode of evading the restrictions upon naming policies. 3 May 80.

In estimating a total loss upon goods upon an open policy, profit has never been added even when the loss occurred at the port of delivery. 3 May 79.

The rule of damages in such case is the aggregate of prime cost, all duties & expenses, to the premium of insurance. 3 May 43.

Interest Insurable.

It is in strictness essential to the contract of insurance (the nature or object of it being considered) that the insured should have an interest of some kind in the subject of the contract. It would be a licence to say one insures a damaged or a remaining loss, which cannot happen when there is no interest there can be no such loss. 3 May 81.

When there is no interest the insurance is nothing more than a wager or gaming policy. 3 May 259, 60.

2 June 264, 716. 3 May 89.
At C 2 however an insurance without interest appears to have been valid. Hence it is not necessary at C 2 to allege an interest in declarating on the policy. See 51, 90–9, 108. Show 156–2 269. 10 267. Am 2 361. Show 125. Park 260–87. 24. 12 385. Con 5 83. Eng 301–1 4 43–

But when necessary to allege an interest (as now by Stat 11 Geo 2° 52) not only an absolute but a
qualified or a mere equitable interest may be
subject of Insurance. If one person has a legal
interest and another has an equitable interest in the same
foot, each may insure to the full value. See 81,
A ship mortgage.

So when two persons have equal a qualified or spe-
cific legal interest in the same subject (mask
19–24. 27 188. 39 12 362–2 489. 4 92) in one
case, each may receive the full value of the terms of
the contract warrant it. (3 24)
Ex. Suppose two lines upon the same subject in
form of draft receipts. (p 19)

It has been held by some that a reasonable expectation
of profit or of a future interest may be insured (Int 11)
59 83. This, however, according to some opinions,
appears questionable. (p 92–93)

However that point may be this rule seems to be
held that the possession of the subject insured a
reasonable expectation of a future interest in it. (this)
depending on the pleasure of Government is an
insurable interest. Ex. When there is a joint cap-
tain of prize, or dead men's chests, the captors have
an insurable interest before condemnation. post 101-
June 12. 49. Park 265. 8. 8. 113. 114.

The before condemnation the property is not changed
but it is at the disposal of Government. This is a
case different from that of expected profit upon
a vessel interest.

Justice of Goods on Ships, who are to dispose of them
according to instructions, may insure them for the
benefit of those who may be entitled to the avail-
of them. June 85. 90. 852. 15. 2. 20. 35. 2. 4. 12. 209.

So of a consignee or agent for prize, for both have
a special interest. June 18. 90. 13. 2. 305. 2. 294.

If goods are consigned to A for B the assignor of the
consignor, B has an insurable interest.

A general agent or where an assignment of
goods has involved in consequence of the consignee,
refusing to receive them, may insure them for
the consignor. June 91. 215. 165. 20. 215.

But an insurable interest can only be founded
upon a legal or equitable title. A Clavin with
legal nor equitable is not an insurable interest
for it is purchase a ship which is registered in
the name of A only: in this case B has under the
by. Register act his title legal or equitable of some
no divisible interest in the ship or freight—June 91-
285. 5 H. 729. 2. 468.

The lender upon Bottomry or Respondentie has an
insurable interest to the amount of the loan lent.
The lender is indeed in the nature of an insurer
for the loan is virtually paid, if a loss be
happening recoverable back burner in case no loss hap-
pen) to insurance upon his interest is in the
nature of a Reaffirmance—June 93. 22. 1571. Part 428.
2. 294. 6.

But it must appear in the policy that the interest
included in Bottomry or Respondentie under a hail
insurance of goods, money lent on Bottomry can not be recovered (Dec 11. 18. 428. June 1579.
106 A. 467. June 223. 613) A Rule intended to guard
52 insurance policies it insures contracts—

The case include only the amount of the loan
lent to the borrower has an insurable interest to
the amount of the lender in the ship or goods
of the value over the loan—June 94. 118. Dec 12-
Dec 1134. 1. 399. 465. 422.

If either should insure to a greater amount it
would be a gaming insurance & void by St. 15 Dec. II.
52 all above this legal interest of the party insured
June 94. 152. 5. 613. Dec 1470. the, not void in this.
Insurance.

But the usage of a particular trade may take a case out of this rule. See 94, Park 11.

A policy on bottomry or respondents can not be underwritten by the borrowers. For it is on consideration of the borrower's exemption from loss, that he is bound to pay marine interest. If then he should assume that risk by becoming an insurer to it, the transaction would be only indirect lending & borrowing upon Usury. Mar. 44, 1845 (Prohibited by St. 9 of 19 Geo. 2°)

A warranty policy is one effective upon a subject matter, while the insured has no interest in it; nor therefore an indemnity to loss, but a mere security contract. See 97-8, Park 255, (Part 42).

Warranty policies are prohibited by the laws of most commercial states as being opposed both to the moral & interests of the public. Mar. 95-8.

But by the En. 2 of Eng., what are called innocent wares are lawful & binding. Mar 95-8. 118-87.

Ib. 53. Burn 2832. 1 Brow C. 146.

The validity of warranty policies at C. L. has been much contested in the Eng. Ch. but they have been fully established in the U. S. at C. L. Mar. 95-8. 117-2. Burn 245-77. 10 Fed. 77. Burn 195-8. 2 East 293-392. They are now prohibited in Eng. under certain qualifications by St. 9 of 13 Geo. 2. See 163. Peake 263-4. (Sta. 1282).
Insurance.

A policy contains the words "interest or no interest or without further proof of the interest than the policy, to preclude all enquiry into the interest of the insured." 1137. 2014.

Upon a policy the insured can never recover upon a partial loss. For, as he has no interest, there can be no subject of salvage. 1137. 261. 269. 133. Therefore, the word "free from average" is always inserted in insurance policies.

Note: Where the loss is but partial, the insured is bound to prove the amount of the loss. Hence the words "free from average" inserted.

For the same reason the insured cannot claim the benefit from any thing saved since the insured has nothing to be saved. Hence the words "without benefit of salvage" are always inserted in such policies. 1107. 1137. 261. 262. or "free from salvage."

An insurance upon one thing or subject but made to depend upon the fate of another is a marine wager. 82. An insurance upon the cargo made to depend upon the ship's arrival, or another insurance upon one ship made to depend upon the fate of another. 1137. 8. 1772. 304.

In a wager policy the insured takes upon them himself to do whatever they would be bound to do in relation to the wager if they owned the subject.
Insurance

Insurance. It once when such a policy is valid it is discharged by a deviation from the voyage that they had no
control over it. Mars 108. 2° Mansfield in 1728. 204.

In a wager policy the Insured takes upon themselves to

The Insured have an interest in the subject insured
yet if it be small in comparison with the amount in
- unless it will be deemed a wager policy. Mars 109. Cop.

A valued policy is one in which the interest insured
is, in effect, is not such as therefore not prima facie a
wagering policy - the proper object & effect of it being only to
settle the amount of property at the prime cost, to avoid
the necessity of proving the value at the time in the event of
a total loss. Mars 110. 515. Park 93. 114. 2 Dun 171.

But if it appears that the interest is really overvalued the
contract must be either a fraud upon the Insurer or a
wager. Mars 110. 208. 515. 2 Dun 117. note 45.

When there is a partial loss, a valued policy is in effect the
same as an open one (ie one in which the value is not
insured) but is case of a valued policy a total loss the
insured regularly recovers the whole sum insured in the
policy. Even since the St. 19 Sec 8. 137. Mars 111. 525. 9. 582.
Park 98. 133. 7. if the amount described is equal to the vat-
uation - if not equal he recovers the whole amount later
elicted.
A valued policy, upon the profits expected from the
voyage, if it appear, point out a claim for genning
has been held not a voyage policy. 

Mar. 11. 79

To a valued policy, upon the Commission expected
by the Insurer of Conscience of a Cargo, is not a
voyage policy. Mass. 12. Park. 260. This is also for
- regularly the subject of Insurance in the U.S.

Mass. 72. 392.

Re. Insurance.

A Re-Insurance is a Contract between

Insurer and a third person, by which the latter agrees
in whole or in part to the risk of
- bound to him on the original contract of Insurance


In case of loss the insurer is answerable to the Reinsure
(a original insurer) but not to the original Insured.

For as between the latter the Re Insured there is no

Nov. 11. 13-

But the Re insuror is bound in the event of a loss to
pay in full according to the terms of his contract even
the original insurer should become insolvent to pay
only a dividend on the original Insurance (Mass. 72)
would be not equitable that the assignees of the first
insurer should hold the difference for the use of the
first insurer) The contract being originally valid must
take effect according to its terms it cannot be affected by a
subsequent one which may diminish the recovery upon the
Insurance is valid by the C. L. by the law of most commercial nations. Mar. 112. - 27. Park 276.

But having become in Eng. a mode of speculation on the rise & fall of premiums they are now prohibited by
the 19 Geo. III. except in cases of the insolvency, bankruptcy or death of the original insurer. Mar. 28. 278.
Park 278 - 2. 279. 106.

(Ex. I insure at 10 per cent. at a subsequent time to effect insurance at 5 per cent. be taken from himself from risks & gainst 5 per cent.)

In either of these events (Insolvency etc.) the original insurer his executor, adm. or assign, may respectively (22)
\(\varepsilon^\) a reinsurance of the amount originally insured.
June 13. 4. Park 278-9. 279. 106 but it becomes of more...

There are 2 species of Insurance in the nature of Re:
- insurance the one where the insured is insured, or the insolvency of the insurer (ie. insurance against)
The other where the former makes a new insurance in consequence of the latter's (ie. insurer) becoming insolvency during the risk. - March 114. This is called
Double Insurance.

The former has never been in use in Eng. nor I suppose in the U. S. this practiced in some other countries. Mar.
114. 5. Park 281.
Doubt Insurance.

Is when the Insurer effect two Insurances upon the same risk the same ins-

The object of this sort of Insurance is to obtain double satisfaction in case of loss.

Such an insurance is in the nature of a wager, as to the excess over the value of the ins-

Both will allow the Insurer to recover but one satisfaction.

The may, however, notwithstanding the un-

The (the Insurer) may thus recover the whole

Would not the rule be the same if there were no such notice?
Insurance

When in a simple policy the sum insured amount to much more than the value of the property.

Formerly in case of Our Insurance, the first Underwriters were liable to the whole loss of the first discharged - March 119, 1 Show 192. But now they are all liable in proportion to their several subscriptions - March 119.

When there are two policies upon the same subject subject of the same person is not in all events to have the benefit of both - the Insurance is not divisible. And if different persons insure the same thing upon different interests, to the amount of such interest, each may recover to the amount of its insurance by himself to the full value of the property - Code 13. Show 119. 21, 27, 106 C. 102, 103, 439, 496.

Each two lives in insurances, in favor of different persons, on the same property.

By Stat. of 19 Geo. 2. ch. 57 58. The defendant in an action on policy may compel the plaintiff to declare in writing what term he has insured the whole or how much he has insured on bottomry to correspond with March 121.

The Voyage is the passage of the Ship from one (25) place to port to another - March 122.
Insurance.

Orders in marine Insurance are generally effected
for some voyage the end universally.

The voyage may be lawful or the transportation of
the goods, unlawful & vice versa. Ex contractu
goods shipped on a voyage in itself legal.

Sir's Rule. No Insurance can be made upon
any voyage undertaken contrary to the laws of the
Country or to the law of Nations, i.e. no such ins-
urance is here obligatory. - Anti 6. Calm 122. 489
18. 58. 673. 727. 78. 98. 582. 727. 430. 582. 30. 48. 3.

If an integral voyage is in any way illegal
in its commencement no Insurance upon any
part of it is valid - even the whole part taken by
itself would be legal. - Man 129. 472. 31. 45. 582.
Ex - voyage to live port one of them prohibited
Law. - the other not. For if a Contract of one
part is valid the whole is.

Seen, if the Contract is not on an entire voyage
(36).

Of the Perils of the Sea or Risks.

The 'perils' of the sea taken in the largest sense
comprehends all accidents or misfortunes to which
ships, goods at sea are exposed - from cause which
no human prudence in the insured can control
136. 78. 2 45. 248. 10. 36. Comb 56.
Insurance

A common policy includes always an insurance against the perils of the sea.

In this sense a 'peril' denotes the happening of the event or misfortune apprehended.

It is the extraordinary unforeseen perils of the sea only for which the insurers is liable. [Note: 221-27 98. Not for the common wear or tear, or decay from age.

A distinction however is derived in practice between those risks which arise from waves, tempest, rock, shore, or such as proceed from other causes, such as the act of enemies, unlawful seizure, or misconduct of master, mariner, etc. For the latter classes of perils are within the term "peril at sea" in its extended sense (220 248 10 Com 57 1 Show 323) yet the former only are appropriately so denominated. [Note: 131 416

Insurance may legally be made to all risks which are incident to the voyage with certain exceptions known forms on policy of humanity. [Note: 132

This the Insurer cannot make himself liable for any loss or damage proceeding directly from the joint of the Insured. It would be opposed to the principles of national justice.

Nor for losses (even by the perils of the sea) sustained in our usual traffic (Sun 1st 11) [Note: 48 85 122 132 - Park 23 10 6 2 7 815 Day 256 Ex. In a manner]
Insurance

Clause - a contribanee or crew in the slave trade.

Nov. 17, 1786.

Formerly, insurance upon the lives of slaves, in a ship engaged in the slave trade, was lawful. But such insurance is prohibited, as opposed to the laws of humanity. By Sec. 30, 34, 39, Sec. 111, the traffic itself was forbidden. Acts 11 - Mar. 134, 6 - 150.

As to the point what risks are within the common policy - the clause specifying the risks, being sufficiently comprehensive to embrace every species of risk to which ships or goods, are exposed from the state of their age, Mar. 139, 701-2-1.

28) There has been great diversity of opinion on various contradictory decisions as to what is called the "common memorandum", i.e. a clause in the form of a warrant annexed to the policy by the insurer. Mar. 138, 155.

This clause was first inserted in 1749, to save the expense of adapting the premiums to the nature of the commodity. Mar. 139.

The memorandum i.e. the form "Com. - piece - flat - fruit - grain & seed" are warranted free from average unless general, or the ship be burnt or lost" - (Sec. 17) Mar. 139, or 129 or. These articles are selected on account of their perishable nature or their natural tendency to decay or damage. Any other articles might be selected at the pleasure.
of the parties.

The word "Average" is here used in a twofold sense, implying both a partial loss or contrivance paid from a total one or else the contributions made by the owners of the ship, freight and goods towards any particular loss or expense sustained for the general safety of the ship or cargo. (p. 101) N. 410. 162. 1553. 172. 323.

Under the memorandum where these two standing the insurers are not liable for a partial loss of any of the articles specified in the clause unless it occasioned a general average i.e. unfixed for the general safety of the ship or cargo. (p. 101) N. 410. 162. 1553. 172. 323.

Under the memorandum where these two standing the insurers are not liable for a partial loss of any of the articles specified in the clause unless it occasioned a general average i.e. unfixed for the general safety of the ship or cargo. (p. 101) N. 410. 162. 1553. 172. 323.

The question has been whether these words amount only to an exception i.e. whether the insurers are exempt from any partial loss on the articles except
one caused by stranding the whole peril average. Upon which suspension (that being the whole peril average) the insurers would be liable for no partial loss upon the article specified only if it were occasioned by stranding or whether these words constitute a condition (as a condition upon which the insurers are liable at large, or at all events, if there is a stranding without reference to the real cause of the loss) upon which suspension if there be a stranding of the ship and any partial loss will subject the insurers by what other cause it may have been occasioned.

Nov 39 - 155. 5 Talm 1553. Pake 112 - 118 - 7 Vol. 4, 383 16120 - 2 Sans 270

The latter construction has at last prevailed so that a stranding as the authorities now stand, destroys the exception or proviso in the memorandum that loss in the peril unless of the policy to operate upon the article thus specified as upon any other commodities.

Note - Lord Mansfield held that if the stranding did not cause the loss, the insurers were not liable.

2 Talm. 210 - 1692 P 410.

The result of the two cases is, that the insurers are liable for partial losses upon the articles mentioned in the name. Whatever may have been the cause of the loss, if there be a peril average (i.e., a peril contribution) or if the ship be stranded - if not they are liable only for a total loss of those articles.
This, 2. If part of the held or cargo overboard (called 
(qidion) to have the ship or the insurer liable 
because this is a peri & average (contingent).

II. If this is a standing or partial loss however 
insured insurer is liable 
& a conventional mode agreed upon to prevent 
in case of standing any inquiry into the causes 
of the loss.

There are some losses or injuries from rain, if 
the rain, but which are imputable to the owners 
of the ship or to the negligence or misconduct 
of the persons employed by them, or for which the 
owners of the ship are liable to the passengers. 


This, if any loss or damage happens to the goods 
whereby from any latent defect in the ship before 
the sailed, or not upon the elements, or any acci 
dent or misfortune during the voyage, the 
owners of the ship are liable & the insurers are 
not. For in every contract of insurance 
there is an implied warranty on the part of 
the insured that the ship is sea-worthy. Of 
this is set to the insurance is void. (Port 78) 


Indeed the Ship Owners or Masters are liable 
as Common Carriers for all losses of goods on 
board except such as happen (Port 80.) 

1. By the act of God (or perils of the sea) —
2. By the act of Public enemies.
3. By the act or fault of the owner of the goods.
In the last case no one is liable. In the two former, the Insurer is liable, under the Common
Law - 1 . 457. 470. 213. 216. 220. 3 297. 32. 35. 104. 182. 214.
by. 5 32. 841. - "Bail ment."

Simple theft by persons on board is not regarded as a part of the act, as it may be attributable to want of vigilance on the master's part. But by the law of negligence, the latter is not liable (1 Mer 157.) but the master is, owing to the goods having been taken - 1 Mer 157. Park 245.
The word "Thieves" in the Policy is said to mean "afflicting thieves." 1 Mer 157. Park 25.

And for thefts by robbery committed by violence from without the Insurer as well as the master is liable.
It being considered as a part of the act. 1 Mer 157. 161. Park 25. 470. 782. 3.

In such cases, however, the Insurer is subjected to loss in the name of the owner of the goods as well as the ship owners, unless the act was that of a Public enemy. 1 Mer 111.) The liability of the latter being primary -

If goods are delivered to the master on shore, he is answerable for them as if they were on
board. 1 Mer 157.

So while the goods are in her boats or barge,
Insurance

In part on board or landed, the master as well as the ship owner is liable as if they were on board as common carriers.

The boat is being considered as attached to part of the ship. (Mar 185) And this liability continues till the goods are safely landed at destination.

In such case, the insurer is also liable for all losses covered by the policy.

If the loss in such case is not imputed to the master or crew, or ship tackle, the insurer only is answerable. (32)

Out by 37 Geo 2. Ch 15. 25 Geo 3. 38th. The ship owners are liable for losses occasioned by robbery, embezzlement or committed by the master, mariners, or others, only to the value of the ship & freight. (Mar 180. 178. 76. Dalier 5. 53.)

Duration of the Risk.

Upon the Goods.

To subject the insurer, the loss must have happened in the course of the voyage & during the continuance of the risk insured. (Mar 185. 96. 1st.)

And every voyage must have a definite commence.

- ment when the insurance is for a limited time the extremes of these times are the terminus of the risk insured. Where the ship is insured extant & bound for one certain premium. the whole is considered as but one voyage. (Mar 185. 615.)

The usual words of policy expressing the commencement.
And if the ship or goods are "by coming from the loading thence or until the same shall be discharged & safely landed. Mar. 162.

Hence the risk does not commence till the goods are on board & generally it continues only while they are on board (i.e., actually or constructively on board) but while in the ship's boat, they are considered on board.

So that when they are landed at the port of discharge or if they are put on board of another ship without insurance consent—the contract is, at an end & in -
- unless discharged as to all subsequent risks. Mar. 162.

But to this there are exceptions, provided in nearly
- they or if the ship become disabled on the voyage & the goods are therefore shipped to another vessel to be conveyed to the place of destination—Not-9. In this case the risk continues—Mar. 162. 220. 1-374-6. Dom. 251. Mar. 248. 159.
- The risks was formerly thought to be otherwise.
- Mar. 163. Not 64. 159.

