Contracts.

A contract, as known to the common law, is "an agreement, between two or more parties, upon sufficient consideration, to do, or not to do, a particular thing." 2 Pl. 127.

Torrell defines it to be "a transaction, in which each party comes under an obligation to the other, and each acquiring a right to what is promised by the other." 1 Torr. 6. 67.

The term includes as well agreements executed (E. G. promises, gifts, grants, leases, etc.) as those which are executory. E. G. covenants, promises, etc., there being no lack of consent of the parties to an agreement, respecting some prospect or right, which is the subject of the stipulation. 1 Torr. 7.

The requisites to a contract, are: I. Parties. II. Mutual consent to some stipulation. III. An obligation to be created, or perform. 1 Torr. 7.

Of the Upon of the Parties, and who may bind themselves by their Upon. The Agent of the Parties is of the essence of every contract. Without it there can be no agreement and, of course, no obligation created or imposed. 1 Torr. 9. 2 Pl. 442.

Hence a person non compos mentis, as an idiot, an insane, a minor, regularly make a binding contract. He has no understanding; and therefore, in legal judgment, not will. In general, contracts out of court, made by such persons, are absolutely void. 2 Torr. 11, 2 Pl. 442.
Thus the surrender of a particular estate, by a person non compos mentis, does not destroy a contingent remainder, depending upon it, strictly and to the purpose.

E.g., 3 Mod. 295, 301. 10 Co. 87. 2 Eyr. 315. 3 Eyr. 284. 2 Text. 1st, 211, 250, 435. 1st Com. 428, 458.

Thus, it may be "believed to such deserted stock?"

E.g., 223, 4 Co. 123, 110. 1st C. Bull. 172. The notions are contradictory: But if not, the deed may still be void.

But persons insane are competent to receive property, by a derivative title: e.g., by gift, devises, etc., as well as by descent. Where being, it is said, a "presumed absent," to what in common presumption is thus beneficial to the party! 1 Conn. 12. 13. 2 Co. L. 2d, 1st Com. 84. 2 Text, 263.

Would it not be more proper to say that in such cases, the same dispenses with the affidavit required in other cases?
Contracts.

And if the insane devise, a donee, recovery his understanding, and then agrees to the purchase; his assent becomes binding: But if he dies during his insanity, or having recovered his understanding, dies without agreeing to it; his heirs may avoid it, 1 Term. 13. Co. L. 2. 2 Term. 263. or affirm it.

But to contracts, made by a person, non compos, to alien his estate, or to create an obligation upon himself, there is an absolute voidness, and no is a legal agent to discharge with. (1 Term. 4.) These fall within the general rule, that their covenants are void.

Of these, however, it appears to be a rule of the Common Law, that the person non compos, cannot himself, recovering his understanding, take advantage of his former incapacity. As man of full age, shall disable his own. He can, or as it is frequently expressed, "nullify himself." 1 Term. 14. 3 Term. 592. 5 Term. 223. 4 Term. 129. 1 H. 41. 5. 3 B. R. 81. 4 H. 4. 45. 5 Ed. 3 vice Bull. 172. 1 H. 115. 2 Term. 195. 4 Term. 206. and 2 Term. 192.

To this intent, therefore, they are not void.

This rule is founded on supposed reasons of policy; to be tried, by "pretended insanity." 1 Term. 14. 3 Term. 592. 4 Term. 129.

But after the death of such insane person, his leg. or executors, may, at common law, avoid his contract, of this description. 3 B. R. 81. 4 Term. 129. 1 H. 4. 203. 2 Term. 195. 4 Term. 206.

Rule is Cont. that one may owe his own, since insanity. 3 Term. 90.
Contracts.

There are two modes also, in which such contracts may be avoided, during his life, by the the English law. 1. After Office found, upon the trial, de idostra inquirendo, or de lunatico, the King, as having notice, may, or, some facts, during the parties life, avoid all alterations, gifts, and other acts in favor of the idiot, or, during his incapacity, the office found may relate to the commencement of his incapacity, 16forn.24. 25. 27. 37t. 40. 2 Co. 125 b. 5 Co. 170. 8 Dec. 83-29. And these contracts, made before Office found, are avoided.

II. A suit may be brought in Cherokee, for the same tribode, by the Attorney General, or the Committee of the county, and the more compact, without the care, 16forn. 23. 27. 41 Co. 414. 38. 176. 111. 37f. 176. 19 Co. 26. 129. He may not plead himself. Ed vid. 19 Co. 26. 279.

But if a suit in Cherokee is brought, in behalf of a lunatic, to compel performance of a contract, made with him, while sane, he cannot be a party. For the suit is brought to facilitate him or to take advantage of his incapacity, but to enforce his claim. The Committee is but his bailiff. 16forn. 28. 29. 1Chaw. 7 Co. 152.

If a lunatic makes a contract in a lucid interval, he and his representatives are bound by it. 16forn. 23. 5 Dec. 59. 27. 213. 4 Co. 125. 2. 27. 412. 414.

As lunatics and idiots are bound, like other persons, by acts, and contracts, of record, Ex. In here, and warranties, not avoidable by their lives, or in any other manner. For no mentor can be admitted after the record. 16forn. 21. 2 Co. 124. 5 Co. 297. 10 Co. 42. 3 Boc. 88.
Contracts

Note; an idiot is a natural fool; a person who has had no understanding from nature. (1 Bl. 363. 3 Boc. 79.) It is said that one who has any understanding, as one who can tell his age, his parents, the day of the week, or count twenty, is not an idiot.

1 Bl. 384. 3 Boc. 333. 3 Boc. 79.

A lunatic is one who has had understanding, but has lost it, from some subsequent cause. 1 Bl. 384. 3 Boc. 274. 3 Boc. 48. 1 Boc. 125.

Drunkniness, though operating as a temporary insanity, is not "infoln of itself, in law, or equity, a ground, on which one can avoid his conct. It is his own fault. The rule is founded on policy. 1 Sam. 24. 26. 1706. 1741. 6 Boc. 202. 4 Boc. 482. 1 Fed. Rule C (172.) contra.

But if one party drives the other into a state of deep intoxication, and then obtains a contract from him, there will not at all. 1 Sam. 33. 38. 1 Boc. 131. For in such ease, the contract isescooned by law.

A party's being of weak understanding is not, by law, a sufficient reason for avoiding his contracts. The law does not distinguish between the subordinate degrees of wisdom and weakness in the minds of men. The only distinction it recognizes is between minds sane and insane. Same rule in Chan. 39-1. 3 Boc. 239. 1 Boc. 51. 6 Boc. 45.

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Contracts

For, in equity, if any fraud, or imposture, is practiced on a person, this circumstance is to be considered. And if, where such a person is party, there are circumstances manifestly a suspender of fraud, Chancery will generally relive, on the ground of fraud. 1 Sam 31. 5 P. W. 129. 2 Pint 228.

Infants.

Upon the same general principle, viz., want of capacity to assent, contracts made by infants, except in some cases for necessaries, are not regularly binding. And the exception itself is founded on necessity only; dedicated on no other principle. 1 Pint 32.

Infants, in judgment of law, have no discretion, no mental power of assenting to contracts. For the distinction, see "Parent and Child."

Feme Coupant.

The contracts of a feme coupant are also regularly void, for want of a moral capacity to assent. Here will be subject, in the presumption of law, to her husband. Hence, her contracts, in general, bind neither her, nor herself. (1 Pint 37. 112). But there are other grounds, on which her disability principally rests, viz. Her want of property, or of control over it, and Husband's rights. 1 Pint 93.

For the distinction, see "Husband and Wife."

Who may, by their agent, contract to bind others, as well as themselves.

6. 11. If tenant in tail, agrees to alienate inheritance, he is bound by the contract, that to the extinguishment of the same in tail. And Chancery will control them to levy a fine, and convey, according to contract. For the inheritance is in his power; and tenancies in tail are not for
Contracts.

"The Cestui que trust of an estate, may, by an agreement, to which the trustees are not parties, bind them, as well as his own interest. — And the trustees may be compelled, in Chancery, to join in executing the agreement. I Por. 112. 1 Ch. Ca. 173. 265. — For the beneficial interest is in the former, the trustees are mere depositaries of the legal title for his use.

A trustor, may, also, under some circumstances, lose the estate of the Cestui que trust. As by a conveyance to one having no notice of the trust. I Por. 113. I T. 755. 7 T. 3. 47. 613. 8 T. 3. 370. 176. Bl. 334. 447. For Ch. 295. For a purchaser bona fide of the legal title, is not to be affected by a right, of the existence of which he had no notice. He has equal equity, and the title, et cætera.

So, an ancestor, being in Lee, may, by an agreement binding this estate, bind his heir; and the latter, after the former's death, may be compelled to convey. (Note. And the purchase-money must go, regularly, to the "personal representatives" of the ancestor.) I Por. 113. 2 T. 2. 13. Vide "Powers of Chancery." — For, at the time of the contract, the estate was absolutely the ancestor's. The heir had then no sort of title to it. The purchaser's claim is, therefore, in equity, the prior and better one.
Contracts

And an agreement to convey an inheritance made by tenant
for life, may be enforced in Chancery to the heir, where the agree-
ment, at the time of making it, was clearly disadvantageous to the
latter. 1 P. 115, 118; 4 Br. 6 Ch. 435.

A mother, acting as administrator to her husband, may, under
special circumstances, bind her minor children, in Equity.
1 P. 123; 1 P. 210. — The Chancellor in such cases, exer-
cises a discretionary power, as being, derivatively, from the King,
the paramount guardian of all infants.

So, the contract of a woman, before marriage, will in general,
bind the husband whom she afterwards marries. 1 P. 123; 2 P.
445; 10 Air. 385; 10 Mod. 106; 1, 243. — For, as he takes her pro-
erty, or the use and control of it, and as the marriage suspends her
original sole liability, he ought to assume her responsibilities.
He takes her own one. — "Husband and Wife."

3. 3. At law, the real estate of a woman cannot be alienated,
except by fine, or common recovery. But the agreement of
Husband to convey her real estate (if consented to by her, upon a
private examination) may be enforced in Chancery. An agree-
ment by Husband alone, cannot be. 1 P. 124. See "Husband and Wife"
see Rec. Ch. 75; Amb. 495; 8 Eq. 515; 574; 2 Shear. & Wed. 412.
Contracts.

If tenant in tail agrees to convey the inheritance, and dies; his issue cannot be compelled to execute the agreement, tho' the tenant might have been. They claim from the donor, the former done, and tho' the tenant might have done the entail; yet, he not having done it, his bare agreement cannot deprive them of their legal right. 1 Pori. 128. Pori. 238-9. 2 Tint. 380. Hodd. 263. Ch. Ca. 171.
Pr. Ch. 275. 276. 584.

Sec. 6. If the issue receives the consideration, for which the ancestor agreed to convey. The former, by this act, accepts, and takes benefit of the agreement; and is, therefore, bound, in conscience, to execute it on his part. 1 Pori. 128. Ch. Ca. 171.

And an agreement by tenant in tail, to dispose of the lasting improvements, or permanent products, of the estate, cannot be enforced as to his issue, after his death; tho' they might have been as to himself. 6 P. 3. An agreement to fell timber trees. 1 Pori. 127. 1 H. 56. 560. Elph. 194.

The executors and administrators of every person, are "implied in himself," and are, in general, bound, by his contracts, of course, without being named. 1 Pori. 128. 2 P. W. 107. Vide "Execut. Admin." "Covenant."

An agent, or attorney, being duly authorized, may, by agreement in the principal's name, bind his principal, and will not himself be bound. 1 Pori. 128. 3 P. W. 277. 2 Berg. Co. ab. 31. 5 Bis. P. C. 547. Vide "Master and Servant." Title by Sec. 35.
Contracts.

But if an attorney be making, in behalf of his client, a contract, which he is not authorized to make; the attorney himself is bound, and the client is not. 1 Porr. 128. 2 Ten. 127. "Nest. & Ser. 3d S. 50.

If a joint tenant agrees to abide his part, and dies before the agreement is executed, the survivor, it has been held, cannot be compelled to perform it. "Nest. 6. 3d S. 50. 2 Ten. 45. 53. "Nest. Nom. 35.

Secus, if the agreement amounts to a severance of the jointure, in equity, the joint accreddees: is, then, destroyed; survivor, trustee for the purchaser. 2 Ten. 634. "Nest. 59. 6. 1 Porr. 129.

Does not the agreement always amount to a severance in equity, if it is oral, as, being made by a tenant in common, would be enforced in Char. 3d. "Nest. Nom. 50., without qualification, by analogy to the case in 1 Porr. 277. "Nest. Nom. 35.

But if so, the first rule cannot operate, in any case. "Nest. 6. 3d S. 50. The exception, as first laid down, would seem to require a change of terms under the contract, before the death of the deceased tenant.

(13)

Agent may be either express or tacit. 1 Porr. 131. Express agent is declared by some sign, intended to signify it. Ex. Speaking, writing, gestures &c. and may be either precedent, concomitant, or subsequent, to the principal act. 1 Porr. 131. Ex. Ge. I. Master sends servant to buy goods on credit. II. He buys, himself, and promises to pay. III. Servant
contracts

laws, or making credit, without previous authority, and the master ratifies it — as by accepting and taking to his own use, the thing purchased.