So, if it is agreed that the goods shall be removed to another ship at a particular place in the voyage & (this being no other place ship in the place to receive them) they are put on board a plane ship, the risk continues on board the plane ship—Mar. 163. Dom. 348.

So, where the Insurance is on goods on board a ship
- to be delivered at a certain (piran) place. The insurance
- extends to the carrying them on shore in the boat under
the clause "until discharged & safely landed")

And the persons are protected by the policy while conveyed from the ship to lighter to any part of the port of de-
= liver where such persons are usually landed. For policies are to be construed according to the course of trade usage.
and doubtfull pablages are construed in favor of the insurer. Mar 166-5.

But it has been held that if owner of goods, takes them into his own lighter to be landed - the insurer is
discharged from subsequent peril. This being consid-
ered as a delivery to him. 2 Hoo 1233. Chanc 165).
29th 23.

If the persons are taken on board a public lighter for the same purpose, that hired by the owner, the
risk still continues. The landing of the proceeding is
according to the usual course of trade. Mar 166-5.
Sun 1448.
The master & owner of the ship cannot however be
discharged in such a case from subsequent liab.
Mar 159-168.

But the owner cannot under the protection of a policy
arbitrarily alter the landing at the port of discharge.
The insurer's liability continues only for a reasonable
Time to the place the cargo can be conveniently landed
But this rule also may be controlled by the usage of particular trade. Mar. 170-2, Long 492.
For even Insure is presumed to be acquainted with the terms of his trade. Mar. 152-3, 154-6, 254-6, 259-262, 369. 1707.

And the usage of another similar trade may be presumed to show the usage or practice. Mar. 172, Long 492.
But the fishing voyage.

But a particular usage in the trade of one nation is not presumed to be known to the underwriters of another. Mar. 156.

If any great delay is occasioned by any extraordinary or unreasonable cause in landing the goods, the risk continues upon the Insurer. Mar. 170-2.

When on a Ship's arrival at the port of discharge the goods are sold without unloading & the buyer contracts for the purchase of them to another port, but a loss happens before the breach, the Insurer is discharged. For the property being charged & freight contracted for the use of the case is, in the same as if the goods had been landed. Mar. 170.

**Upon the Ship**.

The commencement of the risk on the Ship is various according to the terms of the Contract. Mar. 170.

When she is insured for a limited time the risk...
Commence, &c. &c. unless the ship may there be.  
With the time.  Mar 173.

If a ship is insured "from the port of A" &c. it happens before she breaks ground the insurer is not liable for the risk due, nor commence till she left said. But if it be "at A from" such a port, then the risk commences in port from the time of subscribing the policy. (Mar 173 - Corp 101) But this rule supposes the ship to be at the port mentioned at the time of subscribing the policy. For if a ship expects to arrive at a certain place &c. insured "at B from," her arrival three the insurance commences, or the moment of her arrival at the place but not before Mar 173 - Corp 101.

And the risk in such case continues, as long as she is preparing for the voyage &c. until the voyage is over & funded. 2 the ship is there to remain for an unreasonable time with the owner, priority then 173. In such case, after the lapse of reasonable time the risk ceases.

In the Eng. policies the risk is made to continue only "24 hours after the ship is moved in good faith" at the port of her departure.  Mar 173 - 4.  Smith 162.  Park 23 - 33.

When the policy is in this form the insurer is liable for no loss happening to the ship after that time.  Mar 174.

And this rule holds even in the case of her loss existing before her arrival.  Thus, when Master had
Insurance

been paid of by paying on the voyage to the ship
was designed for it, after the arrival it had been
moved 24 hours, insurer was adjudged not liable

If a ship is insured for a given time & receiver, her
death would within that time but still surviving,
the period fixed, the insurer is not liable. May 178.
15 A. 260.

If insurance is made on one's life for a year &
after receiving a mortal wound within the year,
he died after the expiration of it, the insurer is
liable. May 175.

But where the insurance continues, to 24 hours
after wounding, the ship from necessity leave the
wounding within that time, the ship continues
the same. It is moved 24 hours. If the
is obliged to perform for a year. June 1848. For she has been moved 24 hour, import
1205.

So if she is ordered to perform for a year within
24 hours this she does not leave the ship's 'till ap-
- the that time. For she cannot after the order to
perform to be said to be moved in good safety for
this implies an opportunity to incline. (46)

If收 as her surins within 24 hours (at
under no embargo) or retained s a prize, the in-
Insurance

In order to enable the ship to be permitted to
arrive her cargo, she could not be said to be
referred 24 hours in port safely, March 1767. 

But if a ship is insured in good terms, from 9 to 15
without any words, expressing the duration of the risk it
has been held to continue till she has been embarked
at P. March 177 - Jan 24. - Usage at a particular place
at the port of discharge may vary this rule.

Thus, it has been decided upon the ground of usage in
such cases, that the risk terminated at the expiration
of 24 hours after the arrival & unloading, March 177-1
18th 217-18.

If a ship is insured generally on a voyage to an ins-
rance in which, there are several ports - the first port
at which she arrives, for the purpose of unloading
is deemed the port of delivery - June 1789. 18th 14
16th Ca 412. 

The risk upon the Tacking, Tackle, furnitures &
provisions of a ship insured, continues, until, no longer
than they are on board the ship March 180.

But when it is necessary to put the articles on
those clearing repairs of the ship, that are protected by
the policy - Ex. Tacking burned by accident March 2.
June 341. 4th 228 - held that the insurer was liable.
For if it is, for the advantage of the Insurer
that they should be put on there. Indeed it is necessary
in order to repair it.
A liberty in the policy "to lie & touch at any port or place" means only places in the usual course of the voyage. Mar 15. 1799. p. 27.

But the construction of this clause may be extended by the usage of trade. Mar 25. 1799. p. 32. Bur. 348. 1797. p. 6. extended by custom indefinitely.

A liberty to touch & lie at any port or place does not authorize the insured to break bulk & trade at three places. Mar 15. 1799. p. 60. 1810.

Nimikin is confined to general & necessany purposes.

And when a ship touches at intermediate places, she must generally touch in geographical order.

But if a ship issues change, from neglecting the order of the place, at which she is to trade, yet if the original voyage is not abandoned the risk continues. Mar 18. 1799. p. 132 & 137. 207 - 208 - 209 - 207 - 8.

Upon Freight.

The risk in freight commences from the time the goods are put on board. If then any previous accident prevent the voyage the insurance is not liable for the loss of any freight which the said

Mar 27. 1799. p. 1251.
If a ship is to sail to a distant port to take in cargo, the risk upon her freight commences from the time of her loading for that place. The liability being an insurmountable of the voyage & attaching an inordinate right to the freight, as the contract is entire.

**Note:** By "Freight" is meant not the goods put on board to be carried, but the voyage, which the ship earns by the transportation.

**Change of Risk:**

If after the insurance the nature of the risk is altered without the consent of the assured; the contract is determined; the insurer declining the charge. (5-3-4.) Thus, if a defect in hand as a private vessel afterwards takes letters of marque (or reprisal) without the insurer's consent, he is, by the change of the nature of the ship, made a party. (5-3-3.) For this furnishes a temptation to assume for prize, & thus vary the nature of the risk as contemplated at the time of the contract.

But if the letters of marque are void for want of any legal requisites, & taken without any intention to engage (as to preserve seamen) the insurer would remain liable (he is, not cannot be affected by them) if it is a mere trick upon the
In insurance:

So that the insurer in violation of his instructions should actually enjoin for fire, as this would be barratry.


The Policy:

A Policy (as the word is used in the law of Insurance) is a written instrument containing a contract between the Insurer and the Insured.

The word is from the Italian in which it signifies a note or bill. So that the term "Policy of Insurance" means a note or bill of Indemnity. Mar 190.

In general, it is signed by the Insurer only as the price is paid or supposed to be paid at the time of signing. So that there is no need of any counter promise (in the policy) on the part of the insured. Mar 190: 6 FR 103, accepting this Policy he tacitly agrees to pay the Premium. 

An Interest Policy is when the Insured has a real, substantial & assignable interest in the thing insured.

A Wager Policy is one founded upon an ideal risk the insured having no interest in the thing insured. 

Such policies are usually expressed "in respect of any interest" or without further proof of interest than the policy, "without benefit of salvage to the Insurer."—ante 13. Mar 199: 97.

In reference to the amount of interest, policies are either open or valued.

An open policy is one in which the amount of interest in the insured is not fixed but left to be proved by the Insured in case of loss. Mar 199.

A valued policy is one in which the value is determined by the property insured at the time of the loss. "The necessity of proving the value in case of total loss is thus saved for the Insurer has agreed to it as stated in this policy." (32)

The value thus fixed ought to be the true value at the time of the loss (or the prime cost of the goods) at the time of effecting the insurance. Mar 199. 199. 200m 116. 200m 117. ante 12.

The only effect of the valuation is, that it establishes the amount of the interest of the Insured to operate at C.L. as an advance by the Insurer at the trial would do. ( ante 7. Part 12. 144.) Mar 199. 10. 208. 15. 31. 200m 117. 200m 118. 25. 43. Under the Stat. 199. 2. the Insured must—
Since the above statute the valuation can only
prove some interest in order to sustain an ac-
tion upon it; but this is all that he is bound to do,
& time if the interest is but slight the Insurer must
claim it - 2 Dan 1171 - 2 Term 716 - March 202
181 - 103-415-535.

Since the above statute the valuation can be only
prima facie evidence - if the Insurer is at libir-
ity to show that it was intended merely as an evi-
dence of the act ante 17 - Mar 202, 181, 535, 2 Dan
1171.

But when a valued policy is honestly meant as in
o discovery event will not inquire very minutely
into the accuracy of the valuation - Mar 202-3-

It is only in the case of a total loss that there is any
material difference between an open and a
valued policy - for where the loss is partial the same
inquiry as to the amount must be made in both
cases. - Post 127. - 26th 103.

Insurance is usually procured by Policy Broken -
without any direct communication between the
Insurer & the Insured. Mar 207.

In such case it is unfair to charge the Insurer with the
premium & to hold the Insurer liable for the premiums - that the
broker alone is liable for the premiums - that the
broker alone & not the Insurers can recover the
premium from the Insured - Post 55. - Mar 202,
240 - (See at C L). -
Insurance.

In case of a loss, however, the insured only can maintain an action upon the policy. The chattel being only upon an instrument, to which the broker, as such, is not a party. See 204-5.

Where one wishes to obtain insurance abroad he generally does it through a private agent or correspondent. See 205.

To make an agent for the purpose of effecting a policy, he must either have an express direction from his principal, or must be under an obligation to insure arising from the nature of his dealing with his principal. See 205.

And no general authority relating to another man's goods or ships will make one an agent for this purpose. Hence a ship's owner cannot be bound to insure for his own ship without express direction to that effect. See 205. Darm 72.

(See also 218. 109 P. 316. as to correspondent acting as joint & agent.)

But there are three cases, in which one person may be obliged or bound to procure insurance for another: he is liable to an action on this case if he neglects.

1. If a merchant abroad has effects in the hands of his correspondent here, the former has a right to require the latter to affect insurance for him. For he has power to direct the application of his funds, as he pleases.
II. The there are no such effects in correspondent I hand, yet if he had been used to execute orders for insurance for the merchant abroad, he is bound to do it again unless he be given notice to the contrary.

III. When the merchant abroad sends Bills of Lading to his correspondent with an order to insure on the condition of accepting them. The acceptance of these amounts to an express agreement to effect the Insurance. Mar 205-6. 27 N 188. 11 22. Park 304.

And if a Merchant having accepted an order for insurance from abroad, limits the broker to too small a premium, so that no insurance can be effected at a low happens, he must make it good. Mar 206. Park 304. 2 7N 188. See 17 A 22. I see, if he does what it usual to obtain insurance it fails. Park 3042.

So if one voluntarily undertakes to effect insurance for another & proceeds in it, but by any negligence or unskilfulness under the contract in effect called he is liable in the event of a loss. Mar 206-7. 1 Exp 74. See 1N 158. "Bartons.".

In the above cases of negligence & unskilfulness, the agent is liable to the same amount as might have been recovered on the policy or the underwriter, but no further. And he may avoid being a half of every defence which would have arisen to the underwritter. As found by the Decreed Deviation. Break of Warranty. Mar 7b. 299. 7 12 157. Park 303.
But he is not liable for the costs of a prior suit upon the policy unless it was brought at his request. Aan 208.

And if rules practiced by the agent upon the insurer will avoid the policy, the insurer is not liable to it or forbade it. Aan 208. 340-50. 172 12. Park 209. Sec 2 72 70. for the principle, Aan 204.

When one of two innocent persons must suffer by the wrongful act of another, he who enabled him to commit the injury must be the sufferer.

The policy, when effective, is the property of the insured. If wrongfully detained from him, he may maintain a wrong for it; in which action he may prove his loss if any has happened thereon for it to his injury. Aan 210. Park 4.

The amount of the loss in such case the rule of damages.

If a broker represents to his principal that an insurance has been effected when it has not, the latter may maintain a wrong for it upon proof of damages. Aan 210. For it a, to the insurer, if the policy had been effective. And the broker is not permitted to show that no policy was effected. Aan 210. Park 4.
Intercourse

Form & Requisites of the Policy.

Form. The established form of the policy is very

But it is continued liberally & beneficially to the in-
curred loss, to effect the indemnity intended by
And according to the course of trade where effected.

Observe clauses are contained in the value of the C.D.
It is presumed to have been made subject to the
law & in reference to it. Mar. 212. (Aug. 239)

Requisites.

The usual requisites are Ten.

1. Name of the Insurer, or his agent, or Trustee
must be regularly inserted in the Policy. Formerly
the practice was to effect policies in blank, as to
the name of the Insurer. But the Stat. 29 Geo. 3.
éc. 24. requires the name of the Insurer or his agent
to be inserted at the time of the execution of the
policy resides in England & if he resides abroad

It is held under this statute that the name
of the agent when necessary to be inserted must
be inserted as agent, that if the principal
resides abroad the agent must be resident in Eng-
land, that the name of all the parties interested should
be inserted as above. Mar. 24. 158. 313. 38 17.
Insurance.

This Act was repealed by 28 Geo. 3. c. 36. (No. 94-119
10MoL. 346)

By the latter Stat. the names or names of the persons interested, or of one of them, or of the assured, or consignees or of the persons paying or receiving the order
to insure shall be inserted, if at the time of executing
the Policy. Mar 20. 14. 1808. 318-

I. As to the description of the Defed. Name of the
Ship or SHIPS or - In a policy or policy it is
necessary in some cases, to name the ship in which
the goods are to be carried. It then becomes part
of the contract that the adventure shall be in the
Ship named, or any ship or ships in substitution
except, some mentioning of the context of the insurers,
1. 0. 11- 9 Car 19-

But in many cases, where goods are to be shipped
abroad the policy is, "in any ship or ships." This is sanctioned by usage and authority. Then when
a person orders a correspondent abroad to send
goods to him, the correspondent may ship the
goods in whatever ship he pleases, for he is the
best able to judge in what manner the goods will
380-2-3- 2X Ac 343. Car 19-

The place of Defed when known should always be
described as "in the Ship" or - If not described as
in lead the Insurers the contract is void. If by mis-
take, not affecting the risk, or if the Insurers
Insurance

Know the vessel - the Contract is good. Mar 22.

50) If the vessel is a Carracke she should be declared so in a Bill of Lading. If a Letter of Change it is said to be paid. If not to be paid it is cancelled and the interest is charged - Mar 22.

So also the name of the Master when known should be inserted & if there is no clause authorizing the insured to appoint another, no other can be substituted except in case of necessity or by consent of the Insured. Mar 22. 2. Since it is usual to insert after master 's name & wherever else thinks go a master & - But even this does not warrant a warrant change. And if one is named when another is intended it would be strong evidence of fraud - Mar 22. Judge G. thinks Policy would be void.

III. Subject matter. The subject matter, a kind must be specified in the policy, whether ships, ports, freight, or other things. If it is goods it is not necessary to particularize the articles. Any kind of goods or merchandise is suff. Mar 22. 2 (285)

But they are sometimes specified at the port of this policy & where they are so, if these specified are not the one, part on board the policy is void if the others of equal value are put on board. Mar 22.
Insurance.

If respondents or docking securities are named they must be particularly described in the policy. They cannot be included under the general designation of goods. Mar 225. 1813. 3 Dec 1814. 19th 299. 405. 422. But usage may create an exception to this rule. Mar. 225. 94. 5. Parkinson.

The Master, Officers, & the Ship's provisions are not included in the general designation of "goods." Hence insurance of goods not妹子 for a loss or the whole specially named in the policy considered as part of the Ship's furniture. Mar 225. 127.

Seamen's clothes are not "goods." 

Some rule holds of goods locked to the deck, they being exposed to greater damage than others must be particularly described. Mar 225. 1. Parkinson.

Money, Jewels, Billions may be insured under the general designation of "goods." But the insurer is not liable (unless) for the risk of unlawful importations. Mar 225. Park 22. 4 Dec 1812.

Jewels, rings, watches, staves worn by persons on board are not included in losses in a policy on "goods." not considered as part of the Cargo. Not liable to contribute to a partial average. Mar 225. 466. 2 TH. 47. Mol 132. C 184.

52. Voyage. The voyage insured (whether the insurance is on a voyage or on a
particular ship) must be truly described.

The place of the ship's departure or destination,
the time and place at which the risk begins, the
time when the risk is to end.

If a blank is left for the place of destination or de-
parture the policy is void for uncertainty. Mar
229. 8. Long 112. (see Cocks note) 1740 or 419. The terms
are both uncertain.

Sometimes policies are effected for a particular time of time
instead of a particular voyage. In this case the beginning
and end of the time should be specified. Mar 229.

If a letter of marque is insured for a voyage with liberty to
bring in for any losses, they are understood to be the same as
specific weeks. Mar 328. 403 4. Long 509. If they are not so
the insurance is discharged.

If the port of destination be falsely set forth in the por-
ciling the contract will be at issue void; Insurance from
A to B where the voyage intended was from A to C
shall become void on reaching the dividing point. The policy
is void, not on the ground of an omitted descrip-
tion, but of a different original voyage from
that described in this policy. Mar 229 30. Long 119.
321. Date 299. 27 H 32. The voyage from A to B is never
commenced.

And whatever may have been the original intention
(i.e. at the time of effecting the policy) of the Ship actually fails
Insurance

In a voyage different from that insured the policy is discharged (Mar. 231. 2. 3. 1. 572. 39) not on the ground of misrepresentation (as the case may be) but because the voyage before us is not the voyage insured.

But when there is only an intention to deviate not executed (the terminus of the voyage being the same as that of the voyage described) the policy is not discharged.

Ex. Insurance from A to B, loaded with intention to land at B (in the course of the voyage) at last happened arriving at a particular port. Policy is not discharged.

Ques. Is there another where the Capt. is intended at the time of letting sail for insures?

Distinction between a Deviation, an intended deviation and a different voyage.

A deviation is a voluntary actual departure from the usual course of the voyage intended not in consequence of previous orders to the Capt. but in part from design conceived during the voyage. If the departure were in consequence of previous orders it is no deviation but the voyage before would be one different from the one insured (Sec. 50. 3.)

An intended deviation is such a design (conceived during the voyage) not carried into effect—(May 13, Mar. 231. 392. 572. 594. 157).

A different voyage is a full one. If a ship is insured
Insurance

from 1 to 30 before he sailing if, determined by the Insured that the shall call at C out of the usual course of the voyage & the sail in pursuance to that prior determination the voyage on which the sail is different from that Insure. It is no deviation.

A more directio discharge the Insured from the moment of the deviation but not to render the contract at issue void.

An intended deviation do not discharge the Insured, if it is not executed.

A different voyage if carried into execution discharge for the Insured from the moment when decided upon. But if the policy joins the ship liberty to land at a place where it is not intended the ship for this will not affect the contract. It is a mere indeterminacy to the Insured, not going to the place named shorter the voyage & tend to diminish the risk. Note 232: Long 235.