Vestit, an implied, implied, arises, in several ways: Ex. From silence, a relation. As if a true mortgagee, being present, while mortgagees contracting with another, to make a second mortgage of the same subject; and knowing of the contract, is voluntarily silent: In this case, he loses his priority, on the ground of an implied servant, that his own should be postponed. 1 Bl. 432; 2 Term. 174; 13 M. & W. 270. 2 Bl. N.C. 175. 2 Bro. 250. 137.
See Mortgages, 58. — Note: The first mortgagee may, in such a case, be postponed on the ground of fraud. (Mortgages, 58.) But it seems not necessary to consider his silence as fraudulent.

So, if lessor, being present, when lessee makes another lease of the same land, to a stranger, and knowing the contract, makes no mention of his own lease; the second lessee, being ignorant of the first, will, even at law, be foreclosed. 1 Bl. 432. 2 Term. 174. 2 Bl. N.C. 175. 1 E. & C. 173. 2 Term. 239.

And Chan. will enforce such an implied agent over an infant: Sec. He cannot practice a fraud: Ex. Infant Mortgages, who, being present, at a contract for a second mortgage of the same subject, is voluntary silent.
Contracts.

And it has been held that the first mortgagee being a mort- 
right to the second deed of mortgage, is sufficient evidence of his 
knowing the contents, hereby he proves the contrary. Tor. 134. 5.
3. G. 5.

3. 69.
(Ch. 201). — The court would be dangerous. Opportunity for de-
clusion up. first mortgage.

But to raise such an implied agreement, in the person, thus to be ef-
ected by it, it is necessary, not only, that he should know that his
own claim interferes with the subsisting contract; but that his
silence should be voluntary. If, therefore, on ames into silence, his
interest is not affected by it. Tor. 134. 5.

Upon the same general principles, if the holder of a note, which
has been dishonored, omit to give reasonable notice to the indor-
sor, he is considered as agreeing to discharge the indorser, and to
684. ch. 11. 122. 4. 352. — In: What need is there, of enforcing
such an agreement, in such a case? The holder loses his claim upon the
indorser, by his own neglect.

And in general, the law will raise a tacit agreement, where-
ever it is necessary for the purposes of giving effect to some prin-
cipal express contract. Ex. Jr. If one makes a sale of trees growing
on his lands; he tacitly agrees that theee, shall have free ingress
and egress, to take them. So, one who lets a chamber tacitly con-
ceives, that letters shall have free access to it. Tor. 135. 2. 20. 35.

Winch's Law. 53. Co. L. 52.
Contracts.

There is one species of tacit agreement, it is said, annexed to all contracts: viz. That if either of the parties shall fail to perform his part, he will pay the other all damages sustained by the non-performance. 1 Torn. 137. 2 Bovr. 1011 3 Bovr. 105. 3 Knt. 336. Is not this refining too much? What need is there of introducing any such additional tacit agreement? It is never alleged or declared upon the contract.

When one usually employs another to contract for him or trust, he tacitly appoints to any particular contract of the same kind, that the latter makes in his name. 1 Torn. 138. "Master and Servant," 45.

And in every case of feoffment, release, surrender, gift, &c., there is a tacit agreement on the part of the foregoing, unless the contrary appears. Presumed to exist in favor of the donee, unless otherwise shown. 1 Torn. 138-9. 2 Elen. 233. 3 Elen. 267. 4 Stra. 155. 2 Ryst. 28. 4 Sar. 375. See Title to Land 47. 4 Beck. Mortgage to a creditor, no express assumption.

So, an existing acceptance of property descended to him, is presumed. 1 Torn. 139.

So, if drawer of a bill refuses to accept according to the tenor, but pays for the honor of the drawer; the law implies an agreement, viz. the latter to repay the amount. 1 Torn. 130. Ch. 103. 122. 163. 164. 287. 3 Bovr. 1074. See Bills of Exch 10 02.
Contracts.

So, if a husband away his wife; that act, it is held, amounts to a tacit agent, or by the fact, to be bound by the contracts for necessaries.


(17) Upon a sale of personal chattels there is an implicit warranty of title as well as the chattels are his; unless rendered expressly to assume the risk. 1 Thor. 139. 373. Rep. 182. 351. 2 37.

"Soldpys on the Case"

What circumstances invalidate an agent given.

Ignorance, error, will, in some cases, invalidate the agent given to a contract. 1 Thor. 139. 140.

Mistakes. If a mistake, or error, of one party, as to his own rights, is occasioned by the fault of the other, the contract is not binding, in eq. (1 Thor. 140). But it is invalid on the ground of fraud. 1 Thor. 229. 471.

Saw. 1 Thor. 19. 20. Ex. Gr. 1 Hein. Induced to believe that his ancestor will pay duly executed, when it may not, released his right for a small compensation. Release set aside in Chanc.

(18) But if on a doubtful point of right, both parties being innocent, 1 Thor. 118. or which side it lies, a contract is made, by which the party really entitled is a loser; the contract is good: for the parties agree upon the grounds of the rights being doubtful; and knowing that one of them must be a loser. Thus each voluntarily submits to the risk of losing. Ex. The common case of a compromise between litigant parties.

1 Thor. 82. 138. 102. 170. 2 26. 37. 587.
But of the party, really entitled, is ignorant of the extent of his right, says Torr. (He must mean of the value or quantity of the subject contracted about; i.e., under a mistake as to a matter of fact.) and of the means of informing himself, he does not to be bound in equity as the case may be. Br. G. Case of a bequest to daughter, of £10,000, when his paraphrase fault was £40,000. She accepted the former, and releases the latter. Release set aside. 1 Cor. 144, 5, 3 D. N. 315, 2 Cor. 235. — Is it not fraudulent concealment, the ground of this decision?

And in the case of Langdon v. Landoom, both parties being deceived by the opinion of another, as to the right in question, the contract was set aside in Chancery. This was the case of the Schoolmaster. 1 Cor. 190, 234. Not like the case of compounding a doubtful right — Where both parties agree on the footing, of its being doubtful. Each voluntarily submits to the risk of being the loser. Here both are deceived, there no fraud. The decision, however, operated as a favor, they none was intended.

But, generally speaking, ignorance of law, is clearly no ground for avoiding a contract. 1 Bran. 2 East 409, and 409, 29, this case. 3 Conn. 2, 147, 3, 1, 21. 2 East 409, and ignorance is to this case. 2 Barn. 144, 3 B. & C. 287.

Wasting contracts are in general, binding upon the parties at 17. 30. 11, 3, 3, 51, Cor. 202. See 21. 12. 17 it is 31, 38, not essential to the validity of such a contract, that the event, upon which the remedy depends, be, in itself, contingent. Sufficeth that it be equally uncertain to both parties. In that case ignorance does not invalidate the assent. 1 Cor. 146, Comp. 37, 2 S. C. 57, R. 59. 59.
Contracts.