If from a certain point there are several lands of which the Captain usually selects one according to circumstances but the Insured direct before sailing while shall he states the policy will be void and his the lands pointed out by the Insured, it is the one prescribed in the policy. The Insured are otherwise entitled to the advantage of the Captain's judgment in selecting the lands to be pursued. Note 233: 1772 102.

V. The peril against which the Insured is to be protected must be specified in the Policy. Note 234. For the Insurer is liable for no other.
So for life insurable to the owner of the ship or to the
master or mariners employed by them it is not generally
intended that the insurance should be liable than 237
o 1 by bad straige | Embayment | or death by master
or by third person.

By the common policy the Insurer is liable for the Dam-
age only of the Captains. Mar. 237, ante 41.

By the word, last, or not last, usually inserted in the
instrument, the insured is made liable not only for
future lives, but for those (if any) already insured-
Mar. 237.

And if these should prove to have been a prior life
not known to the insurer or his agent the clause will
be binding. (26) - 2 Part 25.

VI. Interest of the Insured - to avoid doubt it is usual to
insert a clause empowering the insurer in case of
misfortune to employ at charge of insurers all necessary
men for the defence of security of the vessel itself.
The expense to be defrayed by a contribution by the in-
sured proportionate to their respective subscriptions
Mar. 237, 724 (also see part 107). This house is of course
usually exercised by the new captains. Insured Agent.

VII. The Receipt or - The undertaking of the insurer
binding them to the performance of their contract
of their acknowledgment of the receipt of the premium
from another clause.
This acknowledgment is intended to preclude all objections from supposed want of consideration.

The premium is not known in fact always paid in advance. It is usually a matter of accounts between the broker who procured the policy and the insurer.


The amount or rate of the premium is not settled by any rule or usage, but by the agreement of the parties (Mars 228). It is deemed fair and justly found is proved.

VIII - The Common Memorandum. This exempts the insurers from all partial losses on certain punishable articles (art. 28) from partial losses on certain other articles not exceeding 5 per cent. from losses on all other goods (as also on the ship itself) not exceeding 3 per cent. Mars 139 - 9 - 140 - 44 - 14 - 15.

The insurers, however, are liable under this memorandum for damages for losses; however small, occasioned by general contribution or average. So in private policies if the ship be stranded (art. 28) Mars 141 - 158 - 9 - 14 - 15 - 14323.

IX - Signature of Insurers, date & subscription.

To the insurers or subscribers of the undeniors (Insuree) the sum that he insures is generally ascertained and in body of the last for their names do not turn up a year.

And it is not indubitable that this sum be the sum signed in the policy. One may truce himself
for the value of the subject, or for a piece proportion of it, without fixing the value or without naming any
sum. [Page 241]

No date is inserted in the body of the policy.
But each subscriber is active a, each makes a distinct contract. [Page 241-2]

Policy altered or corrected.
A policy this a simple contract cannot be altered, altered or corrected by oral evidence of the agreement. Except for mistake or fraud clearly made out. [Page 245-6] Stair 454.

If mistake or fraud is clearly proved a court of equity may correct it. [Page 245-6] 12 Vent. 317-11 Bk. 545.

Can a Court of Law admit oral evidence to vary or correct the terms of the policy?
And these bags, perhaps, Court may do so. [Page 245] Can what principle except necessity for proof? City Law can't relieve at; a mistake - but Equity can. as where
Peninsula letters $2000, instead of $1000 - City 569, Law 738. [Page 245-6]

It's well once either a case of a policy once being valid (ie an action upon it at law) by verbal evidence that the risk was to commence at a place different from that mentioned in the policy, Sal. 454, [Page 347]. [Page 245] Where he not mistake in the statement of that case see Stair 454. [Page 108-9].
Insurance

But the parties may undoubtedly alter a contract by mutual consent. Mar. 21:5:7. Sal. 44.

But I think it clearly follows that Parol Evidence cannot be admitted to correct a mistake or vary the terms of the policy.

X. Warranty.

In every policy there is a warranty express or implied on the part of the insured which is in nature of a condition precedent to insured's right to recover. The stipulation may be either affirmative or negative in form or part consists of conditions (as that the subject insured is not defective) on that which failed on a certain day or

or Promising undertaking the performance of something future (as to sail by a certain day).

And in cases of measuring and valuing the property (as in those cases where the property is under the control of the insurer).

Or in cases where the property is under the control of the insurer.

If an affirmative warranty is given the contract is void ab initio. Alike in case of a Promising warranty which is not performed. But in this case as well as in the former the insurer is liable for loss. (Art. 66. Part. 27. 355. Mar. 739.) Art. 715. 352. 477. Mar. 268.

Warranties may be either express or implied. Express is one expressed in words. Implied is one arising out of the nature of the contract but not expressed in words. Ex. that the ship is beam wide. Mar. 249. Art. 30.
Every Contract to be construed according to the
Commercial import of the words, &c. as they are
understood in the mercantile world. (244)

Even Warranty must be literally complied with if
not the whole contract is void. (72.) 798. than 230
Comp 344-5-6 the meaning of the parties being
that of the warranty, if not complied with, the contract
is not binding. (249.) 313. 172. 348.

And to whether the thing warranted is material to
the risk or not no matter how insignificant or
unimportant it may be. 154. the law does not
happen in consequence of the non-compliance of this
Warranty. (54.) This shall fail with 50 men on
outside voyage has sailed with 59. 50 men, last on hom.
2 word voyage. Insurance were discharged 172. 349-8.
March 25th. 39. 191. 1.

Or if ship is warranted Neutral. Then not to this
is lost by Tempest or Barrages. So whatsoever may be
the cause to which non-compliance with Warranty
is attributable. Warranty must be kept.
only the Insurer prevented in compliance.

Suppose Compliance is rendered impossible by a pre-
view of the damage within the terms of the pol-
cy. a Ex Insurance "at " a port with
warranty to sail at a particular day, & before the
day the subject is destroyed by one of these forces in
the policy, as a tempest. Is the Insurer liable?
(Vide Sanders's dilemma in Island of Carmania.)
Insured in such case can't receive. (248.) 1. 5. 2.
220 - March 363 - Corp 784 - May 252 - 262 - 3 -
* This case was left by subsequent capture -
See (Post 62 - 77 -)

The meaning of the Contract is this - 'I insurers your ship at 9d. (of $4 2d 27) provided you sail at each a day; or therefore I do not insure against any peril which shall disable her to sail at each a day -

The Warrant is this - 'I agree you never shall be liable on this policy unless my ship sails by each a day -

The words at part of N. 16 is not verbally expressed because a left may happen at the Port or yes the ship be enabled to comply with Warrant as if the last day March (60) or any other partial left which will not prevent her sailing by this day. The objection there that time would be no insurance is not sound -

Every Exempt warranty must appear on the face of the policy (not appearing the written instructions i.e. left off they may have been altered) Post 70 - June 252 - 53 - 7 - Corp 790 - Park 921 -

Sufficient if written in the margin this being part of the policy - June 252 - 33 - 7 - May 12 - Park 921 -
Corp 27 - 3772 343 -

But a distinct paper containing instructions wrapped up in the policy is not deemed part of the policy - Park 921 - It has no effect that it may be proof of mistake -
Indurance.

So if a distinct paper describing the state of the ship
the particulars of the voyage &c. compared to the plea
it is, only, a representation (of which see)

The printed proposal by the insurers, referred to in
the policy, &c. prescribed condition are in law part
of the policy to become conditions precedent to the right
of recovery by the insured, M. 119, 250 - 3 - 700-9 -

An example, so a draft referring to another a

Saturday July 2, 1871.

The Subject of Expiry Warranty:

now be what the parties chose - time of sailing a
line of the Common Warranty is - that the Ship
sailed or was loaded, in whole or in part, 
i.e. shall sail or shall have sailed, on or before a

Saturday July 2, 1871.

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i.e. shall sail or shall have sailed, on or before a
In case the ship is detained by an irresistible force, the one of the parties insured vs. Mar 254. Park 328. C. 529.

A warranty to sail after a given day is to be observed with the same strictness. Mar 254. Park 328. C. 529.

But a warranty to sail on or before a certain day is complied with by sailing to another port before the day to join convoy. Not the place of rendezvous, but the direct course of the voyage. (Antiquated by usage Mar 257) So that it is not a breach of contract at the place of rendezvous, beyond the day agreed, to discharge the insurance. Long 341. Park 327. C. Mar 257. C. 529.

This rule supposes the ship to be in readiness for the voyage at the time of her time sailing, Mar 254. C. 529. C. 527. C. Mar 257. C. 529.

If the ship gets under sail upon the voyage before the day, the warranty is complied with, the ship is driven back by ships of war. Mar 251. C. 352. C. 529.

In an insurance "at or from" such an Island (as Jamaica) the word "at" implies the whole Island so that from any part of it at a landing within the policy, Mar 254. Long 341.
Warranty to sail with convoy.

Warranty to sail with convoy is a usual stipulation in insurance if not complied with the policy becomes void unless the non-compliance is excused by the default of the insurer or the negligence of government to appoint a convoy. See 28. 1. 12. 21. 443. 92. 92.

The latter rule is affirmed by the Insured, Immuniing whether the loss happens from want of convoy or not.

By convoy is meant a naval force appointed by government for the protection of commerce. See 212. 238.

The convoy stipulated for in the voyage may be for the whole or some part of the voyage unless by a warranty to "sail with convoy" without more is meant a convoy for the whole voyage unless qualified by the common usage of the trade. See 269. 5. 345. 1. 352. 328. 372. 35. 5. 9.

A warranty to sail with convoy for the voyage is complied with by sailing either with one convoy for the whole voyage or with several convoys different parts of it. See 209. 9. 219.

Sailing with any naval force not appointed by government as a convoy is not a compliance with this warranty. See 242. 2. 2. 218. 9. 349. 2.
Insurance.

If the arriving at the rendezvous, after the convoy has sailed, calls under the protection of any other naval force (even for the purpose of retaking the convoy), the warranty will not be satisfied [sail on page 338-9]. The latter is not a convoy.

If the sails for the rendezvous, to join convoy by pre-arranged by the peril of the sea occurring or in any way after repairing sail without loss, or at the risk of the insurers. [sail on page 332-333].

Sailing with convoy from the place of sailing as printed by the insurers is a sailing within the warranty but the rendezvous is not the port of loading. The place of joining convoy being determined by usage. [sail on page 342-343].

And the ship is protected by her insurance in passing from the port of loading to that of rendezvous. [sail on page 343-344].

If part of the premium is agreed to be returned if the ship fails with convoy or arriving. She must sail with convoy appointed for the whole voyage to entitle the insured to a return of any part of the premium. [sail on page 345-346].

[Note: sail on page 345-346]. But a similarly to sail without convoy for the voyage does not necessarily mean a convoy from the port of departure to the very port of destination.
Inasmuch

but such a convoy or government may appoint for such a voyage according to common usage.

Ex. Voyage from Caixy to London if the convoy appointed for such a voyage terminates at the


If the Ship fails with convoy for part of the voyage with intent to join another for the residue, this

is according to the usage of the trade, enters in the warranty, this the Ship, the latter convoy.

Mar 219 - 9. 2 DDI 7 I. - Park 349.

If separated on the voyage from the convoy by a fault incurred in the event of weather this warranty

is void, broken by this separation, the latter continues.

Park 347. - Bye 73. 5 Lr 320. 3ld 440. 4l & 75. 58. 80. 326.

Tailing instructions are regularly indispensable to tailing with convoy, within this warranty. Mar 271.

272 - 9. 2 DD. - Park 398. 10 DDI 57. 211 154.

These are written directions from the Commander of the convoy to the several Shipmasters under the

convoy, prescribing by what and all necessary instructions to arrive & orders to be observed. The Ship masters

are bound to obey them. - Mar 371 - 3. Park 398.

If the Ship arrives at the rendezvous at the time appointed but finds the convoy gone the

warranty is not complied with even if the afterward

join the convoy without tailing instructions.

Mar 272 - 264. Park 393.
Insurance.

But in such case, the master must obtain them a soon as possible or the warranty is broken.

So if the master applies for them, being himself in no danger, they are refused. Failing without them is a compliance with the warranty. But he must be at the rendezvous in season for obtaining them to avail himself of these exceptions to the penal rules. Man 275-1. Part 341.

The master also use due diligence to obtain them before leaving, or the warranty will not be complied with, tho' he obtains them afterward. Man 376. 2 Del. 164.

The ship must not only depart but continue with the convoy for the whole voyage (or so much of it as the convoy is to protect) unless expressly excused. Otherwise the warranty is broken. Man 278. 9.

If the ship to set under weigh with the convoy it is thus out of its protection for ever so that at time the warranty is broken. Part 349.
Warranties

But if the said vessel cannot or is afterward separated
by ship of war, or unable to join it again, then the
warrant is not broken. Mar. 280. 4. Lev. 320.

The War. 28 Geo. III. prohibits ship masters (except
in certain cases) to sail without a license in
time of war, under severe penalties, Mar. 280. 4.

Warranties that the ship is neutral.

In time of war the subject is no
lawed by frequently won to be "neutral
property," or the property of the subject of some
particular neutral State. Mar. 280.

If the warrant is false at the time when
made, the policy is void, at issue, Park 350. 1.
Mar. 287. on the ground of fraud. Park 350.

In. Is it necessary on the ground of fraud?
May it not be false, this mistake? See also 38.
The title to property is often questionable.

But if the property is neutral at the time, the warranty is complied with notwithstanding a

peaceful war. A subsequent determination of war being at the risk of the insurer.

Mar. 29. 1778. 705. 2 Park 340. 3. 74. 477. 30. 10. 1419.

10. 2. 427.

If peace at the time when made there is, in

law no contract. Secs. 6 of the two preceding

warrants. Park 357.

The verbal evidence of the falsity of the war-

warranty is the sentence of a Court of Admiration

condemning the property as a prize. Mar. 8.

In peril of condemnation even by a

foreign prize court is conclusive evidence, when

the prize court decide. Mar. 281. 97. 328. 64. 712. 6.

Park. 357 - 6.

But the foreign Court contemplated by the rule

must be one established according to the Law of

Nature & of competent jurisdiction.

Such 65 proceedings are not evidence. Mar. 281.


Hence the sentence of a Court of a belligerent power

pronounced in a neutral State is no Evidence here unless

a Tribunal being established contrary to law of Nation.

July 4. 1831. 8 found at Nantford. In N. Y. died Ex Post. Munro.
Rule. When the promise of condemnation appears on the face of the document, it is considered conclusive. An enemy's property is presumed to have been seized. The warranty was false — see C. 247. 127. 17. 7. 12. 16.

And a lentece alleging that the property was "not neutral" (and no more) is conclusive. See C. 240-2. Book 314. Park 345. It is said if the promise of condemnation does not appear in the lentece the other evidence may be adduced to the promise to support the lentece. See C. 341. In a, to the extent of the position. Park 361.

So if the lentece merely condemns as a prize, without more — see C. 240-2. Park 341. Where is the necessity of other evidence to prove the specific ground?

But when a special promise is stated which renders the property to be enemy's the lentece is conclusive. If then the lentece does not necessarily justify the warranty, its truth or falsity may be proved by other evidence. Park 364. See C. 242-2. 7. 7. 8. 523. 533. 534. Decided that the property was bound to an enemy's fort — therefore seized. Neutral or not, is not proved.

So if the lentece is ambiguous as to the promise of condemnation — see C. 247-5. 534. 535. 366.

But a foreign lentece condemning the property as enemy's is conclusive that manifestly unjust. If the promise there in the enemy's lentece does not prove the fact that the property was the enemy's — see C. 247-307. 7. 7. 531. It lentece seeing
the want of a proper list of the Crew & therefore contained in the warranty.

A warranty founded on the face of it upon
principle, repay, want to the Law of Nations is not evidence. But that a false finding in a matter of fact, is binding on our Courts. 

But such a warranty is in no case conclusive except as to points which it professes to decide, as to facts, unless the evidence is not conclusive. 

Any forfeiture of the neutral character of the subject insured by the act or neglect of the owner is a breach of the warranty. 

A forfeiture by the wilful act of the master or mariner even tho' the act should amount to Breach (which is one of the risks insured as) is also a breach of the warranty 

the act committed. The insured cannot recover for any bad securities. (5 Faw. 4 Cent. 3 Eliz. 115.) See "Evidence" 72-3 - 

The warranty implies not only that the warrantor is neutral, but that he is

The warranty there is promissory.
A ship may forfeit her neutrality or that of her cargo by any act done or attempted or the law of nations, in contravention of treaties or injuring one of the belligerent powers. Mar. 201, 772, 785, 96, 234.

Repeal by a private neutral ship to submit to seizure by a commission of belligerent countries is forbidden to be a fornicates of neutrality and therefore a breach of the warranty. Mar. 293, 301, 12, 13, 433, 872, 23, 234. For such repeal subject the property to confiscation as prize. Dated 93, 27, 514. Formerly held under as to breach of warranty. Park 362, 363, 381.

Repeal by the master to produce the ship's papers, which are the regular evidence of being neutral or not, come within the above rule. Ibid. 317.

A ship may forfeit her neutral character byailing without these proper documents required of neutrals. For the warranty implies that the ship shall be neutral for the purpose of being protected. See Mar. 317, 19. For necessary documents.

The want of these documents is however only presumptive evidence of the ship's not being neutral. Mar. 319. This rule as far as relates to the question of neutrality must presuppose in an action on the policy no consideration of the ship or belligerent power. Mar. 319, 223, 24.
The warranty also implies that the ship shall also be navigated according to the existing treaties, between the State to which this belongs, of the belligerent powers.


No compliance with such treaties is therefore a breach of the warranty. Ex. Want of documents required by treaty. 792, 379. 2 Sep 60, 611. 23 Oct 357. And a condemnation for that cause, is conclusive of a forfeiture of the contract, as to neutrality.

The rule is the same that the letter is not recognized by the want of such documents. As if the ship lasts without but has it at the time of capture it is wrongfully condemned on other grounds. For the warranty is a contract in times present requiring a literal compliance.

And the fact that the belligerent power neutral will not insist the breach in such a case. In the warranty is broken. 792, 379. 2 Sep 615. June 39-20.

A warranty that the ship is neutral, implicitly includes a stipulation that she is entitled to all immunities of a neutral vessel. Hence whatever document is necessary by public law or treaty to induce her these immunities is essential to a compliance with the warranty. June 322.

But a non-compliance with the particular municipal regulations of either of the belligerent powers is no breach of the warranty. No neutral...
Insurance

It should be noted in this case, contrary to public law (ante 17) that as in.xxx. 1822. 8. 52
Pack. 352. 7. 19. 61. 8. 343. 592. And they should both of them too. — Pack. 361. Ant. adlaw
see Horse 326. 8. 12. 444. 56.)

If, however the insured is apprised of such regulations, he does not conform to them, he ought to declare them to the insurer or, he might think it a violation of the risk. Ann. 322. 6. 52. Pack 363. Considerations - (70)
I think I would make the policy void. Not if the parties are ignorant of such regulations the insurer take the risk. A condemnation formed upon them does not prove a breach of the warranty.

For the law of Nations (subject to such regulations only as have been introduced by treaties to which the state to which the insured belongs is a party) is the rule for deciding all questions of price. Ann. 329. 12. 243.

But the law of Nations is not varied by any treaty except as between the parties to it. Ann. 333. 6. 2.
175. 562.

Representations

In contract of insurance the most perfect he...
surance

the part of the insur'd is deemed a fraud against

A "representation" in insurance is called a state-
ment (written or oral) of fact not inserted in
the policy but which are necessary to enable
the insurer to estimate the risk justly. Marx 335.
Coll 197. If it is then no part of the policy, as a con-
tract is, it must be.

A representation may be untrue through fraud or
mistake.

A wilful misrepresentation of a material fact
(in material to the risk, is a fraud) always an:
voids the policy. So that the insurer cannot receive
a loss arising from a cause unconnected with
that fact. Representations that the property is
unsalvageable, when it is not, is a fraud by which
the insurer is defrauded. Marx 335. Coll 179-177-205-4-176. See
297, 327, Sum 1419. 1 1 1 1 1 425.

Rival the home that done by agent. Marx 335-9. 205.
179-112.

So if the party or agent makes such a represen-
tation, it not knowing whether it is true or false it is
still a fraud. Effect of it the same. Marx 335-1.

So if he make a positive representation which is false,
that believing it to be true Marx 231-9. 670. Darg
247-179-112, Coll 175-205-5. For it must be repre-
sented as innocent inducement to underwrite or im-
Insurance

"for as the premium agreed on, it has all the effect of a fraud, the not in fact one.

But if he makes a statement as a matter of opinion, knowing nothing about the subject or having no reason to believe its truth, it will not affect the policy. For if it being professedly a matter of opinion, the insurer should inform himself of the grounds of belie of, if he wishes to be satisfied. "See 334, 341.

Part 207.

Expressing an expectation does not amount to a representation within the rule, before laid down. The insurer might inquire into the substance of it. Ex. Expectation to bail by such a day. (See 334, 341, 292, Part 207.) But if the insurer had no such expectation the substance of it would be fraud & B. Basil would avoid the policy.

"Difference between Representation & Warranty in several very material respects.

A Warranty is a part of the written policy. A Representation never is.

A Warranty being a condition precedent must be literally complied with, but it is enough that a rep. representation be true in substance. A Warranty must be be complied with whether at all material or not. (ante 38-39.)
Insurance

A false warranty avoids the policy as being a breach of the condition of the contract. But a false representation is no breach of any condition of the contract. But if material avoids it on the part of fraud or at least that any person has been misled by it. Mar. 338-7. 341. Park. 196-7.

Written instructions not inserted in the policy, of the wrapper in it — or even referred to it are only representations not warranty. Mar. 337-252. Day 12 12. Park 321. Anti 59.

Any fraud practised by the agent will avoid the policy. If a material misrepresentation will also avoid the policy.

If the broker or agent makes any unauthorized representations by which the policy is defaced he is answerable to the Insured. Mar. 338. Corp. 397. Day 293. Park 257-8. 40-4. 30Mar 149-108 Aug 427.

In the event of a loss he would be liable to the insured to the same amount as, the Insurer would have been if the policy had been good.

A false representation made a, to a material fact to the first underwriter is considered a notice to all the other underwriters, and will avoid the whole policy. Mar. 338. Corp. 397. Park. 198. 201-7 8. The name signature of the first is often an inducement to others to subscribe. But the last signed underwriter must make the signature on the trial in the first instance, the best
If matter of some computation is omitted as a fact, it is a representation within the rules of nature to such time as it avoids the policy. See 4, to this time of this being known to be false. Same 338-3. Story 247. Park 2054.

Sup. that the representation be true in substance. Same 341. Story 765. Park 207-1. Representation of a prior force in the ship, the actual force is somewhat different in particular, is greater than that represented. Policy is good.

So voyage represented less than it really is, yet if the actual voyage is as described in the policy, it is found the interest is bound. Same 342-3. Story 274.

A false representation there will not avoid the policy if there be no fraud, or the insurance be not declared. It is where the sensible voyage differs from the real one (the Insurer knowing the fact) to the least voyage is within the policy. Same 343-1. Story 275. (cont.)

A representation that the ship was ready to sail on a certain day when she had in fact sailed before that day is material to avoid the policy. Same 348-3. Park 182.
Concealment. As in all contracts "suppositis poesi" has the same effect as "ingeniosi falsis."

Hence a wilful concealment by the insurers of any fact material to the risk avoids the policy, etc. As to the litigation of the ship, the time of sailing, the nature of the employment, etc., see 248. 182 A 14. Bate 74-15. 182 A 16. 174. 182 A 192. 182. Jan 1929.

In each case, indemnitees are not liable even for a loss arising from a cause unconnected with the fact concealed. Sec. 374-48. Parks 147. 182. For the effect of concealment as of misrepresentation relative to the time of the loss but to the making of the contract (Sec. 249-52. Vina 1183.) And found deceiving the contract at issue. E.g., where the plaintiff knew that the ship had sailed on a certain day from African, whereas the reinsurer knew the ship was on the coast of Africa on that day. Sec. 249. Parks 182.

Concealment by the Charter of the Insured by whom insurance was ordered to be made has been held to avoid the policy. This has been in cases of the owners' knowledge of the fact concealed. Sec. 349, 350-340-208. Parks 209-210-214.

If the time of the ship's being ready to sail is known to the insured it was communicated. This concealment avoids the policy. Sec. 350. 182 A 373.

Sec. 392. Parks 43. Parks 182.
Insurance.

If the Ship is engaged in a dangerous service the fact should be made known to the underwriter, for he is not liable. Mcn 357.

Material concealment is fatal to the policy, the party or agent concealing supposed the fact to be unimportant. Mcn 357. Dong 308. It may alter insurer's estimate of risk. Dong 500.

Even doubt ful answers as to the safety of the Ship when insured "Lost or not lost" must be disapproved to every underwriter. Alter the policy is not binding on those uninformed. Mcn 357-358. Part 170. Part 179.

If the owner having an uncertain intelligence of a ship's being lost has her insured without disclosing it the policy is void. The the intelligence was false & the ship had not been lost. Mcn 348.52.

Part 178. Part 179. For the insurance was obtained that false.

No compliance with a foreign ordinance (tho. 75) is contrary to the law of Nations should be disapproved to it affect the risk. Mcn 352.3.6. Part 159.6.

And concealment by an Insurer may also avoid the policy, so that the premium may be recovered back. Ex. If he knew at the time of underwriting that the ship had arrived safe.
Insurance

Concealed the fact — See 352, 180, 574. 3 June 1909
(foot 132).

But the owner is not bound to disclose what he
knows himself knows — or what he ought to know
as what every one is presumed to know (Ch. 352-
4). Ex. The nature and ordinary state of the voyage
of the climate — the probability of tempest or calm
probable length of the voyage. See 353. Part 183-
106, 246, 590.

In fact, the owner is bound to disclose these facts
only when he knows to his belief the insurer is
ignorant of it, has no means of knowing, or has
3 June 1909.

So he is not bound to disclose matters of fact
— intelligence, or private political communications
where both parties have the means of judging
as to the existence of war or of Peace, or the
probability of either. See 353. Part 183.

So of facts which go to diminish the risk, for the
concealment of these can not injure the insurer.
Ex. If the insurance is for a given time, or
with liberty to deviate, the probability that this
time will be pleasant or that there will be no
actual deviation need not be disclosed.

If a private ship of war is insured, any war.
Insurance

A stated actual enterprise within the scope of the policy need not be disclosed. [clean 55r. 535. 182.] For in each case, it is known to all that some hostile enterprise is intended. If insurance, not insist on information. he leaves it.

That the ship is foreign built need not be disputed [78]. the insurance may inquire as to the fact. This will contain the information if he wishes it. [535r. 554.]

It must be for the insurer to disclose the state of the ship, these being an implied warranty. in every case that the ship is sea worthy. [new 555r. 56. 229.] Indeed it is a rule that the insurer is not bound to disclose anything which he stipulation by a warranty express or implied. [new 555r. 73.] For the insurer has by the war -- worth all the benefit he can possibly derive from a disclosure of the fact.

It is not easy to disclose facts, while the insurer ought to presume. Ex. "insurance on a ship taken in battle immediately after capture." the statement of the amount of damage sustained. For the insurer must presume that the was damaged. Therefore must inquire as to the true price of it - or he waives the information. [556r. 13unigned 72.]

If the risk is increased by a foreign ordinance, unknown to both parties, it which writing is bound to know the policy is good. In each case the insur.
In carriage of a port abroad. The speculation of the insurer upon the possibility of an attack or not disclosed. Policy herein.

In this case reason of state operate by any disclosure. I think this kind of pre-74ence ought not to be allowed. as policy of the law.

Ship's Sea Worthiness to.

From the very nature of the contract there is an implied stipulation, or warranty on the part of the insurer that the vessel at the time of her departure is sea worthy. New 363-79. Park 221-30. The rule holds whether the insuror is on the vessel or on the goods on board.

Principle of the Rule. That the insurer ought not to recover for any loss occasioned by the inherent natural defect of the subject insured. New 353- Park 220.

Hence if the ship proves to have been incapable of performing the voyage from any latent defect not occasioned by any peril insured on, but existing before the voyage commenced the insurer are to be charged (ante 59) New 357-79. Park 220-220. Policy is void.
The warranty implies that the ship shall be
tight & staunch, properly manned, provided with
all necessary stores & in all respects fit to perform
the voyage, & with the proper cargo. Nov. 26th
in tight & staunch she lies Nov. 26th. ante 26-

And when a ship is found incapable of proceeding
on her voyage she is deemed to be defective until
the incapacity appears to have been or continues by
sea damage or some unforeseen accident. 604 of
the policy, issued against. Jan. 36th 73. Part 230-

If the ship is lost or is unable in the course of
the voyage to proceed & this can not be a result of
ship of weather or any accident, the presumption
is that the loss was the doing of the time of the
departure & that it is incumbent on the insured
to prove the contrary. Jan. 367.

And the ship is fit for the trade in which she is
employed - otherwise not for writing. Jan. 367.

If the ship was not in a condition at the time of
her departure to perform the voyage - the owner, upon
a suit of the part will not succeed (avoid) him even
with any degree of care to make her fit writing.

To both the owner & the captain believing him to be fit
worthy - if the insurer knew her condition as with a, the
owner.
Insurance

When goods freighted have sustained damage in the voyage thence unsavourings of the Ship at the time of her departure, the ship owner or master is liable for the damage & not the insurer (Mar. 1801-9 - 572-3 - 572-4 - 150). Reg. 220.

But if the cargo as the time of departure & rendered defective afterwards by thefts of weather (or other peril insured against) the Insurer only is liable Mar. 1801-9 - 572-3. For the warranty of unsavourings is complied with & the is in a suitable condition for the voyage at the time of departure - Mar. 572.

In case of barratry both would be liable (in case of neglect).

Except appearing cause after sailing, apparent presumption of defection of cargo on sailing & thinks the one on the insurer.

If the ship built in a place of difficult navigation without a pilot. The insurer are discharged it is in the nature of unsavourings (Mar. 573-4 - 574-18 - Cont. 12 417 - Williams v. Crowther.

If goods are to be transported in a ship named in the policy & the ship is changed without success & without consent of the insurer he is discharged.


It is an implied condition that the voyage shall be performed in that ship. If then is consent or neglect, the may be changed without any clause in the policy to warrant it - ante 30 - 49.
And if the proceeds of goods landed from a wreck during the voyage be lost, be put on board another ship the proceeds will be protected by the policy. 15.2.14.

Warranted by necessity.

If the ship becomes disabled during the voyage the captain may, at his own (if he can & if best for all concerned) to hire another ship & proceed with the goods. In such case the risks continue. (Ref 575. 378-7. 452) - 174. 181. & Parks 19. 296-1-1.

In such case the Insurer is liable for even unmixed expenses occasioned by the change of the ship before 379.

If goods are insured on board any ship or ships the insured may change the goods without altering any necessity or consent until 24 - Mar 221 - 379, 80-1-0

2 x 136 46 x 345.

In two policies are effected on the same ground for the same voyage "in a ship or ships" it for the same party & the goods be put on board two ships & these in one ship be lost - first that the insurant or others are to contribute it being but one insurance in law (Ref 135- 386- 80-1-6. Parks 280-1-1 Dunn 492.

136 x 46 x 46. 146 x 23.

In each policy is limited to the goods in one of the ships. (Ref 280-4-2 280-246-9-7 and a declaration in writing by the insurer of such limits satisfaction & good evidence of such fact.
Insurance.

How to Conduct the Ship.

There is an implied condition on the part of the insurer that the ship shall be navigated and conducted according to public laws, municipal laws, and treaties between the state to which the owner belongs and other states. 

Mar 292. 189. 48. 49. - Don. 279. - Part 7.

If the voyage is illegal or pursued in an illegal manner the insurer is not liable. Mar 122. 48. 72. 385-751. 189. Or a voyage in violation of the laws regulating or prohibiting the slave trade by the laws of war. 

Mar 385. 91. 48. 72. - Anti 5. 9.

Deviation.

Deviation of a voluntary departure from the usual course of the voyage insured. 

Mar 292. 189. 375.

There is an implied condition in every policy except as far as the public itself permits, that the ship shall proceed by the shortest and safest usual course to her port of destination. Mar 292. Don. 279.

Hence a voluntary departure from that course (ie a departure not occasioned by necessity) being a breach of the condition, determines the contract and changes the insurer from liability for any subsequent loss. 

Intemecine

Note - a departure that the ignorance of the ship is considered as voluntary within the rule (ante) 92; is not through negligence. Nain 351 26.

By the "course of the voyage" is not necessarily meant the shortest possible way, or track, but the regular or usual one of time as such. Nain 185 92.

Therefore touching at places, out of the direct line, in the course of the voyage, is no deviation if it be according to the usual settled practice. Such usage being supposed to be in contemplation of the parties. Nain 292 2 251 182. Nain 246 1707.

But such usage can be established only by long and regular practice. Nain 287. Nain 601.

Deviation does not vitiate the policy at matter, but determines it from the time of deviation alone. 3.

Hence if a ship after sustaining damage at a port, arrives at its new port, the insurer is then liable for the damage first sustained (albeit of the vessel in a different voyage anta 53) but not for the later augment of it to have a right to retain the whole premium. Nain 292 1748. Pat 442. 4174, 840.


If a ship having liberty to touch at one port named in the policy falls into another equally near the port named (ie equality near her course) it is a deviation. Nain 304.
Insurance.

If there are several ports of discharge named in the policy— they are to be visited in the order they are named— if the ship goes to them in a different order the discharge is void.

This rule is founded on the presumed intention of the parties. Mer 375- 6 178 531-

If the voyage embraces several ports of discharge not specifically named in the policy they must be taken in geographical order. Ex. From N.Y. to the ships ports of destination in the Mediterranean. Mer 398- 8 179 523- In such case, the voyage terminates at the most distant port of discharge.

In either of the above cases, if the ship is obliged by necessity to change the order in which she visits the several ports, she is entitled to the privilege of calling at any port or place. Ex. Mer 188- 392- 8 408- 874- 180- 208- 373-

Liberty is given to "touch & trade at any port or place" extends to ports & places only within the usual course of the voyage. Mer 184- 398- 8 413- Long 272-

If insurance were made from N.Y. to Halifax with leave to touch at any one port in the U.S. this means an intermediate port, no one south of N.Y. Mer 297-

If a letter of marque is issued, cruizes in quest of prize, it is a deviation— this is not a case of necessity. But piracy, chase to an enemy that comes in her way is no deviation. Mer 482- 838- 215-
Any unnecessary delay in commencing or post-
poning the voyage is of the nature of a deviation
it has the same effect. It increases the length
of the risk. It is an implied condition that the
ship shall proceed with reasonable expedition (ante 35)
June 20th. 18th. 25th. 30th. owner in an action to
the ship owner or master may allege the agreement.

A deviation is generally the result of a project for
and after the commencement of the voyage. And
in all cases of deviation whether actual or only in
contemplation the term "of the voyage" are the same
as those mentioned in the policy | ante 13 | Mar 23 | 2
46 | May 18 | 2 | 343.

But when the voyage originally intended is different
from that described in the policy. It is a different
voyage from that insured and a deviation.
June 23 | 2 | 343 | 314 | 245.

A deviation intended but not effected do not
discharge the Insurer. As if in the last case
the ship had been lost before arriving at the divi-
sion point. June 23 | 46 | Feb 12 | 49.

This rule holds when there is a subsequent intention
to deviate not executed. But if there is a previous
design or the part of the insured to touch out
of the course of the voyage (as at 2 30 24 6) the
policy is void on the ground of fraud & misrep-
resentations of the voyage. June 22 | 9 | 30 | 10 | 45.

Ley 18.
But when the voyage originally projected to begin is different from that described in the policy the contract is void at nulitio. Here the actual voyage commenced is not insured. May 22g. 23d. 247. 8. Long 15. 7 D. 162. 20 30. Park 299.

And what was the original design of the ship actually sailed on a different voyage the insurer is discharged. June 232. 272. 38.

A deviation can never be justified. This in some cases a departure from the direct course of the voyage is justifiable. It does not discharge the insurer. June 428. There are cases of uncertainty here.

The causes which justify such departure.

1. Ship of weather.

As when a ship is driven from her course by a storm (May 22g. 232. 247. 8. Long 15. 7 D. 162. 20 30. Park 299.)

This is sometimes called "justifiable deviation" sometimes "no deviation." It not being voluntary.

In such cases she is not bound to return to the point from whence she was driven, but may make her best way to the port of destination.

And it is a peril rule that if the case is departing from its usual course act fairly and according to the best of his judgment for the benefit of all concerned with a view to proceed in the shortest and safest practicable

(85)
2. Want of Repair

Want of necessary repair during the voyage is a sufficient cause for deviating from the direct course, but the ship shall go to the nearest convenient place for that purpose. Navy Law 118th § 545. Rich 381.

3. To join Convoy

This is repealed by usage (until 616). Navy 235. 265-412-914-445.


In all these cases, the extent of the deviation must be limited by the degree of necessity. Navy 412.

And the new course thus occasioned by necessity must be so pursued as to reach the port of destination in the shortest, safest, and easiest manner necessary, deviation from which a course will discharge the instance. Navy 412. Doug 271.
Insurance.

Of Loss—

For a list of peril, usually insured against see Mar. 415. 712. 714.

Every Loss is partial or Total.

A Total Loss may be either an absolute destruction of the subject insured or such damage as renders it of little or no value, or if by any misfortune the voyage is lost or if worthless pursuing, or if further expense is necessary & the Insurer will not bear it—then Insurer may consider the loss as Total.

The Voyage is considered as not worth pursuing where the value of what is insured is worth the loss. Then the freight Mar. 415. 479. 492. 508. Pack 98. 143. 110. 133.

Where the loss is of the voyage only (the subject not being damaged) or where the subject is the damage retains some value—then Insurer can not be as for a Total Loss unless there has been an abatement.

Port 109. 110. 115. (Mar. 479. 482. 509)

Partial Loss—Every loss short of total is a partial one. If a ship insured for a voyage reaches her port of destination & is there safely, however, 24 hours any damage she may have sustained is a partial loss. (Port 115) Mar. 415. 508. 151. 187.

So if insured for a Term (t. the duration of 86)
Partial losses are sometimes called average losses. In cause they often occasion average contributions.


Losses are considered with reference to their immediate cause, some of various kinds.

II. Loss by the peril of the sea. These in the limited sense of the words, are such only as proceed from some damage. As Tempest, War, Lights, Rocks, Island, &c. Including only a part of those which are covered by the common policy. (ante 26. 3.)


Note - In the comprehensive sense of the term they include all forces to which sea voyage may be exposed. These forces, then in the more limited sense include Foundering, Stranding, Heeling or Rocking.

The assured must of course in some manner prove the fact of a loss. In some cases, he may do this by presumptive evidence.

A ship not heard of in a reasonable time is presumed to be foundered. If the assured may prove it, for a loss & by sinking. (ante 17.)
Insurance

411. 17. 51b. Nis 1199. Vol. 67. 4.

No time is limited by the English law for founding the presumption. It rests upon probabilities of each case, and, upon its own circumstances.

Mar 413. In Strange 1199 - the period was 4 years. D. 656.

(83)

Destruction of the ship by worms is not a loss by the policy of this case - Mar 419. 1844. 444. 30 Decr. 713.

For any diminution of the value of the ship occasioned by ordinary service - the insurer is not liable

Sew. if occasioned by extraordinary accident.


If animals, insured die by natural disease the insurer is not liable for time - Sew. if they are run aground or killed by a shot - &c. when their death is occasioned by any peril insured against - Mar 420.

II. Losses occasioned by running foul of another ship are within the policy; when not occasioned by the fault of the master - or mariner, of the ship - (Mar 620) intended -

When so occasioned (as by neglect or mismanagement) Marshall considers the loss occasioned by running at the insurer liable - Mar 423. 1.