593. See Art on the question whether a ship at sea, is now lost.

594. There are cases also, in which the absence of an intended purchaser of an estate is invalidated in equity, by erroneous representing respects the circumstances, or qualities of the subject ; there be no fraud in the case. The distinction is this: If the mistake respects that circumstance, or quality, which appears to have furnished the principal motive to the purchaser, the purchaser is not bound. The ground of his agent's failure. Ex. Sr. An agreement to buy land for a mill-stream, and represented as such; and that proved to be no stream. 1 Pott. 147, 9. 2 Pott. 196, 211, 176, 400, 3 Vern. 185. 1 Vern. 52. — It can not be enforced in Chanc. 1 Pott. 149.

Sec. 5. If the mistake relates to a particular, which appears not to have been principally in the contemplation of the purchaser. He is then bound by his agent, and his relief, it is said, lies in compensation for the difference of value. 1 Pott. 147. 9. and equity will enforce the contract. Ex. A mistake in representing the amount of rent, given for land, which is the subject of the contract. Note. Ex. Will any action, or bill in equity, lie for this compensation? I think not. But equity, in enforcing the contract, may impose terms, which will do justice.

But if, on an agreement for a purchase, the purchaser makes it an express condition, that the subject shall possess certain qualities or incidents; the absence of them will breviate him. Agreement not enforced as to him. 1 Pott. 153. Ex. That a farm has such a portion of meadow, when it has not. For in such case the contract is not, so its terms, obligating.
Contracts.

And in some cases, the intention of the parties is to their intent may be inferred from circumstances; and the want of intent may be inferred in the same way. Ex. Sale of a female slave in the town of a man, and sold as a male. Contract void 1 Porm. 152. There is no want to the breach of the article delivered. Besides, the fault would vacate the contract, if the state of the fact was known to vendee.

And according to Story, if an undoubted horse is sold for a piece of timber which he could not be used, unless deemed of such, may be in the case, and the contract is void. 1 Porm. 152. Ex. Ford v. Wade 3 Co. 2. 347. 2 Porm. 152. 25. 11. R. 152. 35. R. 175. There is an implicit warranty of soundness. "Hunt" according to one decision. (Note: see are these decisions near regarded as law.) 1 Porm. 4. 247. 2 Co. 128. 160. 3 D. R. 175. 11. 115. 29. 2 Co. 128. 3 D. R. 175. 1 Porm. 23. 2 Co. 147. 322. 1 Porm. 147. 3 D. R. 175.

Story's rule appears definitely opposed to all other authorities. Exception must be the maxim in such cases; not even damages recoverable if no fraud. If vendor was guilty of fraud, he would be liable in damages. But even in that case the contract of sale would bind vendee. The law does not affect folly & warranty as the vendee not to.
Contracts.

the rent, he shall hereafter pay. The grant is void. 1 Term. 132. Term. 452. Sect. 132. Co. 329 b. 339. b.

So if A lease to B, the land of another; lessee may "heads to debt for rent," the lessee has nothing in the land, at the time of the lease;" militibus non. 900. 1 Term. 153. Co. 2. 42. Sect. 233. 318. 323. 320. 146. Not. Is not this plea allowed, on the principle that the lesee's covenant (express or implied) of good title, is broken by want of title, and that such covenant is a condition precedent?

Sec. 2. If the lease were by indenture, the lease is then established by his covenant. I conclude. 2 Sect. 233. 301. Term. 817. 73. A. 337.

If one of two joint tenants makes a deed of bargain and sale of the whole land, and his co-tenant afterwards dies, the before enrollment, the moiety of the latter does not take. 1 Term. 169. Bac. Max. 80. Not. sec. If the deed contains a covenant that the grantee is seized of the whole, it must not the other moiety half may of exist, etc.

Upon the same principle, if A sells to B, a house, with condition for payment of 5 months' rent; A cannot sell him to another before the expiration of 5 months. Then the tenancy is changed: (and the sale to another, before the expiration of the 5 months, must not be made good, by B failing to pay at the time); for at the time of the sale, the interest would not be in A. 1 Term. 1545. Term. 452.
Contracts.

Of the Subjects of Contracts.

No contract can be made that, to which he has only an inchoate title, to be perfected in future. Ex. If Contingent remainder. Tor. 135, 124; 47, 221; 49, 241. The such contingent interests are descendible, devisable, and, in Equity, assignable. Summary, 44, 44. 44, 120, 222, 3, 309; 37, 281; 18, 14, 30, 12, 222, 225. See Estates, 3, 23; on Remainder, 32, 29.

But nothing, of which one is potentially the owner, i.e. a thing necessary to another, actually vested in him, at the time of bar- gaining, may be disposed of by a contract executed: Ex. The rights of one (and of years to come) of the future profits of any subject, actually vested in the bargainee at the time. Tor. 108, 7, 100, 3. Here, possessor has a present interest, (in the subject,) in order to seize the re- mainder.

Rights not vested, naturally or potentially, may be the subjects of executory contracts: These being no other than stipulations precedent, and preparatory to the act, by which the interest is to be conveyed. In the one, cannot actually convey what he has not, he may stipulate himself to convey what he may acquire in future. Ex. If covenant to purchase a tract of land, and convey it to B. Ex. If authorized to lease the land, of which he shall be deeded on such a day. In these cases, the agreement is good; as a new future act is to be done, to execute the contract. Tor. 158, 7, 120, 100, 3.

Scot. If no future act is to be done, to give effect to the con- tract. It must then, take effect, if at all, as a contract executed, which
Contracts.
which cannot be, by the preceding rules. Ex. A covenant to stand
decided, to the use of B. of the land, he shall hereafter purchase.
1 Ann. 159. 160. 254. 1st. Max. 310. 2 8. 440. In this operation as
a covenant executed. No future act is necessary.

[23] But a contract executed may bind a future interest by way of es-
toppel. It has been held in Court that if one makes a
Deed, with covenant of seisin se of land, of which he is not
the owner, and afterwaids purchases it, he is estopped to al-
lege that he had no title at the time of the grant. Tide. 1st R.
132. 2 S. 295. 60. 1st. 265.

And the rule is the same in England as to leases. Ch. 76.
Torr. N. 495. 1 27th. 364. 1 278. 729. 8 Mod. 258. 2 89. 1 1445.
1550. Est. 2 23. 3 205. 90. 2 370-1.

So of Mortgages. Torr. N. 97. 2 27th. 11. 15. 270. See "Mort-

The rule is the same (sembl) at com. law, as to freedom, con-
sidered in deed, with the usual covenants. 1 Torr. N. 180. 2 27. 370-1
1 275. Est. 2 23. 305. 90. 2 370-1. See "Sale by Deed," 90.
Then may not a contingent remainder or executory devise be
passed by such a deed, by way of esoppel. (Estates in Rem. re. 27)
the interest being described as a present one.
Possibility of Contracts

All contracts must be *possible* of performance; *II* lawful. Sec. 24.