[Note] When we find &c. was stated as the owner.
can it be Barry? 

If any suit the Master by whose misconduct the loss was occasioned would be liable for it, and so 

June 1579 421 15 Nov 90 238 May 22

III. Loss by fire. Without any fault of the Master or Mariners it is within the common policy for 42.

And if the property is burned, the fault of the Master he is liable to, under the last head. But

the Insurer is not to trust unless the Master mis-

conduct amounts to Barry. 

Mar 421 5/6 422

IV. Loss by Capture. Whether made by enemies or friends, whether lawful or unlawful, the indem-

nity is liable. Mar 422 3

If the property insured being captured is never restored or recovered, the loss is of course total. If recovered by a capture or otherwise before abandonment the loss is entire. Mar 422 3

In the latter case the Insurer is bound to pay the latter case, all reasonable expenses incurred in recovering the property. Mar 420 6 67. In Ransone paid 200 for service done.

The Insurer is liable for a loss by Capture, whether the property in the subject named is charged by the capture or not and whether carried into any hostile
Insurances

...or not. For whether the property is changed or not, whether the capture is lawful or not, the loss to the insurer is the same (ie, while the detention continues), as in case of capture by a privateer, or when there is no war—Mar 423—

As between the Insured & the Captor (or his receiver or Vendee) these questions may be material, but not as between the Insurer & Insured—Mar 425—

In capture by a privateer—Insurer is liable

And capture is always prima facie a total loss; or rather it is always to be regarded for the purpose of enabling the insured to abandon to the Insurer & thus recover a, for a total loss—Mar 427-9-428-429-430-3. 17th U.S. Ca. 147-151. 4 Ch. 448-449. 4 Ch. 450-451. 4 Ch. 452-453. 4 Ch. 454. 4 Ch. 455. 4 Ch. 456. 4 Ch. 457. 4 Ch. 458. 4 Ch. 459. 4 Ch. 460. 4 Ch. 461. 4 Ch. 462. 4 Ch. 463. 4 Ch. 464. 4 Ch. 465. 4 Ch. 466. 4 Ch. 467. 4 Ch. 468. 4 Ch. 469. 4 Ch. 470. 4 Ch. 471. 4 Ch. 472. 4 Ch. 473. 4 Ch. 474. 4 Ch. 475. 4 Ch. 476. 4 Ch. 477. 4 Ch. 478. 4 Ch. 479. 4 Ch. 480. 4 Ch. 481. 4 Ch. 482. 10 East 329. Certain of the loss proves eventually material the there was a prior abandonment during the detention post 93-119-120-18 East 384—

It is said in Gaming Insurance the question whether the property was destroyed or not by capture might (while such contracts were deemed lawful) have arisen between the Insurer & Insured in one action on the policy—there being no real interest to be prejudiced or neither to the benefit of Insurer—Mar 123—

It has been received however even in these cases capture is deemed a total loss, as in case of a total interest—Mar 424-6. Burr 693-Case 381-120-197. Pena 1250-Case 77—
Concerning the question. In what time, or under what circumstances the property in the thing captured is by the law of Nations changed, there have been various opinions.

Now, the property of the owner has been said to be deliverable and transferred to the Captor on the thing's being brought within the protection of a fortress of the Enemy or into his bason or on board in his possession. Mars 427-8, 81-92. 10 Dec. 79. 2 Dec. 1.95.

The rule adopted in the English Court is that the original owner is not divested of his property in the thing captured till compensation by a prize court (foot 107) than 428, 73, 92, 3, 80-3, 11 Dec. 79. This is the rule in the U. S. – Vide Wheaton 1st ed.

Now capture then does not change the property even after a capture & possession by the Enemy for 9 days, for 14 months, or for 4 years, without compensation restoration to the original owner has been accorded to a Re-captor or even to one of the Original Captors. (W)

Whenever a Ship is captured the crew and every abandon (ie relinquish all his interest in the subject set to the underwriters) to claim for a total loss. But he is in no case bound to abandon. Mars 414, 419, 475, 506, June 476, 372, 479 or 497.
No capture by one enemy is of itself (or without condemnation) a total loss; in such a case, to prevent the possibility of recovering the property except in the case of a captured ship converted into a ship of war by the enemy (Rev. 107) Mar. 429-74-92. Den. 1198. 106 276.

If therefore the owner retains the property captured, he will be absolutely entitled to it, or if it be recaptured by another before (or in lieu of) by Stat. 29 Geo. Ill. after condemnation, the same will be entitled to restitution upon payment of salvage Mar. 429-492-3.

By the Public Law property thus taken belongs after condemnation to the Receptors or captors, the Government retaining all or most of it upon them (88).

The owner's right to restitution is called "jus post dominii". Which by the general Marine Law continues the condemnation. After which a Receptors would entitle the receptors to the property on a continuance of condemnation in the favor. But by the Stat. 29 Geo. Ill. it continues in case of Receptors forever. Mar. 429. 492.

In case of Recepture if the owner has abandoned the property holds in his place, as has the benefit of the "jus post dominii" Mar. 429. For this abandonment transfers all the interest of the issue in the property to the owner.
In case of Reclamation to the Insured, the Insurer is bound to pay, all the necessary expenses of the recovery, whether the original capture was legal or illegal, as a term of money paid bond face to the Captors on a compromise to prevent any damage, Mar 4th, 31st, Oct 25th.

The owner, chance of recovering his property does not diminish his demand upon the Insurer, as for a total loss. But then on a re-capture, the Insurer stands in the place of the Insured (ante 30th, 32d) Mar 4th.

Clause:

By the Law of Nations property captured by an enemy may be reclaimed by the Captured part. This is effected by a Reclamation Bill which leaves to the Captors the price agreed on. To operate as a Bill of Sale of the property to the original owner, to protect it from other Claims of the enemy during the Voyage. This is to diminish the losses of war.

A Hostage is regularly delivered to the Captain to become the stipulated sum. Mar 4th, 27th, 7th, May 8th, 4th, 9th, 14th, 6th Dec 17th, 18th, 25th, 15th, 26th, 17th, 25th. The Bill is signed by the Captain of the captured ship.

The Contract is binding by the public law on the Owner, as well as the Captain of the hostage. And if the property is reinsured, the Insurer is regularly liable for the amount of the Reclamation. Mar 4th.
But a suit lie not upon it in the State of the Captured party till the end of the war or then only in a prize court as the law now stands.

And a promise by the Captain in behalf of the owners to pay wages to a seaman for becoming a hostage binds the owners.

The Ransome of British Ships captured is now prohibited as illegal & the Contract declared absolute void by Stat. 22 Geo. III. c. 35. Mar. 432-3.

**Arrest & Detention.**

By the established form of Police, the Insurer is liable for all losses occasioned by any arrest or detention under the authority of any Princely or public body exercising sovereign power who do any pretence whatsoever by the Sovereign of the Part to which the Ship belongs or any other sovereign or army with him from acts of necessity or policy or out of hostility.

Different from Capture - the object of the latter is Prize - that of Detention is rest &c. Mar. 434.

Hostile detention in port after a declaration of War or notice of Deprivation by or of the foreign detaining is clearly a capture & warrant an immediate abandonment & for loss by Capture. It being a detention for the purpose.
"Arrrest of Princes" may take place at sea as well as in port. If done from public necessity not with a view to plunder, the seizure by government of a Neutral Ship with a cargo of provisions, for the relief of a place suffering by famine with intent to the provisions. May 1345.

But if a Neutral is taken at sea or in an enemy's port, being laden with enemy's goods, the arrest is a capture an act of hostility to take a quiet restoration will not change the original character. June 4257.

But if Neutral property is seized the unlawfully for an alleged offense of the law of nations, this is only a Restraint of prisoner. June 4258. Page 352. Not the act of an enemy.

But if a ship is seized for violating the laws of a foreign state which the war bound to obey it is a Restraint of prisoner. This is an arrest for misconduct which may amount to Nasierty in the Master. June 4255. June 1396.

The most frequent cause of such detention as are termed "arrest of Princes" is an Embargo, whether legal or illegal, is a risk within the Policy. June 4256. 2 Fort 1624. And 177-9. Art 704. 13June 1962. 1862 270.
By the word "people" (in the phrase an act of prince, or people) is meant not a mob or rabble, but a people or nation, or rather the ruling power of a country. Mark 147, 426, 593, 617, 472, 783, Pass 78.

Since if a Ship is seized by a lawless rabble, the loss is not deemed a loss by detention of a people but by pirates. Now unless this act is done on the high seas? If not the loss is by robbery. I conclude.

If the seizure is committed in part by fresh-water pirates, it is not committed by pirates within the legal meaning of that word. (97)

But if a Ship is arrested by authority of the Governor of the State to which the ship belongs, or of a State in amity with it from State to State, or if the capture is within the clause last referred to. (98)

"arrest of prince, or or people." Mark 437-8. 2 Doctors.

Sal 444.

If a neutral Ship is landed at a port from a belligerent Ship is detained by an embargo in that port, the detention is deemed an "arrest of princes" within the meaning of the learned men, who abandon. Mark 429, 58-8.

Arrest made after the cessation of hostilities, or preliminary articles of peace, by one of the parties to the articles, is an act of princes, not a capture. Mark 441. Acts 31. The prizes not being actually at war at the time of. In the case Mark 44. the ship had been restored. Did that alter the law? Not at all. See last page of Mark 435.
Insurance.

Loss by Barratry;

Another loss within the Policy is that by Barratry.

Barratry is defined to be any species of fraud or deceit committed by the Master or Mariner to the injury of the Owner.

As by running away with the Ship and the designation to deprive the Owner of distributing the Ship's Cargo by stealing the Cargo. Being given or any offense by which the property may be subjected.

Even dropping anchor with a view of defrauding the Owner is an act of Barratry. Mar 341, 458, 442, 452, 547 (ante 67).

It seems sufficient however to constitute Barratry that the act of the Master be unlawful and that its probable consequence will be injury to the Owner. 5 Blay. 1, 8 East 126, 572, 383, 2 Pkm 574, 81.

It comprehends every fraud that may be committed by the Master or Mariner against the Owner. 1811. Hence an allegation of Loth by the fraud or negligence of the Master was held to be a lawful ground of Loth by Barratry. 1707, 1401; Jem 429, 595, 172, 332; 2 D'Esc. 1349; Vem 581.

By the Laws of some Countries the ship owner (who appoints the Master & directs the Crew) is not to be in -

lined of their misconduct. But by the Eng. Law, each insurance is permitted to be made so as of course in every policy. Mar 442, 572, 84.
Dancaty, is now a common hazard; but the insurer is not liable for it, except by express stipulation in the policy. 172 252 377 4037 (CI).-

And the Capt. may be insured against the Dancaty of his crew, but not against his own.

No fault of the Master or Mariner amounts to Dancaty unless it arises from an intention to deceive the owner of the ship. Hence a deviation not premeditated (as, if it is occasioned by the ignorance or unskilfulness of the Master) is not Dancaty. Mar 445 39 172 323 737 875.

Dancaty may be committed by the crew if done without the concurrence or against the will of the Master, but not unless the act is intended to defraud the owner. Mar 443 447 458 1214.

But when a Captain of a letter of marque prizes in quest of prizes in violation of his order, his conduct was held to be Dancaty. The he intended to benefit the owners, it being a breach of duty towards them. Mar 448 195 172 379 268.

Dancaty being an offence to the owner of the ship cannot be committed by them or with their
Insurance consent. The they may by their misconduct make themselves liable as Carriers to the owners of the goods on board Man 458. 9. 5. Stee 1793 - 1794. 3. 73.

Hence if the same person is both Owner & Master he cannot commit Barratry.

But a part l' freighter is considered as Owner for the voyage & hence a deviation without his knowl.

edge, tho' with the consent of the Original owners may be Barratry. As where the Owner lets out the Ship, to carry freight generally as for a voyage a year Men 454. Long 143.

Gent' l' freighter has the control of the Ship as Owner.

Seems if there be only a covenant by the Owner to carry goods for another - the former would then have the direction of him.

Suff' for the Insured to prove act of the nature of Barratry by the Master without proving negatively that he was not owner. To Gent' l' freighter - If the was such Insurer may show it by way of Defense Man 451-8. 67. 452. 133.

So the insurance be only in any lawful trade the Insurer is liable if the Captain engage in a smuggling trade on his own account as it was a went to Barratry Man 458-9. 352. 279.

To subject the Insurer the L3 must happen during
Loss by Average Contributions

The word "average" denoting a contribution towards a particular loss, has been explained (ante 38).

The contribution is of course to a partial loss to all who are subject to it. (See 142, ante 38, 1555, 17632.) And by the first words of most policies, the insurers are bound to indemnify against this species of loss, denominated General or Gross Average (48).

Rule: When any loss is sustained or any expense fairly incurred by a particular individual to prevent a total loss of the ship and cargo, the loss or expense is to be justly borne by the owner of the ship freight and cargo. (See 48, Beam 148.)

"Particular average" means a particular loss in no connection with average (properly so called) or contribution of any kind. (See 142, 146-2.

"Petty" (or accidental) averages are certain necessary expenses, such as pilferage, light money, anchorage, tolls, towage, 

Insurances.

When insured in the usual course of trade, are not regarded as lost within the policy. Such insured property is supposed, but as necessary or ordinary expenses, or to prevent great damage, or in consequence of disaster. They are deemed peril average to subject the insurers to loss. Mar. 412.

Claims are liable for peril average under the rule of the measure, of course bound to indemnify in such cases as the following. If the goods of a particular individual are thrown overboard to save the ship from sinking, Mar. 461. 12. 36.

If the goods or cargo, anchors, or other furniture of the ship are cast away or cast overboard for the public benefit of the whole, others must contribute. Mar. 415. 18. 34. 22. 38. 38. (See, if the life of some, occasioned by ship of weather or casualty.

If the composition is made to a privateer or pirate, to save the property; or a ransom agreed to be paid to an enemy, or damage sustained in defending the ship or an attack or expense incurred in carrying three wounded in defence of the ship, or in her claiming the ship or cargo, after capture or defending a suit or her in a foreign court, obtaining a bill of change. Mar. 414. Show 0. 12. 17. 20. 148. 12. 25. 28.

In such case where the life is occasioned by fire or in procuring a total loss, the owners be subject to a peril contribution.
But the contribution can be enforced only where the sacrifice appears upon such deliberation as the case admits of, between the owners, to have been absolutely necessary to the preservation of the ship & cargo. Nov 462 - Sec 145.

So only when the sacrifice or loss appears evidently to have conduced to the preservation of the ship & cargo. Nov 462 - 3. Hence if a (private) person having captained the ship takes, only the goods of a particular person there is, no contribution. Nov 362.

So if goods of a particular person only are damaged in a storm. Nov 462 - 3 - 297.

So if particular goods are landed to avoid capture, the rest taken - no contribution from the owner of the former. For the capture of one part is not the mean or doing the rest. Nov 463. Nov 383 - 80 - 22.

So if the ship & rest of the cargo are not in fact landed by the sacrifice of part. Then, if goods are here on board in a storm to save the ship, the rest of the cargo & the ship is little lost - so contribution. The other goods are landed by throwing the goods overboard if they are not landed by throwing the first overboard.
But if the Ship is thus preserved to afterwards lost from a distinct cause, the effect, ultimately, had must contribute, because they were once saved by the jettison.

If goods put into lighters to enable a Ship to go up or down, and a bar or are lost, the Ship or must contribute - the goods were removed for the peril & benefit. But if the Ship is lost the goods in the lighters do not contribute - not lost for the preservation of the goods in the lighters - March 16

In case of any unjust capture & detention the wages & expenses of the ship's company (as well as the charge of re-claiming her) are to be brought into peril & average. (April 4th. Sec 187. For this be receipt of all).

As where a Ship is obliged in consequence of a storm to land at a Port to repair - wages & every other expense (from the day of her resolving to land a port to the day of leaving it) incurred by the same neglect are brought into peril & average. The expense being incurred for the safety of all concerned - (Part 125 - 275 - 49).

While if the necessity of repair was not occasioned by any extraordinary accident (March, Part 125)

It is a case of unseasonable - loss does not arise from any peril incurred against

No injury occasioned by mere ten damage is
Insurance

Subject of prior average. Not incurred for the preservation of the whole concern. Ex Facts injured by Ship's Springing a leak. No contribution.

But loss of ship's tackle & extra labor hired to pur-
ease a burnt cargo are the subject of average con-
tribution by the owner of the cargo & the ship owner
may have an action at law to recover it.

Mar 467. East 220.

Rule. The ship & freight, every thing that is deemed
part of the cargo are subject to average contribution.

Plate, jewels, or where a part of the cargo.


It is the Captains duty to adjust the contribution
which may be demanded before the cargo is landed
for the ship owner, when entitled to a prior average
have a lien on the funds on board for average con-

Ned 62 C 1 52.

If the Captain neglect his duty an action at law
would lie in his name by each of the par-

ties. An action would lie in either of the parties li-
able to contribution. A bill in Equity by all of

them would be a more eligible remedy. Mar 467.


In settling contributions the property lost must itself
In conclusion.

be taken into the account—So that the owner of it may bear his proportion of the loss. The whole value is not to be reimbursed—June 47- (2nd)-

As it the mode of ascertaining each person’s contribution. A rate of 8% less than 47c. The Rule appears to be that each person’s share of the eventual loss must be in the same proportion to the real value of his property (at the port of discharge) as the whole loss bears to the whole real value of ship’s cargo & freight.

If the proportion is 25:100. contribution is in the ratio of 25:100. If value of his property—June 47c. See Art. 125.

In this estimate the freight is valued at the clear or real sum while the ship has landed after deducting the clerical’s wages, & all the charges called “jettys & other taxes” of the last two letters the cargo bears 3/8 of the Shk 1/5—June 47c.-8.

The ”retainer” or property sacrificed is estimated at the price which it would have brought (if land) at the port of delivery on the ship’s arrival there after deducting freight duty or other charges—June 48c.

So all the average contribution, the Insurer is bound by the policy words of the policy to indemnify the insured & to reimburse his part of the contribution—true or not, whatever the Insured has paid toward, towards them or not towards them—in either case he has maintained a loss which falls, eventually on the Insuree. June 48c.
Salvage

By one of the usual clauses (ante 51) in policies, the insurer is liable for the expense of Salvage. Any 239-469-712-14-1 2. 1. the allowance made to tuck by which means the property has been saved in case of disaster. Ship wreck. Pipe. Fresh. &c. (ante 51).

Salvage in some cases also means the property saved. Act 469. (It is used in three two kinds, indifferently in all the treaties of law, & the connexion governs the meaning.)

Those who have land posted on said premises have a lien upon them for a reasonable Salvage; they may retain them till paid. Mar. 469. 12. Rey. 393. 1817. Here is a slab of rum. No. Code. Weckes, whose burning it is to save Cargos wrecked. They are entitled to Salvage. So too are Receptors. Mar. 469. 289. 712. 14. Hence Receptors right to label Ship.

As to the Amount of Salvage -

The mode of ascertaining it and enforcing payment of it - different rules prevail in diff. commercial states. In Eng. it is regulated chiefly by Stat. Law. Particularly Stat. of 12 Anne. 1852. 26 Geo. 2nd. & 35 Geo. 3rd. in the State Mar. 469. 494.

The Code of Captain & Receptors the property vary. the Marine Law renders & the Receptors entitled to a reasonable salvage - if the Receptors was, before Capt. 3-2-44. in possession - otherwise neither salvage nor Receptors.

- Captain, &c. 91-2- or 21-2. The Ship. Captured is lawful prize to the Receptors. But by Stat. 33 Geo. 3d. English pop. of a salvaged ship to reclaim at any time 40 60 80 100 120 140 160 180 200 220 240 260 280 300 320 340 360 380 400 420 440 460 480 500 520 540 560 580 600 620 640 660 680 700 720 740 760 780 800 820 840 860 880 900 920 940 960 980 1000 1020 1040 1060 1080 1100 1120 1140 1160 1180 1200 1220 1240 1260 1280 1300 1320 1340 1360 1380 1400 1420 1440 1460 1480 1500 1520 1540 1560 1580 1600 1620 1640 1660 1680 1700 1720 1740 1760 1780 1800 1820 1840 1860 1880 1900 1920 1940 1960 1980 2000 2020 2040 2060 2080 2100 2120 2140 2160 2180 2200 2220 2240 2260 2280 2300 2320 2340 2360 2380 2400 2420 2440 2460 2480 2500 2520 2540 2560 2580 2600 2620 2640 2660 2680 2700 2720 2740 2760 2780 2800 2820 2840 2860 2880 2900 2920 2940 2960 2980 3000 3020 3040 3060 3080 3100 3120 3140 3160 3180 3200 3220 3240 3260 3280 3300 3320 3340 3360 3380 3400 3420 3440 3460 3480 3500 3520 3540 3560 3580 3600 3620 3640 3660 3680 3700 3720 3740 3760 3780 3800 3820 3840 3860 3880 3900 3920 3940 3960 3980 4000 4020 4040 4060 4080 4100 4120 4140 4160 4180 4200 4220 4240 4260 4280 4300 4320 4340 4360 4380 4400 4420 4440 4460 4480 4500 4520 4540 4560 4580 4600 4620 4640 4660 4680 4700 4720 4740 4760 4780 4800 4820 4840 4860 4880 4900 4920 4940 4960 4980 5000 5020 5040 5060 5080 5100 5120 5140 5160 5180 5200 5220 5240 5260 5280 5300 5320 5340 5360 5380 5400 5420 5440 5460 5480 5500 5520 5540 5560 5580 5600 5620 5640 5660 5680 5700 5720 5740 5760 5780 5800 5820 5840 5860 5880 5900 5920 5940 5960 5980 6000 6020 6040 6060 6080 6100 6120 6140 6160 6180 6200 6220 6240 6260 6280 6300 6320 6340 6360 6380 6400 6420 6440 6460 6480 6500 6520 6540 6560 6580 6600 6620 6640 6660 6680 6700 6720 6740 6760 6780 6800 6820 6840 6860 6880 6900 6920 6940 6960 6980 7000 7020 7040 7060 7080 7100 7120 7140 7160 7180 7200 7220 7240 7260 7280 7300 7320 7340 7360 7380 7400 7420 7440 7460 7480 7500 7520 7540 7560 7580 7600 7620 7640 7660 7680 7700 7720 7740 7760 7780 7800 7820 7840 7860 7880 7900 7920 7940 7960 7980 8000 8020 8040 8060 8080 8100 8120 8140 8160 8180 8200 8220 8240 8260 8280 8300 8320 8340 8360 8380 8400 8420 8440 8460 8480 8500 8520 8540 8560 8580 8600 8620 8640 8660 8680 8700 8720 8740 8760 8780 8800 8820 8840 8860 8880 8900 8920 8940 8960 8980 9000 9020 9040 9060 9080 9100 9120 9140 9160 9180 9200 9220 9240 9260 9280 9300 9320 9340 9360 9380 9400 9420 9440 9460 9480 9500 9520 9540 9560 9580 9600 9620 9640 9660 9680 9700 9720
In accordance, the ship has been converted into ship of war. If to the damage price.

In cases not within the exceptions, the property, and upon the recapture rests in the original owner, pledged for the salvage. Mar 490 - 2 Nov 498 - 1526.

In declaring upon a policy to recover salvage paid, the Insurer does not allege a loss by payment of extra salvage, but a loss by the particular cause which occasioned the disaster. Under such allegations he may recover the salvage actually paid (p. 474).

Mar 574 - 575 - 579. (Note the policy contains no provision for a particular agreement to pay salvage as nominee.)

In cases not within the above statutes (as the case of neutral prize, recapture), the Eng. Ct. of Admiralty has discretionary power to regulate the rate of salvage. Mar 574.

So entitled the Insured to an action at law on the policy for a loss by payment of salvage, the amount of the salvage must have been previously ascertained by the Court of Admiralty which alone has original jurisdiction over the question of the right of salvage, (in cases, not within the English statute) of the amount also Mar 475.

Where the salvage is very high the Ins. may abandon a claim as, for a total loss. (p. 473-475). So too in case of recapture.
Abandonment.

In all cases of total loss (ante 31) when the subject is not absolutely destroyed, the insured is entitled to recover as for a total loss must abandon he gives up to the insurer all his right or claim to what might be saved, that the insurer may make the best of it for his own benefit. (ante 34, 39, 82, 172, 56-63, 195.)

But the right of abandonment exists in peril only while the loss is deemed total. (Post 114.)

The balance there stands, as to what is thus saved in the place of the insured. If he is entitled to the whole of it as his property. The abandonment creating a re-transfer of it to him. (ante 92.) Same 479.

When the subject is totally destroyed an abandonment would be very sturdy if could have no effect. In this case no subject to be abandoned. Abandonments of course unnecessary. Same 479.

As to what amounted to a total loss (so as to warrant abandonment) see ante 31.

The most frequent grounds of abandonment are capture of "Arrest of Prince." Same 453.

Capture by an enemy or pirate, or an arrest of prince or, as a detention by an embargo of prince police a total loss. And immediately upon capture, as at any time.
While the detention continues, the insured may, as a last resort, give notice to become of his abandonment. (See 423.-9.-5; 5th 26th. 13th 237.) In 11 East 289, it is held that if the loss proves only partial (as, if the loss is partial, it is able to proceed to the voyage without meaning) the insured can recover only for a partial loss, if the actual loss (anti 99., 1st 289) — this seems to qualify the original rule.

In the case of a 28 year policy (as a policy without interest) there can be no abandonment. For, there is no subject to be abandoned. (Hence the decision in such cases without benefit of belongs.) Hence, upon a policy with interest, the insured may abandon the moment he has notice of a captain to that effect. The insured whatever may be the ultimate fate of the ship — lost, trial, etc. (anti 99, 1st 289, 11 East 237.) See 116. 484., 172. 304. — anti 18.

But a captain does not necessarily result in a total loss, it is to warrant an abandonment. For the insured can abandon only while the loss is deemed total. Hence, if on receiving notice of the loss, the insured can also receive at the same time notice of the recovery of the subject, he cannot abandon. (See 423.) The same cannot be said merely because of the prior capture.

If there is any additional cause of abandonment as of the goods recovered because spoiled or the voyage is lost from other causes, (See 483.-9., 581. 4-280, 159, 256, 13th 274, 186 & 237.)
On the other hand a right to restitution or recapture does not necessarily entail the right to abandon. The recapture notwithstanding - for still with equal sequence of the Captain the voyage be lost or not - what proceeding - or if the salvage be very high or if further expense be necessary the insurers will not engage to pay it - the insured may abandon

**Rule.** If after recapture or before abandonment under the subject he recovered before any loss paid the insured is entitled to claim as for a total loss or partial loss according to the state of the case when he makes his claim. For if he has not abandoned (when he has a right to abandon) he has no vested right to claim as for a total loss but only for his actual loss ormitted at the time of action brought or subsequent offer to abandon.) [Mar. 485, 491. 10th ed. 237-82.]

**Recapture before any offer to abandon.** Insured recover 3/2 of the property he can recover on the policy only 3/4. [For both cases 6th ante 12.

But after a total loss paid in case of capture if the subject he recovered the insurers cannot oblige the Insured to refund - but will stand in the place of the Insured - taking the property returned to himself. [Mar. 485, 497. 10th ed. 237-8. The payment being voluntary it no fraud or misrepresentation can take it cannot be recovered back. At the time of payment the loss was total in contemplation of law.
And a right of restitution arising upon recapture cannot defeat the right of abandonment created by the capture of the ship is unjust to quit the voyage.  
Acts 487-2 Sun 183.  On the voyage is left. (Ante 111)

The insured may abandon upon a mere arrest or seizure by a prince not an enemy. Acts 489-2 Sun 183. 501-19. 546. 557.

...but where a capture joint but a small temporary hijack -deprive, as if the ship is immediately ransomed to prevent her voyage the insured cannot afterwards abandon. Acts 489-2 Sun 183.

And he is in no case bound to abandon. Acts 489-94.  
Sun 183. 501-25h.

If there is any salvage whatever he may retain it to recover or, for a partial loss.

We cannot by abandoning become a loss which the law deems partial into a total loss. Acts 489. In such cases there is no right to abandon.

It is not universally true that because a ship has been once captured - the insured may abandon at any time pending. For if the loss act. before any loss is paid - i.e. rescinded the insured is entitled to receive only as for a total or partial loss as the case stands at the time of action brought or offer to abandon. (Ante 111) Acts 423-430-4-5 581 162 526 227. 237.
Insurance.

Then, when a ship is captured & after 17 days she is
liberated or recaptures & is lost to the country to which it was
bound. The insured is not allowed to abandon her
after her arrival. The voyage not being lost to cause
the loss not being deemed total at the time of the offer
to abandon. Mar 491 b 581 b 83 b 2 Decm 1793 1801 2 76.
For the insured can only recover an indemnity according
to the nature of his case at the time of the offer to
abandon. Mar 497 581 234.

If upon recapture the captain (being returned to the prof-
denial) sells the property to proc. for the benefit of the
concerned to pay the salvage the insured may abandon
it recover a for a total loss. For the voyage is lost

For the Captain in case of disaster has an implied
authority to act according to his best judgment for the
benefit of all concerned & the insurer is bound by such acts.
Mar 378 580 Aug 219 190 11.

If the Captain repurchases the captured ship as a just
for his owner, when the is offered for sale by the cap-
the purchase is a recovery of the ship for the
owner & the price paid is deemed salvage. Nov 1230
1801 279.

And in such case if the voyage is worth pursuing.
t of these war, no abandonment during the detem-
t time the loss is only partial. (37).
Shipwreck is regularly a total loss of the Ship. By "Shipwreck", I mean the loss of the Ship in whole or in part. A loss. Mar 582. In such a case the whole may remain to be saved - yet if the Ship's to be taken or otherwise injured as no longer to exist in its original nature or character as a Ship - she is considered as lost. (Mar 582) So that when this Ship the loss total.

And this the cargo in this case should remain yet if no other ship can be procured (by the captain) within a reasonable time to carry it to its place of destination the loss a to the cargo is also total. (ante 79) Mar 578; 498 512 527. Any 519. 158 611. Park 4 290.

But standing is, not of itself, a total loss. If the Ship be put off rendered capable of pursuing her voyage the loss is but partial. The insurer liable only for the expense occasioned by the standing. Moreover if the standing occasion shipwreck or otherwise renders the ship incapable of pursuing her voyage - in such case the insured may or may not abandon. (ib)

To warrant an abandonment in any case there must have been at some period of the voyage (or that time period of the offer to abandon) what the law deem a total loss. (ante 109) And no partial loss however great occasioned by part of the sea can be converted by the insurer into a total loss. Ex - Insurance on a Ship. She performed her voyage but was so damaged as not to be worth repairing - this damage was 48 pr. st - held due to be only a partial loss. Neither the ship nor the voyage being
Insurance.

... Mar 503-4 - 15R 187...

So if the voyage be lost (or by new damage) the loss is total (ante 86) to the insured may abandon the vessel as milne - Ex - Insurance in Ship, Cargo & freight obliged to put back in consequence of a leak. As prize could not be obtained at the port & no other ship to be obtained - then the loss was held to be total as to Ship, Cargo & freight & abandonment allowed.

So if goods insured be so damaged as to be worth less than the freight then the loss is total. The adventure being
Insurance

entirely lost to the owner. 

...144, 481-507-521-1865.

...the insured would suffer more than if the
property had been annihilated or sunk.

As to the time of abandoning -

Rule: As soon as the insured receives advice of a
...the left - he must make his election to abandon
...or not. If he resolves to abandon - he must give
notice of his determination to the insurer within
...reasonable delay. To do this is a waiving of his right
to abandon. (Mar 588-9 = 511-12-13) He should do it
by the first opportunity. Mar 574.

Where if the insurer does not signify his
intention (Where time is any thing to be abandoned)
the loss will be partial whatever may be the con-
tent of the damage. Mar 589-172-608.

But this rule must suppoire the subject or some
part of it to be removed or to remain - Otherwise
there can be nothing to be abandoned. If the loss
will necessarily be total - Mar 570-152-608.

Till the insured are advised of a loss or disaster
no act of the insured will prejudice their right to
abandon. But upon such advice if they do not
elect to abandon he give notice as above - they adopt
...their own - the acts of the disaster or person as
a thing for the benefit of the concerned. It is in being
or recovering the property for - to which case they
waive their right to abandon.  March 11, 12. 27-30.
12 at 48. 648. 0. 112. 13. 2. 2. 2.
Ex. Captains & Recaptures.  The
insurance where direct the proceeds of the goods
are committed to time four months after that
fine notice of their abandonment.  This is too late.

(117)

To generally agree once treating the loss a partial
they cannot abandon.  March 15. 0. 112.

The Insurer cannot demand an abandonment
of more than they have insured.  Nor can such
demand prevent the Insured from abandoning
to the amount insured.  (And if the Insured
flee to abandon in lesse in consequence of
such demand - they cannot afterward reom for
a total loss.

Ex. On a Ship worth $500. 0. 0. only $500. are insured
Captured.  So the Insurer is willing to take the loss as to
half of the Insured will abandon the whole.  June
5, 0. 5. 872. 6. 6. 6. 6. The may abandon pro tanto (just
119) to the amount of $5. 0. 0.

This is a qualification of the rule - that the Insur-
333. 333. 333. must abandon his whole interest to the
Insurer; which suppose, the insurance to have been for the whole amount.  $72. 2. 6. 0. 0. 0. 0.

But if the Insurer in any way prevents the Insured
from abandoning - the Insured may claim the
whole loss.  o, if he had abandoned.  k. 1. to the sum of
the amount insured.  o. When the Insurer dies
- deceased the Insured from abandoning the Ship

Ship.
(the being damaged) by offering & ordering repairs to after which offering to pay for them - So the Ship was sold to obtain payment. - 351. 57. 40.

If a Ship after sailing is not heard of in a reasonable time the insured may abandon. - A total of being presumed - (Para 87) - May 411. 576. 7. Stim. 1199. - (Para 63. 46.

If the Insured would abandon his Insur. (118) make a protest - but only to give notice of the fact that it is his determination to abandon. - May 517 -

No particular form is prescribed - in which an abandonment must be declared - but whatever may be the form it must be explicit & not left to inference. - (67 & 673. 72). -

It may be given either to the Insurer himself or to the agent who subscribed for him. - May 573 -

When the insurance is entire either upon the whole of one subject - or upon different subjects in the aggregate - if not separately valued - the insured cannot leave them in abandonment but must abandon all the subjects - or not at all. Thus, if Sugar & Cotton are insured in an aggregate sum (as 5000 on the whole without distinguishing) the insured cannot abandon the Sugar & retain the Cotton. He must abandon both - or neither. - May 518. 38.
the insurance is entire—because the premium is

But if different articles are insured in different for

cles (or by different valuation in the same pol-

icy) it is otherwise (first 120.) these are in effect dis-

tinct insurances in each case. Ex. $1000 on Sur-

--$600 on Cotton--Either in two policies or in

one. May 518--Insured may abandon goods that

Sugar to retain the Cotton--

(119)

So if the Insurance is on Ship & Cargo distinguish

by how much is insured on each—abandonment

may be as to one only—(21)

Then if both are insured for one entire time (31)

The abandonment must be unconditional—if

not—It would not transfer the entire property

to the Insurer. To offer to abandon a cap-

—Ship on condition that if released. a re-

—Captured the property should revert to the Insur-

er—valued—May 518-19

Effects of Abandonment

Abandonment transfers the property back to the insurer

in proportion to their several subscriptions. (May 519)

This proportion obtains without regard to priority of the

policies when there is more than one—i.e. even if the

property was over-insured. May 519

And the title rests in the insuror by relation from

the commencement of the voyage—but not so as to
Insurance

Vice versa to the Insurer of a Ship, the freight being
by the Ship before abandonment. - Mar. 179-20-

But if the insurance is for life, then the value of the
property - the insured may abandon in proportion to
the sum insured or subscribers (ante 17) his property
insured worth $5000 - insured to the amount of $4000
at a total loss or by loss of the voyage. The insured will
abandon only 7/5 of what is saved; the other 5%
remains in his name. In this case he holds, 10/15
interest in common with the insurers. - Mar. 510-

Capps partly insured, money borrowed on dependant
upon the value of the residue. On abandonment, he
knows & lender have a joint claim to what is saved.
The Insurer having the legal title to the whole or the
lender an equitable claim to his proportion. - Mar. 524-

If there are distinct insurances, upon the whole or
upon different parts of the property insured, see to
the proportions of the Insurers, if what is saved on
abandonment. - Mar. 521-2-

If after the loss is paid - Compensation is made to
the insured for the injury which occasioned the loss,
the Insurer is entitled to it. - Ex. compensation for
an unjust capture. - Mar 522-3. 1780-93-

If after abandonment (as, for capture) the ship is
arrived safe this does not rescind the abandonment.
Insurance

The insurance must still pay the same interest, but is entitled to all the profit of the voyage, to all that's saved, however great the profit may be: near 520.

12a. side ant 109, 11 back 109) Ex. Goods insured. acquired or abandoned, from them released voyage completed, or profit made. The whole belongs to the insurer.

But the property should be restored uninjured, after a total loss paid, the insurer cannot for this cause compel the insured to take back the property or refund the money. Near 524. 41st June 1862. For an abandonment, once property made upon a state of facts which warranted it, at the time, is irreparable. Except by mutual consent (side ant 109, 11a). So it may for an insufficient reason (as when there had been no total loss) it is void.

In case of disaster, the effect shall continue till abandonment—the property of the insured & he, bound to do his utmost to preserve them & make the most of them; if the change, thus insured, are borne by the insurer. (There is no clause to this effect in the policy.) The Captain, master or agent of the insured has authority to act in his stead for these purposes. Near 506. 10-26. 1862. 643.

It is the duty of the Captain in particular to act in such cases (under the an implied authority) for the benefit of all concerned: if his act binds the insured—the insurer & all others interested in the ship or cargo. Near 527-27. Story 219.
This if the ship is disabled he may hire another to transport the cargo or invest the proceeds of the goods in other goods & this will bind the insurer.

And for whatever is received of the effect insured (22) the captain (in case of abandonment) is accountable to the insurer (32).

But if the insurer neglects to abandon when he has a right to do so, he adopts the act of the captain he is bound by them.

And if the insurer, after notice of abandonment, suffers the captain to continue in the management he becomes their agent & they are bound by his acts.

The sailors are also bound, in case of disaster, to do their utmost to preserve the property & so they are entitled to wages, as far as what is saved will allow. But if they neglect to do so, they are entitled to no wages.

Adjustment of Losses

When the loss is total to the policy a valued one, the insured are entitled to the whole sum insured (subject to basic deductions only as may have been agreed on in the policy). The valuation in the
policy being prima facie at least equivalent to the admission at the trial of the value stated in the policy. See 422. 3- B. 199. 202. 530- Part 1. 122- 2 Dunn 1171.

Ex: Valuation in the policy $1,000. Subs. $500. Loss total: insurer liable for the whole sum except $500. If the subscription had been $1,500, the insurer would have been liable for the whole of that sum.

It is only when the loss is total that there is any difference between an open and a valued policy. See 422. 3- B. 199. 202- 530- Part 1. 122- 2 Dunn 1171.

Upon a valued policy on goods (the loss being total the insurer has to prove only that the goods were on board at the time of the loss). For the value stated in the policy is admitted. See 422. 3- B. 199. 202- 530- Part 1. 122- 2 Dunn 1171. But in cases since the Stat 29 Geo 2. ch 27. of wagering policies, the valuation is only prima facie evidence. See 202.

But on an open policy in, and must prove only that the goods were on board, but the value of them ($10) while value not exceeding the sum insured the insurer is bound to pay if the loss is total. (422)

In case of partial loss the same proof must be made whether the policy is open or valued. See 202- 5- 530- Part 1. 122- 2 Dunn 1171. The indemnity stipulated in both kinds of policies being that if the subject is lost or damaged in the voyage the loss shall become by the insurer to the extent of the sum insured. 422.
Insurance.