I. Possible. No right can be acquired, no any obligation created, by a contract to perform what is naturally impossible. Such *is* a contract is idle, since *in the nature of things* it cannot be performed. Torr. 150, 178. "Lex non coget actum esse impossibile." Besides, performance cannot ever have been expected or intended. Pol. 137. (2)

II. Impractical. To exclude one of lands, ocean to the ocean. Salk. 290, 291. Where to go is done in three days. To suffer a breach in a binding action, when there is no action binding.

Tor. 176. 2o. 3. 4a. (1)

In the former case, it must be evident to all parties, at the time, that performance is unattainable. It is not, therefore, have been the intention of either, that it should be performed. Sec. 24. in the latter.

An agreement to deliver two grains of corn on Monday, and so on. Hypothetically, doubling the quantity on every three days, Monday in the year. The transaction, it is held, is liable to be "something." So of an agreement to have, for a lease, a lady only for just mail. 12. Holding liable to pay the rents of the lease.
The contract is not void on the ground that its performance is impossibly, unless it is strictly so. The distinction between a near and a remote, the probability of performance is not regarded in executory contracts. E.g. A covenant, by B, that, if he dies without issue, his land shall be settled on C, is binding and may be specifically enforced in Chancery. 1 Porr. 165-166.

For the contingency, whether probable or not, is not impossible.

And if one covenant be expressly and absolutely, to do a thing not impossible in itself, has been prevented from performing it, even by inevitable accident, does not discharge him. E.g. Covenant to be at such a port, at such a time, with a ship to take a cargo. Prevented by tempest. 2 Com. 207. See action of covenant broken. *Note. It must be otherwise, I think, if the covenant had been to perform the voyage within a time, within which such a voyage could not possibly be performed, in any case. Ibid. 214.

In such a case, he is virtually an insurer, a mortgage to the risk of failure.
II. Contracts must be lawful. The thing stipulated to be done, must be morally possible, i.e., lawful; or the contract is void. For no one can be bound in law to do an act which the law, itself, prohibits. (1 B. & 1. 104-5.)

If contract is ag. to law, when the agreement is to do something which is malum in se, or malum prohibitum. (2 D. 37.)

If the first kind, are all contracts, which have, 3. 35. 47. for their object, something forbidden by the law of nature, as to commit murder, theft. &c. (1 B. & 1. 105.)

If contract, therefore, to pay V. L. a certain sum, if he will, kill, or not, &c. 1 B. & 1. 106. (1 B. & 1. 107.) Comp. 85. If theft it valid, would be to furnish a motive for the commission of a crime.

Secondly:—Contracts are ag. to law, when they have, for their object, something which, (the not ag. to the law or nature, or the divine law,) is contrary to the law of the laws, or the Municipal law. Co. L. 206. &c. 1 B. & 1. 108. Ed. A promise to pay for smuggling goods.

And a contract may be contrary to the law of the law, as being, I. 1 B. Repugnant to the absolute welfare. II. 53. being ag. to some maxim or principle of law. III. 59. being obnoxious to some particular statute. (1 B. & 1. 109. 1 B. & 1. 522-527. 3 1 B. 17-3. 2-3. 3 1 B. 546. 3 1 B. 89. 1 B. 5 1 B. 172. 2 Wilso. 344.)
Contracts.

1. Hence, all contracts, the object of which is a general restriction upon onee交易 in a particular man, are ag. to law, as being opposed to the welfare of the State, and therefore, void. 1 Term. 105. 7. Alb. 69. Term. 143. Holt. 211. Cary. 19. 1. So. El. 872. 1. Id. 303.

So are all contracts, in general, which militate ag. national policy. 170. Alb. 122. 27. 1. S. A. 543. 90. R. 59. Corp. 29.

Rule the same, as to contracts, the object of which is a general restriction upon the exercise of a trade, even for a limited period. 1 Term. 107. 2. Alb. 540. Term. 115. Geo. 3. 6. 2. R. 205. 1. Ed. 181. 28.

So, if a Husbandman agrees not to cultivate his land. 1 Term. 107. 1168. 53. 6.

But an agreement not to exercise a trade in a particular place, may be binding. For such contracts may be useful. 1 Term. 107. 8. Geo. 3. 75. 2. Gul. 100. Term. 172. 1. Term. 18.

But a contract of the latter sort is not obligatory, unless founded upon sufficient consideration. And upon this point the case proceeds, it seems, i.e., upon the party claiming under the contract. The presumption is ag. the existence of a sufficient consideration. Hence, such contracts, tho' they may be valid, are not prima facie, per 1 Term. 158. Geo. 3. 79. Alb. 67. 46. 24. 2. Term. 172. 1. Term. 181. 92. 10. Geo. 2. 85. 150. This presumption arises from the jealousy, with which the law regards such contracts. (even tho' the contract be under seal.)
Contracts.

And it seems to be immaterial, whether the trade, which one agrees not to pursue, is his trade by profession, or not. If it is not, null the validity of the contract, depends upon the foregoing distinction. For no man ought to be permitted to preclude himself from engaging in any useful trade. 1 Dow. 159. 16 P. Wm. 162. And therefore the policy of the law is adverse to the contract.

Upon the same general principle, a bond, or agreement for unlawful maintenance is void. It is apt. the public welfare. 1 Dow. 172. Carter 229. 1 Inst. 312. 14 A. 135. The maintenance is meant the upholding of another's law (title).

A contract with an alien enemy, is also regularly void, for being apt. the public welfare; because communication with a public enemy may endanger the public safety. 1 Dow. 173. 2 Do. 173. 107. 50. 827. 64. 24.

Upon the same principle, it seems now settled, that an insurance upon the property of an alien enemy, is void. It promotes the commerce of the enemy, and gives one more interest in the security of that commerce. 8 Ed. 1 548. 1 Bro. 346. 1 East. 96. 475. 2 Doug. 235. 6 Ed. 35. Lord H. Hartnike, and Mansfield, both opposed to this rule.
Contracts.

The rule, however, that contracts with an alien enemy are void, is not universal. For instance, contracts with an enemy are obligatory: (i.e.) a contract, by which the captured party, a condition of being discharged, agrees to pay to the captor a certain sum as ransom. And the master of a ship may, by such contract, bind his owners as well as himself. This is a rule of the law of nations. 1 Doug. 99. 3 Simm. 1734. 1 Co. R. 383. But the action will not lie, till peace is restored. 6 Co. R. 223. March. Ins. 37. Note. But such contracts can be enforced only in a court of admiralty. March. Ins. 452. 563. See Pleading 30. Insurance 3-4. 95.

Rule the same, that the hostage dies; or, that the captor is afterwards taken with the hostage. The latter being only a pledge, the duty exists, independently of the hostage. Doug. 879. 1 Cl. 1. 578. 3 Simm. 1734.

And, as I conceive, such contracts, in general, made with an alien enemy, as arise out of a state of hostility, and tend to mitigate the evils of war, are binding. Doug. 695-6. Cov. R. Treaties of Peace between belligerent States. Rules of Captur- lating, &c. between Military Commanders. Agreements for exchange of prisoners.

In Eng. however, ransom contracts are now prohibited by Stat. 2. Geo. III. (March. Ins. 452) 2w. 2 to the U. States.
Contracts.

Marriage-bondage bonds are void; i.e. bonds given for assistance in promoting marriages. Because this is of danger to society. 1 Pint 3. 1 Ch. 12. 2 Ch. 2. 1 Pint 4. 1 Pint 4. 2. 3. 4. 5.

The same principles apply to promises and agreements of the same kind. 1 Pint 174.

II. Contracts opposed to any maxims or principles of law are void. 1 Pint 175. Hence, if the consideration, which is the cause of a promise, or the promise itself, is opposed to any such maxims, or principles, the contract is unlawful and void. 1 Pint 176. 1 Bulle. 35. 3 Galk. 97.

Thus a promise, in consideration, that a promissee would fraudulently discharge a debt, due to his master, was held void. 1 Pint 175. 3 Galk. 97. The consideration is opposed to principles of law. Ego. the whole contract void.

If a Sheriff promises, for valuable consideration, to permit an escape; it is void, (as is an obligation or promise to indemnify him for it,) in which last case, the consideration is opposed to the principles of law. 1 Pint 175. 10 Civ. 76. 182. 35. 10 Civ. 82. 199. See title Sheriff's 3. Hence the promise is opposed to, i.e. the thing promised.
Unlawful

Contracts.

So, a promise, by a Minister of Justice, to do an unlawful act, in his office, for the thing promised is unlawful. Or, by another, to indemnify him for doing it: 1 Cor. 17. 2. Ew. 2. 22.

For the consideration is illegal.

But when the unlawfulness of the consideration, or rather, of the fact, which makes it unlawful, is unknown to the promisee, a contract of indemnity founded upon it, may be binding. Ex. A. brings B. to an inn, under pretense of having lawfully arrested him, and promises to indemnify the host, for keeping him as a prisoner. If the host be subjected, B. is liable to his promise. 1 Cor. 177. 5. Matt. 53. Acts 5 in the Case. 17. For the host is innocent of any crime; this motive being innocent. Hence no illegality in the consideration can be imputed to him.

So, if a plaintiff in a case for trespass requests the Sheriff to take certain goods, as the defendant, which are not his, and promises to indemnify him; the promise is good. 1 Cor. 177. Ew. 1. 1. 75. 2. (See 18. R. on Case. 17.) Reason as last above.

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Introduced into Page 46.

All contracts, the objects of which militate against the laws of morality, and decency, are void, as being illegal. Ex. The sale, in the year 1729, of a slave to the pop of Clerkenwell. Ew. 1. 729. 735. 74. 5.

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War. 1 Cor. 15. 233. 2. 17. R. 17. 37. R. 793.
Contracts.

So, of contracts made for corrupt purpose. Ex. But, with one having a vote, or influence in appointments, that I shall not be appointed to such an office. March. Tom. 95. Feb. 1842. Cor. 39. 2St. 60.

So, of a wager with a Judge, or Counsel, by way of a 9.40. Indec. 1843. 1St. 55. A. 50. 2St. 53.

So, of a wager that is not done. In. Feb. 1844. Ex. Done for a lot by London, that the borrower will not repay it, in such a time.

So, of a wager as to the mode of playing an illegal game. 2St. 51. 43. It promotes a knowledge of the game.

But a wager between Hff and Defendant in a cause, as to the ultimate decision of it, is good at comm. Jan. 1843. Comp. 57. In this does not create their interest in the cause or issue of the cause, nor does it tend to influence the decision.

And wagers in general are binding at Comm. Jan. 1843. ante 18. But the rule has been much disapproved. Nash. 1St. 21. 1810. 31. 89. 59. 93. In Comm. all wagers are made illegal by Stat. (Stat. 1845. 60. 61. 62.) So, of money, knowingly lent, at the time and place of gaming to a party, gaming at 9. 1St. 1845. 57. Does the Stat. extend to any case of money lent to a party, gaming, except that of a wager upon some “game, horse racing, or other sport or pastime”? comb. not.
Contracts.

Contracts in favor of child persons are illegal and void. 1 Par. 99. Sec. Agreement between two partners and another to cheat the government, in the purchase of supplies for the army. 1 Cor. 155. Chap. 134. Sec. 450 or 433. 2 Cor. 185. 176. Salk. 155. 49. A. 185. 176. Sec. 325. 113. 381. 381. 765. 1 Bos. 4 Fall. 95. 288.

Void at law as well as in Equity.

So, of a secret agreement, by one of the parties to a marriage, to refuse part of his marriage portion. It is fraudulent as to the other party to the marriage. Chap. 184. Sec. 246.

So, of agreements to pay for attendance at auctions, to enhance the price of goods, by influencing bidders. 1 Par. 107.

Contracts are unlawful and void, where the object of them is the omission of some legal duty. 1 Cor. 195. Sec. a Covenant by an under-sheriff, not to borne executing above a certain amount; or not to execute process on a certain part of the bail. 1 Cor. 195. Sec. 12. Mor. 382. See "Sheriffs".

So of contracts which tend to encourage unlawful acts or omissions, of any kind. Ex. a bond to indemnify a printer as to any indictment or action for libel. 1 Par. 195.

An obligation given for compounding a felony, is illegal. 2 Esp. 195. Sec. if the crime is only a misdemeanor. 2 Esp. 643. 49. A. 475. Sec. 2 Wis. 341. Contz.
Contracts.

So of a contract to indemnify a Sheriff for embroiling a trait, or permitting an escape. 1 Pow. 107. 5. 29. 3d. 8. 31. 2 Bulst. 213.

Or, to save one harmless, if he will commit a felony, theft, or other wrong. 1 Pow. 97. 1 Pow. 239. 10 Co. 100. b. 1 b. 311. 29. 324. Co. C. 353-4. See 'Sheriffs of.' It is a temptation to the commission of an unlawful act.

So, of a wager between two, that one of them, or a third person, shall do any criminal act. 1 Pow. 196-9. It is an incitement to immorality.

III. Contracts prohibited by Stat. are void. 1 Pow. 108-108. 61. 49. 9. 96. 3b. Ex. A contract for more than legal interest is void by Stat. 12 Anne, and our own statute. 1 Pow. 186. 10. 167. 755. Statute of Uses.

So, of a secret agreement for a bankrupt, or by any person in his behalf, to pay money to a creditor, for signing this certificate, is void by Stat. 3 Geo. 2d. 159. 189. 676. 677. and would have been as at C. L. (comt.) as fraudulent on the other creditors. 1 Pow. 190-1. 40. 20. The money ought to go to the payment of all the creditors, or to any of them.