When there is a total loss of any one or more articles, tins, bottles, or packets (out of a greater number) admitting of a separate valuation, the insurer is liable for the whole value of those lost. The loss being considered total or to those instead of part in relation to the whole. E.g., if 100 pipes of wine are lost, the rest arrive safe. Than 50.

2 Sum 1170.

When part of the goods insured is saved, or exceeds in value the amount of the freight, the rule is to deduct the freight from salvage. (see the note.)

Example: 1000. part lost 500. freight $100. than $500 - $100 = $400. And $1000 - $400 = $600. the amount of the loss. &c.

Note. By difference here meant is not the difference between two substractions & addition, but the part saved to the whole value.

But if the freight exceed the salvage the loss is total - the voyage not being worth pursuing.

Than 144. 527 - 21 - 2 than 1065.

But when the goods insured or part of them are only damaged - the amount of the loss is the difference between the value of the goods in their damaged state & their prime cost.

Than 531.

When several articles are insured for an aggregate (125) sum but with a distinct valuation to each (part 118) & only one of them is put in risk, if that one
In valuing goods insured, the prime cost is not always the criterion of the true value. In case of joint contribution for an individual ship (i.e.
the general average), the goods and contribute as according to their prime cost, but according to the price for which they may be sold at the time of leaching the average (ante 107) (ante 67-532-3) according to price for which they may be sold at that of exchange. The price is what owner of goods had been benefited by jettison:
But in leaching a total loss, upon an open policy on goods, the English rule of valuation (i.e.
the prime cost, i.e. the invoice paid) to all duties, & expenses the they are put on board, together with the premi
sum of insurance. For in this case (ante 1240 when 534, (ante 149, (ante 77)) there can be no sale
of the goods at the port of destination to afford a
Insurances

Criticism in case of joint average. Besides, the insurance is, surely an indemnity for the loss actually sustained in the loss of a future contingent profit. Now I can't find any law.

Note: Why are there duties and expenses to go into consideration of loss? They are put into consideration of goods when put on board - why Premiums? But note that this also is to be taken into consideration in estimating cost of goods to insured - for the phrase is, they stand him up to much of.

The rule is the same when this loss is partial - if it be on goods (16).

The price at which the goods might have been sold at the port of destination - if they had not been insured - is immaterial - for the definition of Exchange required for the Insurance does not affect to indemnity after any loss from such cause. Ware 534, 5-1-9, 20 - 2 Durr 1167.

A Ship insured is estimated on an open policy at the price plus or minus where the ship on the voyage, including the expense of repairs and outfit. The value of her furniture, provisions, arms, money, and cash at the port, or in jail, minus any expenses of outfit, together with the premium of Insurance. Ware 201, 555. The premium being part of the cost liquoedit by the second in the Ship. Ware 555, 50, 208 - 2 Durr 1167.

A partial loss upon a valued policy is that par.
portion of the value in the policy which the diminution in value bears to the price of the
property in the port of delivery. Nov 525. 40. 6/12 - 2 Duns 1167. See chart at Appendix.

And the insurers are to pay the loss accruing
upon the ship's arrival in landing the cargo at
the port of delivery. Nov 539. 2 Duns 1167.

If the value in the policy exceed (considerably)
the true value the loss is adjusted as if the pro-
tection were open & according to the real value
of the subject insured (ante pp.) Nov 540. 6. 628m.
This rule obtains wherever the law permits for
suming policies.

A written adjustment endorsed on the policy
is signed by the insurer, with a promise to pay
if prima facie evidence of all that the in-
sured is bound to prove. Hence if uninsured
or it entitles the insured to move without fur-
ther proof. Nov 542. 3. 2 Duns 510. It stands
the same footing as a note of hand being
considered. If no express promise, then it must
be in nature of a due bill.

But this same may be impeached either by showing
that policy was a wager (I conclude) or for any
false or concealment practiced or by proving a
mistake conception in point of fact. (Here, lay of
law or if fact true. 8 generation lay, non existat.
Nov 543. 4. 2 Duns 118. 1 Emb E 486.)
And this adjustment may be used in evidence under a verbal declaration in an action on the policy or as the foundation of an action it may decline on the adjustment as on note of hand (the no need of this special plea) pack 118 March 54. 588. Oct 139.

When insured declines specially on the adjustment this is deemed the instrument which establishes to issue.

But when on policy to give the adjustment in evi -

due it is then regarded as offered damage.

Retum of Premium - (129)

The premium paid on one side is the risk of -

- burned on the other are considerations for each.

- Hence the insurer is not liable to this risk without a premium. Nor can he re -

- tain it if he runs no risk. Man 548. 30 Jan 1240. The consideration fails.

And where a premium has been received by the insurer - without his incurring any risk, it is money had & received by him to the use of the insurer. Man 548. 2 Dec 1008. 25 Dec 454.

Corp 109. 372 266. 15 Nov 156.

A Return of Premium may be claimed in various cases -

I - When the contract is void at its in -
right is acquired under it. And if paid. The
premium may in part be recovered back. (See 549
13.)
And the contract may be void.
1st for want of interest in the insured. by Stat.
19 Geo 2d 2d (forbidding Waiver Policies) & if he has
no interest - or a small one in proportion to the
amount declared in the policy (Anti 1799 43.)
(See 135 5 Park 263.)
Such Contracts are in general void & COntracts
of illegality. (See 549 135 5 Park 263.)

General Rule. If this mistake or any incorrect
cause - insurance is made without any interest
in the Insured - or (in a single policy) for
a much larger amount - than the real value of
the subject - then there shall be a return of the pre-
mium if it has been paid - In the former
case the whole is returned; in the latter the
return is of all received for the excess over the
true value -

Ex. Insurance (this misappreciation) by a single
policy on goods supposed to be worth $500. But the
had no interest - while premium is restored.
If his interest was only $500 - half the premium
is restored. (See 549 2 Park 317.)

And all of the Insurers are to pay in proportion
to their several subscriptions, without regard
to priority of names - or date. (See 549 32.)
They would all be liable in the same propor-
tion to contribute to a loss -
Innsurance.

If by several policies (made without fraud) the sum insured exceed the real value of the subject, they make in law but one insurance, and all the underwritings are bound to pay according to the above rule. (Note 115-380-550, 286-1). See also ante 23.

Premiums are not returned in all cases, in which the contract is void, as when an insured is insane, or in cases of an illegal contract. For the sake of Delicte or Non 552.) 8 Term 548-575.

Thus, upon a wager policy, which supposes the except insured over the true value to have been unintentionally by the insured, the court cannot base the Stat 19 Geo 2, receive back any part of the premium at least, if the risk has been done. (Note 552-93-9. 103-701. 457.)

For he is parties, criminals, & has united to the contract, he has executed on the other side. (See same rule a, to wager, generally. "Contract" page 47.) 8 Term 575. 5 48-1 1 Geo 2 248. 3 East 222. 1 Den by 6. 9. 7. 8. 9. 10. & 11. 12. 13. G. disapproves altogether of the distinction in the law of contracts, upon which this depends. (Distinction is this. On in illegal contracts if one has received money, he may require it back before the illegal act is done after it has been done, he cannot. So if deposited on an illegal game. Distinction is this. But before the risk can be right it, he must have recovered it back. (Note 552. 2 Den 451-701. 6 East 92. Note 551-76-1. East 96. 11 Den 83.) Re. 12, to the principle of the distinction at insura.
Insurance.

(131) - If the contract is void or being a Verrassade at the Stat. 19 Sec. 2. 137 - the insured cannot claim any return of Premiums - (see 556 - 392 184 - 295).

If under any circumstances the Insurer might at any time have been liable for the whole sum insured, then shall be no return of any part of the premiums - for the whole amount subscribed must by the Supposition have been put at risk.

Hence: if Captors insures their interest in a prize then (ante 16) shall be no return of the premium the subject captured should in afterwards adjudged no prize - for if the property had been lost before the adjudication (in which case the could never be an adjudication) the Insurers could have been liable for the whole amount described - (see 554 - 392 154).

(152) - But if the policy is void without any fraud or fault in the insured - he is entitled to a return of the premium.

On compliance with a warrant is the expected or implied - as by not failing on the day prescribed - or without money when warranted to fail with one warranty of Mortality or property not venture to or want of her worthiness. For as the exchange were attached the risk in law never commenced - (see 556 - 27).

The premiums may be returned back it use.
...a policy is in an action on the policy, but in the Common Court of money, had a suit on the Special Court upon the policy. Aa 8499.

So if the policy is void by reason of fraud in the Ineurance, the insured is entitled to a return of the premiums: Ex. Insurance on property 'lost or stolen.' When the Insurer has received knowledge that it is safe (ante 75) Aa 553 - 9 - 1876. Aa 544. Shank 609.

But if void on account of fraud in the in.

Ea. - Concealing facts which increase the risk or for the contract is void that his own wilful fault & after he has taken the chance of cheating the Insurer by the Contract he ought not to take advantage of its voiding. Aa 559 - 63 - Mon 28.

Formerly holding contract: Aa 562 - 2 - Park 289 - Pitch 28 - 197076 - 3 Dom 1364 - 2 Dom 261 -

II. If from whatever cause the risk is not

begun (in the the Contract is originally solid), the premiums is to be returned. For the consider

eation on which it was paid for. Aa 564 - 75.

Dom 1237 - 1870 - 172 - 8 Jan. 1 - Ex, Ship bound

ds. destroyed before the policy attached (a. if the in

eurance is from a port & this is destroyed in it

before sailing) or from any other cause more

sails in the voyage in mind.

(132)
Insurance

But where the voyage is divisible into several distinct risks, as to be in effect distinct voyages, the premiums may be apportioned according to the several risks, if any one of the risks is not begun - the proportion of Premium applicable to that risk must be returned, say 564-7 - 3Pun 1237 - 1850 172 -

Ex. - Insurance from London to Halifax, premium entire - warranted with Coverage from Portmouth. On arrival the Coverage we procure immediately prior to London. Premium apportioned - the part applicable to the voyage from Portmouth to Halifax returns. See the contiguity in the warrant (of sailing with Coverage) divided the risk of the voyage. It was a condition precedent to the Insurance from Portmouth to Halifax, so that the policy did not attach upon that voyage. Upon the arrival from London to Portmouth it did attach (since 3 Pun 1237) I. G. 2nd. a, to the property of the assignor -

Yet an Insurance "at & from" a place just the risk at the Port & from it an end divisible - Ex. "At & from" the port of No. Premium entire - warranted to sail on before each a day. She does not sail till after that day. Is that the warranty is not complied with - No return of Premium for the risk begins at the port of. It is not divisible - for there were not two distinct voyages or hazards, & therefore there can be no apportionment. Shew 567-8. 8Pun 1 -
Case a, before with the addition, warranted to sail with convoy "a" if she be lost, a third of the premium to be returned. The ship with convoy "a" May 20th, to the convoy the risk is made distinct and the insured may recover the 1/3 loss.

Upon an insurance "as from" with warranty to sail by hukes a day on with convoy "a" the warranty is not kept, if there is a usage to allow a certain per cent. for the risk, "as from" the usage will fine the Insurer, will recover back the premium after deducting from the sum or proportion established by the usage.

But if the risk is entire ò once commenced the general rule is, that there shall be no return of premium so that if the ship merely gets sail in the voyage, and the whole premium is earned, the ship shall be obliged to return to port the same hour it abandon the voyage. So if the deviates the same from the voyage the whole premium is retained, the deviation to charge on the premium from the risk but against the sum of 5/14 of the distance 75 and 81.

For the entire risk be attached by the sailing in both cases.

Rule the same that the voyage be to several different places, if the risks to the premium be one or entire. Ex. At A from A to B, from B to C, and from C back to A. As a prime premium minus C, 10 per cent for the whole loss in.
A form arriving at B. No return even for the voyage from C to A. June 57, 4. Long 791.

For in this case there is no contingency preventing the risk or dividing the voyage to this premature it entire. June 57.

(5) To of an insurance upon a life with the usual exception of death by suicide or the hands of public justice - if the party commits suicide or is executed within an hour after

if no return of premium - June 57, 5, 6.

Comp 088 Long 751 (the ill mans field)

So upon insurance for a certain time for an entire premium - if the risk, begins there is no return of premium. this the contract should be determined by some event immediately afterward. Ex. Ship insured for a year for any voyage - or voyage within that time - warranted free from capture by any French force - Capture within a month by a French Ship. No return of Premium for the residence of the time - June 57, 8. Comp 088. If ever there was a warranty that the ship did or did not sail on a certain voyage at this end of that month? wise like so by the 3 June 1237.

In all questions of apportionment - the premium is being entire is one proof that the risk was entire. (1) + May 570. Long 791. 564. + SB thinks generally the chief evidence.
Furthermore, an insurance for a year of a profit 240 (2, $60) is given as a premium for the whole time. This is expressed in the policy to be at the rate of $5 per month, 30 weeks, 30 days, the rate as above - these will be no return of premium.

(While I presume of expressed this, at (or for) $5 per month (omitting the rate of the profit time).)

"At the rate of" is considered only as a mode of conveying the profit time from 570-9. Long 575. For the contract was not to pay five dollars, for the first five for the second to, but $50 at once for the whole risk.

115 - Part of the premium is often agreed in the policy to be returned upon the performance of some stipulation - as condition by the insured.

"Five per cent. to be returned if the boat with convoy t arrive." In this case, if the condition is complied with, the insurance is bound to return 5 per ct. - Max 579, Long 255.

Thus the insurance is on goods the condition is compliance with the ship sails with convoy and arrives without losing a life upon the goods. It is 581 - Do that the insurers is bound to return in such a case the 5 per ct. - the liable for the life on the goods - Max 579 - 581 - Long 255.

To upon insurance - on freight to return a certain sum per ct. if the ship sailed with convoy and arrived. The sailed with convoy was, explained & accepted.
of allwards arrived - The Insurer has the right to pay the loss was still bound to return the speculative part of the premium. Mar 23 12

[Page 421]

Where the law requires a return of premium it is the custom of all marine owners to allow the Insurer in each case to retain 1/2 per cent. This is allowed it being a compensation for his trouble at the appointment. Mar 583 4. (This he knows we are without)

The Proceedings -

The late original jurisdiction in matters of Insurance is in the Courts of Con. Law. Courts of Chancery have no direct jurisdiction in like cases. Mar 24 585 2.

We have Ct. of Admiralty for this is a personal contract between Insurer and they have jurisdiction over questions in same. Still however Ct. of Chancery may upon cal. = lateral proceed hold jurisdiction of questions of Insurance as upon all other questions affecting rights of property - as - To compel a Trustee to permit his name to be used in an action at Law - To file commissioner for the co. = examination of witnesses - To grant injunctions to stay proceedings at Law till the reum of such commissioner - To compel a discovery by a party charged with fraud - to order the delivering sale or inspection of
material proven. But except in such case, Equity has no cognizance of questions of insurance. Sec. 581. 18th 23. 2. 359. 3 Dec. 182. 0. 0 525.

But an actual submission to an awardee—de—it will be a conclusive bar in this as in other actions. Sec. 581. 12th 6. 129.

Will a bare submission still pending here? I think not. If there were a clause in the policy binding the parties to submit it would be no bar. No man can send himself out of the tribunal of his own country. A party can’t by mutual agreement, to arbitrate, over C t. Courts of their jurisdiction. 14th 12. 2. June 1082. June 1881. 7.

Upon a policy uninserted (as those subscribed by private underwriters usually are) the proper form of action is a Special of Summons or Counting specially on the policy. Sec. 589.

If the policy is issued to one named by an ins. corporative company is), the proper action upon it is. Cov. Broker. or Debt. Sec. 576.

For the head 1176, of the declarator Sec. 579. 8. 2 Col. 12. 5th "sp" 17. 66. 9th 18. 6th 186.

Count for money had $ 363. usually added to a, to secure back the premium—of on the prop,
the Plff seeking to entitle to that -t uncertainties
Mon 588.

Not necessary to declare upon an adjustment
it is good evidence upon a declaration on this
1881 11 19.

Amount of interest - in Plff may be personal
spécial  - If general he must prove any kind
of interest  - that he has  - If special it must be
proved as statute  - (Chap 144.) Mon 585-6. 589-91.
6B. 639-652. 117.

If insurance is made in the name of an agent
this action may be brought in his name  - in
that of his principal  - 1867 545. 2 Ch 57. 1-2 559.

But in either case it must be avered that the
policy was made in the name of the agent
as agent  - for the use of the principal. Mon 589.

As amount interest  it is sufficient to allege
it to have been in those who had the proper
age at the time of making the policy. The
owner should have become afterwards in
interested with them  - (Chap 156.) Mon 589-90.
2060. 1552.
Insurance.

If it is the owner of a Cargo sells, a share of it to B. & then insures it in his own name alone—an amount of interest in himself (without any mention of B) is insufficient. The fact of B's interest alone not negativing the amount to, as B still has an interest in the whole. Man 590-2-1280 240-

The loss must be averred to have arisen from the true cause—on the Off cannot recover—ante 87—post 148—Man 591-2-618-1582 364-

Ex—Ship captured—set at liberty in a port—in time to pursue its voyage—Sails in a different—one voyage & is lost. The Insured cannot—can be for a loss by capture—Man 147-431-592-3-1582 364—40723-

If Seamen are taken away by a Capt. Bag the Ship leaves—no want of Seamen. Declaration must state the loss to be by Dilig. It is a loss by the fault of the men 2. NA 336—it must be alleged—(it loss)—

If a vessel found a Ship & occasion a standing—Dilig. cannot be had on a loss alleged by boarding of people—pirates &c. but only upon an amount of loss by Stranding. The proximate cause (cause cagnator) must always be alleged—Man 590-431-147-434 723-

So an amount of loss by the fault of the men is not supported by proof of a loss by the Captain.
misconduct. [Page 593 - 5 - Page 62]...

so too, while policies on slaves, injuries were lawful to certain slaves, were thrown overboard to purify a leach of water—an omission that they punished "for want of water" was adjudged not to be supported by the fact—"the leap was—by throwing overboard."

but the leap must not be alleged in the very words of the policy. sufficient if it be alleged in words which bring it within the policy of the words in the allegation are tantamount to those in the policy. ex: Allegation of leap by the person or any other of the sam—i.e., leap as prior event of leap by "Barretty" (Cont. 90) [Page 594 - 595 - 2nd May 1849 - Stave 581]

when salvage is to be recovered—protestant to state the injury which occasioned it (Cont 103) [Page 594 - 595 - 2nd May 1849 - Stave 594- Salvage is not secured in the policy."

141) if the only object of the injury is to recover back the premiums—the proper form of action is: Indemnification, if premiums for injury had been [Page 595]
The Plea.

The usual plea to an action of assumpsit
for the policy is the general issue (now
afterumpat) which puts in issue every allegation
in the declaration & enables the plaintiff to prove
any fact which disaffirms the contract. It does
change the policy, demand, under its clause 597,
being 106. 2. June 1844. So that the policy was
illegal, that the issue had no interest,
found, or representation, or concealment by
the insurers. That the ship was not seaworthy
that the voyage in question was not the one inten-
due. That the ship sailed on a different voy-
age. A deviation. That there has been no
loss, or sum to this amount claimed, nor
compliance with some warranty.

So that the insurance was defective & that Agy
has already recovered to the amount of his
loss under another policy. June 599.

Keep more pleased tadon or under the furit
issue being money into Court by Stat on 9202
C27. (June 599-600)

Qn. Why might not money be brought into
Court independantly of that STAT. As in other ac-

In debt or Cert. Breach. In healed policies
(as those of incorporated insurance companies)
all though matters of defence must at law
have been specially pleaded. (5 Cert 11)
One inconvenience is now removed under the
When several actions are depending together - at several steps in the same policy they may be consolidated by a rule of Court, suspending the proceeding in all but one of them - the issuing the steps in the others to abide by the event of that one. - Shaw 12 4. 1802 264. 3 Darm 1477 - This is a modern rule of practice & formerly refused - Shaw 12 3. 200 264.