So held in Cont. in case of a compromise between an insolvent and his creditors. Upon a bill in Equity by the debtor, to be relieved as such a contract. 188 C. L. 268. Ramsey v. Blake.
Contracts.

Distinction between cases of covenants, a bonds for the performance of covenants &c., where some of them only are lawful, and some made void, by statute; and cases where none are lawful, and none are void, at Common Law: In the former case, the whole bond, on other instrument, is void; in the latter, it is good, as to the covenants that are in themselves lawful, and void as to those that are unlawful.

1 Com. 249. 2 Mee. 387. 4 Text. 237. Thus, if an under Sheriff covenants not to issue executions above a certain amount, and is to save the Sheriff harmless of all expenses of summonses arrested by himself; the covenant as to the former covenant is void, and as to the latter, good. The illegality of the former covenant is created by the C. L. 1 Com. 249. 2 Mee. 387. 4 Text. 237. But a bond, given to secure the distinct debts, one legal, and the other adhesive, is void, in text. 1 Com. 249. 4 Text. 237. 2 Mee. 387. See Sheriff’s v. 30.

This distinction arises, therefore, not from any difference in principle, between the effects of a partial illegality created by statute. in one instance, and by the C. L. in the other, but from the phrasology and structure of Stat. Law, which in such cases, declares the bond or security void; i.e., according to the construction given to the words, the whole bond or security. If a statute should much declare a particular clause, or condition, in any obligation to be void, the whole obligation would not be so, i.e.,

But the an illegal contract creates no right that can be enforced; yet, after it has been executed, the law in some instances suffer it to prevail, by refusing to aid either party in rescinding it. 1 Com. 249.
Contracts.

I. Where the illegality is of such a kind, that both parties are deemed criminal: Here, if the contract is executed, by per- 
formance of the illegal act; he, who has paid, cannot recover 
back, what he has paid. In Jones, delicto fund., 1 El. 200. 1. 2 B. 
Corp. 179. 2 Bro. 1042. Secus, while the contract remains 
executory, as to the act stipulated for; i.e. while the criminal act 
remains unperformed. Here, the other party may recover back the 
Ex. moneys paid to A., to hire him to beat B.  — If the beating is not 
committed, the money may be recovered back: Secus, if it is 
committed. * Note. Ex. ad to the correctness of the distinction, in 
point of principle: Would it not be better to allow a recovery in 
both cases, or in neither? 7 B. C. 535. post. 47.

Hence, decided, that money, deposited on an illegal wager 1 B. 19, 33. 
and paid over, with loser's consent, after the wager is decided, is 
not recoverable back. 1 B. 575. [See 2 B. 19. Doug. 41. sec. 130. 
and 1 Lord. 99. — Secus, before the wager is decided. Marsh. 

But if money thus deposited, has not been paid over; either by 
parties, it has been holder, may recover from the stake holder, 
yes, for 
the part deposited by himself; this the wager is decided. 
Affirm. Ex. In a boxing match. For the loss is not paid, and winner 
1st 43. 
has no legal claim to recover it; tho' the illegal act is com- 
mited: For the law will not aid in enforcing the contract, as 
it would not in enforcing it, if the money had been paid over. 
5 B. 465. 3 East. 222. See 2 Doug. 425, contra.
Contracts.

Suppose the Shareholder pays the whole to winner, after being prohibited; is he (the Shareholder) then liable? [Note. Do not point the same in principle, as the last.] 1 Ch. 57.

2 Id. 139. — Yet, on principle, he is: nor, as it seems to me, the winner cannot in such case recover it, or the Shareholder; and that the latter cannot retain it, ag. the loser.

3 East, 222. Sack., s. Marsh, 44. — See vide Cass. 25 contra. 18. Hoffman, Recorder. And the weight of authority seems to be ag. the right of recovery, on the ground, that where the contract is executed, the party paying cannot recover back.

Under our Stat. the loser may recover back in all cases. Stat. Cr. 36. ante. 39.

(35) — And it has been once decided, that money paid to one of the parties, before hand, on an illegal wager, may recoverable back, after the event, 7 I. R. 335; and the the event may go in favour of the defendant (the winner). [Note. In 8. I. R. 375, it is said that the action may ag. the Shareholder, before payment over. Cass. 25. ] Questioned. 1 East 98. See 8 I. R. 375. See 45 Hans. 428. — Indeed the case is opposed to the current of authority.

1. 37. Money, advance for the procurement of an office, is recoverable back before the office is procured; but not afterwards. So, of a premium, paid on an illegal policy, before, and after, the risk is run. 10 B. 202. 210. Doug. 47. cited. But this distinction, as before remarked, appears to me, opposed to the policy of the law.
Contracts.

III. But where the party, who has paid money on an illegal contract, is not actually criminally, he may recover it back, the contract is executed, on the other side. 1 Pitt. 207, 2. See 4 Johns. 13.

This is the case, where the law prohibits the contract, for the protection of the party paying. Ex. the case of using paid, 341.

Reason: The object of the statute, otherwise, be defeated.
So, if money, paid by a bankrupt, in his favor, to a creditor, for signing his certificate. 1 Pitt. 205.

A security given, or promise made, in consequence of a previous transaction, prohibited by positive law, is not, however, unlawful, of course, not. Ex. If one of two partners in an illegal transaction, pays the whole of his, and takes a security, or promise, from the other, for repayment of his part; it is good. For the contract is one step removed from the illegal transaction. That is, part. The payment of the letter, is not unlawful; and the promise of repayment, neither is unlawful, nor tending to anything that is so. And the payment, as to half, is virtually a loan. 2 Pitt. 207. 39. 2 Bk. 81. 379. 2. 18. Bk. 39. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55.

So, it has been held, if it is paid with the four points of the other party, the no security is given, or promise made, 39. Bk. 411. 2, Ex. This rule has been much shaken, and seems practically overruled. It appears, on principle, not to be law. There was no obligation on either party, to pay the left. See 2 Bk. 81. 379.
If paid without his privity, or consent, there can clearly be no recovery. In re. 576, 379. There is no novus actus gesta; no special instance, from which to infer a promise.

If deposited with a third person, to be paid over; the party for whom it was deposited, cannot recover it from the depositary. (Hand. 25. 3 East. 222. 3 Car. 5. Jus. 5.)

If a person makes a contract, the making of which is lawful, made criminal, in him, by positive law, he may be bound by it; (const.) the he cannot claim under it. 81. 15 Stat. 12. 11th. 8. it is an offense for a clergyman to trade; but if he avails himself, he must be bound to his contracts, as a trader. 10th. 196. 191. ch. 19. In the nature of the contract is not unlawful; his making it, only, is so. The only is the offending party. And the object of the law, is merely to subject him to a restraint; not to grant him an immunity. He cannot take advantage of his own offense, or of the law, which he has violated.