But as the condition of granting this rule the Court may impose any reasonable terms or the steps so that they shall not apply to equity or bring in error for delay. That they shall produce books or papers. That in the case to be tried that shall admit his subscription the offer's interest the life or any other fact upon which the dispute does not depend. But general terms are sometimes imposed but by consent. Or these forms terms may be imposed on offer. - Shaw 12 4.

But this rule of Ct can't be claimed as a matter of right - & if the offer will not consent to the rules the Court will grant imprudence or cause - suspension in all the actions but one till he say consent - Shaw 12 4.

If offer refuse - the Court will permit all the actions to proceed. (14) -
The verdict found in the case tried under this rule binds all of the defendants in the other actions. It is satisfactory. But if it is considered in a new trial permitted the other cases are joined by the final verdict. June 607. 1862. 464.

And if after such a verdict an attorney in any of the other cases brings a suit of error, even for manifest error in violation of this terms of the rule he is guilty of contempt.

June 607. 1862. 21.

The principal points to be proved by the policy of 1843.

1. The Contract.
2. The payment of the premium.
3. The interest of the insurer.
4. The performance by us as cators.
5. The loss.

1. The Contract.

The contract is proved by proving the policy and proof evidence can be admitted to contradict it, or only the time of it - June 618. 209. 1847. Then 454.

Once held due under policy 444 (June 247) (Policy of 20 Oct. or a certain case within the time of the policy is admissible to contradict it, but 65. no examination policy served 207. incorrect.)

In doubtful points usage may be proved, as in the banding of a chance in the policy, but the
where a policy is executed by procuration, proof that the procure acting as agent, held in the habit of subscribing for the chief's prize was sufficient proof of his authority.

2. The payment of premium.

The claim in the policy entitling the receipt of the premium by Insurance is sufficient evidence of its payment, by the insured. Sufficient at least to sustain an action on the policy. The sure conclusion is, they lost in an action for premium, the insured in the policy being in extenuation of cause. 11 M. 167.

3. The interest of the Insured.

This may be proved by any document which is evidence of property, as bills of lading, or of taking a interest, with proof that the goods were entered by bills of lading, or of the output, custom house clearance, by or by actual evidence, grant of ownership, or by directing the loading, paying the people employed on June 1812. 18th 269. 379. 8th 1129.

144. Under a general assignment of interest, the issue may prove any species of insurable interest. He said we know the kind of quantum of it.
Insurance

A test but will remain in proportion to what he prev. see 88. 589. 612-630. and 139.

Upon an open policy the real value of the ins.
A test must be proved. On a valued policy it is necessary "prima facie" to prove only time.
A test. Yet the value itself may be disposed
for the purpose of showing the contract to be
a waiver under Stat 19 Sec 33 - 637. (ant 48)
Nov 149. 612. 2 Dec 1171. 2 Dec 710.

Upon a policy on "good" generally the insured
may give evidence of a mortgage on other
line - Nov 613. 225. 188 212.

Proof of Donation to Respondent rend - by the
interest of the Oblige or - sufficient proof of the
interest of the Oblige - when he is the insured
by the Oblige or may testify to his own interest.
Nov 613.

4. The performance of Warranties.

The truth of a
- primative warranties must be strictly proved by
the Insured. So - of the performance of executory
or promisory warranties. Ex. That the property
was neutral - that the ship sailed within the
time limited - with convoy or &. the nature
of the case may require. (ante 58. 15. Mac 289.
328. 304.)
5. The Loss.

The loss must be proved to have happened during the continuance of the risk. (p. 145)

Loss of goods may be proved by the testimony of witnesses, like any ordinary fact; but the best evidence of what goods are on board is the bill of lading which, if not impeached, is regarded in all cases as conclusive of the quantity and species of goods laden.

But the insurer may impeach it of fraud or collusion if he does not, it concludes, him. The insurer on the other hand cannot impeach it because it is his own evidence. (p. 145)

But a protest by the Captain is no evidence in chief or against him while he is living. The only use which can be made of it is, to contradict his testimony if he varies. (p. 145)

"Evidence" -

Law - Is it evidence in chief after his death? except as any other private memorandum might be.

The loss must be proved to have happened from the very cause alleged in the declaration (ante 87, 140) (p. 144), 147, 549, 12, 147, 438, 456, 727, 11, 254 - for particular examples of this rule see ante division "Declaration" p. 140.
Insurance

No loss can be proved unless it is the immediate consequence of some peril insured against. (Art. 8)  

Ach 13. 4. 418. 47-20. Park 55. 174. 85. 23. 186. 44.  

For the remote consequences of a peril are not within the policy.  (56)  

Thus, if a ship is driven by stress of weather upon an enemy's coast and there captured, the loss is not by stress of weather or "peril of the sea" but by capture. (Art. 87.)  

Ach 88. 20. Park 69. 20. See further examples.  

Art. 67-20. 1712. 101 n.  

But loss may prove damage immediately proceeding from the cause alleged. As payment of salvage when the loss is indeed to have been by standing or sinking.  

Art. 87-20. 186. 52.  

Wages & provisions expended or consumed during a repair of loss damage are not a loss within the policy on the ship. (Art. 81.)  

Note. The freight is not the ship insured, but the ship. (Art. 70.) Let us go on to the ground of the distinction. It seems to be that this expense is not the immediate effect of the peril of the sea. Indeed, the expense may be said to constitute the loss on the freight.  

So, if the expense of wages & provisions had been incurred during distinction under an enlagement.  

Ach 82. 35. 82.  

Yet the ship's provisions are considered a part of the ship itself & are protected by a policy on the
Insurance

This - As if they are lost or injured by the damage or - BUT in such cases the loss is the immediate consequence of one of the perils insured against. Man 122-5. 4724. 216.

Note - What shall be deemed part of the Ship a furnishings may depend on the usage of a particular: rule in trade. Man 126-7.

If the owner of goods insured has been computed to pay for eight "per cent" interest in case of a capture or detention - he cannot recover the amount paid from the Insurer. The case is not within the contract between the parties. An insurance on goods has no concern with the freight. Man 127-8.

If Off alleges a total loss - he may proceed to recover for a particular one. Man 128-9. So, if he declare for the loss of an entire thing (e.g. a Ship) when he was owner of only a part of it, he may recover for the loss of his part. Man 894-121. 824-104. 828-148. The actions being a literal one in which Off recovers according to his actual damage.

1473.

If he alleges a loss interest than he has - he may recover to the extent of the interest alleged. Man 674-1. Parte 674-102 214. As more.

As to the right of the Insured (under Rule 17. 420 232) when Insurer become破产. - By the law
Insurance

Bottomry and Respondentia.

Bottomry is a contract in nature of a mortgage of a ship or cargo on which the owner borrows money to procure the outfit or cargo for a voyage or for the bottom (pay, pay lots) of the ship as security for repayment. Jan 93 - 632 - 262435.

The agreement is that if the ship be lost in the course of the voyage by any of the perils named in the contract, the lender shall lose his money. But that if the insurance be paid he shall be repaid with the interest agreed generally called the Marine Interest, which may lawfully exceed to any extent the common rate of interest established by law in other cases. (No) for the same May 718.

By this Contract, not only the ship & tackle (if the insurer pays) but the person of the bearer is bound for the repayment. Jan 632. 258 458.

If the subject pledged is not the ship but the cargo (which is of course intended to be held) the contract is called Respondentia, under which the lender's principal security is the personal responsibility of the borrower. Mar 639. 258 458. And in the particular consider the chief difference between the two contracts.
In both cases the bankrupt is lost, the loan is lost to the lender.

If however the loan is for the homeward as well as for the outward voyage, the return cargo or money, etc., for the first cargo, is also bound (i.e., in case of Reponsantia) Now 500 - 20l 40s.

On the contract of Botomary the loan on the Marine Interest is to be repaid on the safe arrival of the Ship according to the condition of the contract.

Upon the contract of Reponsantia upon the safe arrival of the Cargo, or (as the case may be) of the return, for it. Now 657-757.

It is of the essence of both contracts that the loan (i.e., the principal) should be exposed to the perils of the sea, at the risk of the lender. Now 654.

Difference between Bottomry & Simple Loan. In the latter the money is at the risk of the borrower to be repaid at all events; in the former it is at the risk of the lender during the voyage. 2. On a simple loan, only the lawful interest can be reserved. On bottomry any rate of interest agreed upon. Now 654-5.
In many respects also the two contracts differ. In many other points of difference—in case of ship or wreck—the lender has a lien on the effects—hand to the exclusion of the borrower (they being pledged to the lender). But the Insurer has an interest in the effects, and in common with the Insured before to be insurable.

I chance excepting the lender from general average would be illegale to void treaty to suing, while in case of an insurr. Where the voyage is divisible, the premium must be apportioned. But in Bottom, if the ship be burnt or sunk, happens, the entire marine interest must be paid. Mar. 35.
II. Of Insurance upon Lives.

The great principles which govern marine insurance, govern insurance on lives against fire.

This is a contract by which the insurer in consideration of a premium (either in a lump sum or by instalments) engages to pay the policy holder, for whose benefit the contract is made, a sum of money (or an equivalent amount) upon the death of the person whose life is insured, whenever it may happen (if the insurance is for the whole life); or in case of its happening within a certain period (if the insurance is for a limited period).

This sum is to be paid to the person agreed upon in the policy—15L. 23s. 4d. 174. 6d. 3s.

This contract is usually qualified by a condition or warranty inserted in the policy, or contained in a written declaration, on the part of the insurer, that the person upon whose life the insurance is made, has no disorder tending to shorten life—that his age does not exceed a certain number of years—that, if any of these warranties or conditions be wanting—the contract shall cease without the sum being paid by the insurer for future years.

15L. 32s. 4d. 174. 6d. 3s.
Inference.

The warrantee that the person whose life is insured has no disorder or does not imply that he is entirely free from all infirmity or indisposition. It is sufficiently true if he has reasonably good health for a person of his age and constitution. (157)

For, tho' he had a particular infirmity of it had no tendency to shorten life or did not in fact contribute to his death, Jan 68, 69, 100 & 312. Ex. That he had a local palsy as consequence of a wound is no breach of the warranty.

So liable to fits or faints, holden no breach of the warranty. Jan 68, 70.

If there is no warranty the Insurer assumes the risk whatever may be the state of the health of the party whose life is insured, and he there be some fraudulent representation or concealment. Jan 670, 666. See Also, Jan 336.

If any misrepresentation is made to the first underwriter, every subsequent one may give evidence of it in his defence. Jan 670.

See Jan 336.

Index.

Beck 12.

By Stat 14 Geo. 3, 24851, insurance upon any life or other event is whilst the in-
Insurance

lent has no interest is void. 

Would such insurance be void upon

Life, principles of being opposed to good

policy of morals? It was not to consider

it.

It is agreed that a bona fide creditor has

an insurable interest in the life of his debt-

or. At least, if he has only the personal le-

surity of the debtor, within the Statute

Ser 673-4. Park 432.

But to warrant such insurance by a creditor

the debt must be upon good and legal consid-

eration. Hence the Holder of a note given for

money illegally worn, at forcing has not an insurable

interest. Ser 673-6. Park 432.

That the debtor is an infant is no objection to this

Insurance. For he might not avoid himself of

his infancy. If he might not plead infancy, as

an infant promisor. Ser 673-6. Park 432.

Note. The infants rule in this case must be rejected

as only voidable, not void.

The Insurer of a Creditor may insure for the bene-

fit of the latter, or the Executor to Ser 576.

Park 235.

Under the Eng. Stat. the insured can recover no

more on the life of a third person (as a debtor)
Insurance

The amount of his interest in the life in
the ann. Mar 675 - 96875 12 110364 104193. Hence pay
the uncertainty of the debt. before action brought on the policy
for the action of the insurer.

A life upon this contract must always be total.
If the event on which it cannot happen partially,
time can not be a partial life. Mar 677.

The usual exceptions inserted in life in favor of
the insurer are these: If the insurance is upon the
life of the party insured it is usually declared that
if he shall depart the limits of Europe, shall
die upon the seas - shall enter any military or
naval service without the previous consent of
the insurer, or shall die by suicide, duelling in
the hands of justice - the insurance shall be void.
(Would not death by suicide or dueling discharge
the insurer without such exceptions - as the insurer
voluntarily exposes his life?)

Note. If the insured in each case dies by suicide
or dueling there is no return of the premium

Where no provision is made upon the life of another.
Death by suicide, dueling or by the hands of
justice is not usually excepted. For the party to
the contract is not a voluntary agent in such death.

Where the insurance is for a limited period, not
only the cause of the death, but the death itself.
must happen within that period—on the法人's
lost-health (Nov 174 - 677 - 8. 1792 254). So a court
would receive within this time & the death after
the expiration of it—

And if it be uncertain whether the death happened
within this period—it is a question of fact—whether
a circuit of the jury from the circumstances which
may appear in the case—Nov 178—

When there is no direct proof of the death at the time
of bringing the suit—if the parties whose death
is questioned has been absent or unheard of for seven
years—will not his death be presumed? In an
action to recover a injury—loss, or lioe, or under
the Stat 1 & 2 B. & 19 Car 35. 4 & 5 H. & 4 East 37, “Land
& dog” 13.
If he should afterwards appear to be alive, relief can
only be had in Equity I suppose—

In a policy to take effect—是否 the day of the date
the day of the date is excluded in construction—
Nov 178. 9. the Comp 714. Powell on Comp, p. 432
If ” from the date” it is included—(14)–

Most of the principles which from marine insurance
are also applicable to this species of loss—
New 679, 1815.
III. Insurance against Fire

By this contract the Insurer, in consideration of a premium received, agrees to indemnify the Insured of losses or damage in his buildings or goods by fire during a limited period thereafter.

It is true that insurance at fire without interest is void under law principles. Public policy manifestly requires the rule to be as hereinbefore stated 855-599. 2 Scoto 554, 3 Deco 9 C 497.

And the Insured must have an interest both at the time of Insuring and at the time of the loss. Post 1851.

As, any rate such insurance is void 856 by the Stat 14 Geo 3 th 49. Mar 1845-52.

It is generally provided in the printed policies (which are deemed part of the Contract) that if there is a previous insurance on the same premises or on which a subsequent insurance is applied for, notice of the former must be given to the subsequent insurer before the subsequent insurance is effective. And notice of a subsequent policy must also be given to the prior insurer so that the cash terms of each policy may be endorsed in the other. If the like notice is not given the policy is void. Mar 855. 115 380 56.

The same precision I believe is inserted precisely in the body of the policy. Mar 325.
And in case of loss the underwriters on each policy are to bear their several proportions of it according to the amount insured by them respectively, and

So it is, not neglecting that the insurer should have the absolute interest in the subject. The insurer himself, or a trustee or agent, having professions of effect to be able to commence any insurrance, but according to the proposal the nature of the interest must be specified (been in some cases a name).

By the utmost terms of the policy, the insurer is liable for all losses or damages by fire during the term the subject is in the contract—\( \text{Mar. } 67 \).

But by the common proposals the insurer is not liable for any loss by fire occasioned by invasion from any kind—foreign enemy—or military or civil power—\( \text{Mar. } 67, 725 \). And these proposals are deemed part of the contract—\( \text{Mar. } 67, 726-7, 271 06 5 \),

The same power is usually inserted in the policy—\( \text{Mar. } 725 \).

By "interruption power" is meant an invasion from abroad or an internal rebellion. ("Conducted by authority," \( \text{Mar. } 687-8, 260 06 367 \).) Not a mere

sovereign act. \( \text{Mar. } 687-8, 260 06 367 \).
The term "cruel commotion" which is also used as a device in the present of some policies, has been defined "an incipient of the people" for any "general purpose to intimidate the legislature to prevent the passage of laws or - it always implies - to conclude opposition in some way to government" as its object. As was the case with Lord Gordon's riot in 1780.

June 188 - 191-

It seems clear from analogy to the liability of the hundred in Eng (under the Stat. 13 Geo. 1 s. 16) that if the insurer voluntarily pays a loss by fire occasioned by a wrong done, the latter is still liable to an action

for the

in the name of the insurer - the insurer having received full satisfaction from the insurer (see 181-2) for the insurer having paid the loss. Ex. the insurer was enough abandonment in marine insurance. And besides, a payment (either voluntarily or compulsory) by the insurer is not satisfaction for the damage.

The risk commences in peril from the signing of the policy - unless some other time is appointed.

May 21-

In general, the losses are fixed in the policies to an hour.

In policies for a term of years, or an annual premium - 15 days from the expiration of each year are usually allowed by the terms of the policy for the payment of the premium - for the ensuing year. In such cases, the property is protected during the 15 days (from) of the premium is paid within.
Insurance

That period. Mar 193-5 - See 5 The 197- Century (end)
when in a half yearly policy there was a clause
"as long as the managers agree to accept the land.
This case is not therefore inconsistent with the rule(s)?
for the latter clause part it in the power of the
manager to refuse the premium at any time by
its own terms t when the same it was decided
at the rule (s)?) was not denied.

So that if the house is burnt on the 10th premium for
the 2nd year is paid on the 10th (of the 15 days) this
Ins. is liable. The insurance of the Ins. would not have
expected insurance for the 2nd year.

The policy being a thing in action it was after.
sable to law. And besides an assignment of it
would be insufficient without a transfer of the
interests interest because it would not have a recovery.
The policy must have an interest at the time of transfer
at the time of the lift. June 687-59 697-701 (May 189 187)

Such lift done the interest in this policy fall as one
incidence upon the transfer of the subject. June
699-3856. 80.4 97. The policy are only specific
agreements with the persons insured (Bill) section 792
2. 775. 554. The contract is not strictly an insurance
of the subject (which cannot be) but of the per
- sion of damage (x)
In the printed proposals, it is declared, that on
the death of the insured, the interest in the policy
shall devolve on that one of his representatives to
whom the property in said policy belongs; provided he
pursues his right to be indemnified upon before any
new policy be made. Art 690.

Note. This is an assignment of the policy
with the subject, yet it is not an assignment
in the strict sense.

But in peril notice is given, in the proposals,
that the policy shall be of no force, if assigned
(except where the subject is assigned) unless the
assignment is allowed (by an entry in the books
of the Company insuring) or indorsed upon the
policy.

So that, an express permission is required —
Max 697, 698-9, 700-2, 2 Bot 554, 560, 664, 497.
A very reasonable rule.

If the owner of the subject insures and transfers it to (157)
another & engages to get the policy assigned to the
purchaser by a proper indorsement, he is liable
solely for all the consequences of neglecting to do it.
Max 207, 703, 1089, 74.

The insurer, all the risks thereupon in having the
transfer of the policy effectually made it will be
liable as the underwriter would be on Policy —
1849, 74, Max 207, 703.
For tho' the engagements were gratuitous of
the party promising commenced the perform-
ance & by my licence left it incomplete this
affirmative - As if it had construed a renewal
of the policy & neglected to procure an appro-
curant of it - in the most rigorous (ante 46)
term 207 - 703 - 1562 & 74 - Dice analogy 124 10 135 135
To prevent fraud the prudent proposers of most
fire - insurance companies prescribe certain
terms or conditions - a compliance with which
by the insured is indispensable to the liability
of the Company for any loss. See for the Com-
mon from 1584

These proposals require immediate notice of
any loss claimed of the Insurer. A verifica-
tion of it by the oath of the Insured. As the
same may be the production of books, accounts
or other records. D. E. Policies require a
Certificate under the hands of an entire officer
or reputable inhabitant of the Parish (or town)
(as the minister - churchwarden, etc.) stating
their acquaintance with the character of the
Insured & their knowledge or belief of the loss
& that it was incurred without any fault
on the part of the Insured. 1584

(1584)
The terms presented in the proposals are part of
the contract & conditions precedent to any claim
under the policy. 1584 707 2 706 574 178 180
Hence if the certificate presented is not pro-
ced the Insured cannot recover. And it is
no excuse for its non-presentation that the
minister resides out of the parish or that he
or any other person
from whom it is required, acting puly in
justly refuses to furnish it. Mar. 705-709-
22. Dec. 514. 577. 52. 6 yr. 710. 1 No. 354. 2 Dec.
Mar. 252.