(42) So, if one trades in smuggling only, he is liable as a trader to the Bankrupt Law. 18th. 191.
Contracts.

If the object of a contract is perfectly useless, it is void.

Caro. No valuable end to be attained—of no advantage to the party claiming. Ex. Agreement not to work one hand. (Note: What is not this as to decency, and, of course, as to morality and void on that ground?) 1 Pomm. 231. — not to smile— not to follow a fashion in dyes. Ex. non cogniscit alium. 26.

A contract which materially affects the interest, or peace, of a third person, is void. Ex. Wager that A. has committed a crime; or as to the value of a third person, on any personal bodily defect. 1 Pomm. 232. 3. Comb. 729. 735. 39 R. 69.

So, of a wager that tends to the introduction of indirect evidence. 1 Pomm. 233. 3 S. R. 708.

Hence, if A. promises to deliver goods, in consideration of B.'s promise to pay money in a certain time, A.'s promise is said to be void. 1 Pomm. 180. 1 Bulst. 92. 97. 39 R. 270. Because the promise, which is the consideration of it, is uncertain, and therefore, void.

But a promise to pay money, without appointing any time of payment, is good. It is payable immediately. 1 Pomm. 182. For it creates a present debt. 3 S. R. 124. 127; and no future time is appointed for payment.
Contracts.

The if one promise to do a collateral act, and no time is appointed; he has his whole life time, it is said, to perform it. Ex. to make a lease.

To deliver goods to. Ex. 10. 20. Would it not, now be construed, as requiring performance, in a reasonable time — or, on request?

But if certain act, good certain ready testament. Hence if I promise to refer to B. whatever he paid out to me; it is sufficient by certain. 1 Rom. 150. Bk. 148. Bk. Ch. 194. Bk. 247. Bk. 33. 85.

For what he advances for me, may be ascertained.

(41)

Of the Nature and Kinds of Contracts.

All contracts are executory, or executory. 1 Rom. 234. Bk. 442.

A contract is said to be executory, when the parties transfer property to each other, together with immediate rights; or with a present indefeasible right of future parties. Ex. 1. Goods sold, paid for, and delivered. Exchange of houses. II. One buying land under lease, sells it, to rest in his possession when the lease determines, and receives the price. 1 Rom. 234. 175. 185. 9. Bk. 244. Here the whole agreement is executory, or both sides.

Executory are those, by which no property passes in present, but which are introductory to an actual future transfer, or exchange of property. Ex. An agreement to exchange houses next week. An agreement to grant, sell, convey, or in future. 2 Bk. 245. 1 Rom. 235.
Contracts.

A contract is executory, when one performs immediately, and the other is trusted; and when neither performs, but each is trusted. Ex. I. Loan of money, and a promise of repayment; II. An agreement to make a lease, in consideration of an agreement to pay for it. 1 Cor. 234. *Note. Would it not be more correct to say, that it is executory, in the former case on one side, and in the letter, on both?*

All contracts are, according to quod, executia, constructive, or implied. 1 Cor. 250. The usual distinction is into express, and implied; and this, I think, is the correct one.

I. An express contract is one, in which the parties stipulate, in express terms, what is to be done, or omitted. 1 Cor. 280.

II. Constructive contracts, are such, as are raised, by construction, out of instruments, or express agreements; and are different from what the instrument, or express agreement, prima facie, imports; i.e. the way from the form and terms of the instrument, or express agreement, from which they are raised. 1 Cor. 280. 2 Civ. 187. 65 s. 1 Civ. 171. 2. 1 Civ. 24. 13 Civ. 14. 13 Civ. 112. Thus, however, is not a division, or branch of express contracts, being raised by construction, from the words used. Thus a recital in a deed of conveyance respecting the grantor's estate in the subject, amount, or construction of labor, to a covenant, or agreement, that he has title according to the recital. Ex. Whereas P. D. is proprietor of Blackacre for years, &c. be assignee of. 1 Cor. 287. 1 Tec. 122.

So, a recital in a marriage settlement agreement, that

"Whereas A is to pay B 1000 $, for the marriage portion of C's, &c. &c. &c.
be a covenant for the payment of that sum. 1 Cor. 285. 24. 13 Civ. 132."
Contracts.

So, an exception in a deed intended may amount to a covenant. Ex. Lease, by indenture, of a farm excepting a particular close. This is said to be a covenant by lessor that the close shall not pass by the demise. 1 Penn 237, Ch 377, Penn 57, 1 Snow 177, 1 Bell 102, 1 Min 37. "Covenant broken." What need is there of calling it a covenant? If not a covenant, the part excepted would not pass. It seems to be only matter of description.

But it is now held, not to amount to a covenant that lessor shall not disturb lessor's 1/8 of it. Some authorities -- For lessor is a stranger to the part excepted.

But where the exception is of something, arising out of the thing demised, it amounts to a covenant that lessor shall not disturb lessor's 1/8 of it. Unless it be by indenture, 1 Penn 237. But see also, whether an indenture is necessary. 1 Snow 324. 1 Penn 241. Ex. Lease of land, excepting a right of way over it. Lease of a house, excepting a right to pass through. 1 Penn 241, 1 Snow 324, 1 Bar 571, Waithman 132, Tulk 170, 1 Col 170. In these leases lessor has an interest in the subject, out of which the right excepted arises, and therefore, is considered as amounting to a covenant.

So, a reservation of rent, in a lease intended, amounts to a covenant to pay it on the part of the lessee. 1 Penn 242, 1 Snow 377, 1 Bell 57, Penn 407, 1 Vent 10, 1 Snow 379, Tulk 170, 1 Col 571. Ex. "Yielding and paying" 176.

So, a lease without mention of waste gives lessee the trees, growing upon the land demised. 1 Penn 243, 1 Vent 183.
Contracts:

So, if an obligation is incurred, that obligee will, that the obligation, in a certain event, shall be void, it is a good condition, that the words are the obligee, and not the obligor; for such appears to be the intention of the parties. (Com. Lab. 1 Com. 24.)

III. Implied, or implied contracts, are those which are neither expressed in terms, nor raised, or construction, from the terms used in an express contract, but which arise by operation of law, out of the nature of the case. Ex. Labor done, goods sold, without any express promise of payment. A contract to pay is implied. (Com. 216.)

So, if one takes, without authority, the profits of an infant's land, there is an implied promise to account for them. (Com. 245.)

So, if one delivers his goods into the custody of another, the latter impliedly engages to take such care of them, as the law requires. (Com. 245.) "Bailment".

So, if a sheriff levies money on execution, the law raises a promise that he will pay the money to the plaintiff in the execution. (Com. 255.) And the numerous class of actions, called re-debitata, ajoventita, is founded upon promises implied by law.

If A. grants his trees to B., he impliedly grants also, a right to come on the land, to cut and remove them. And if he grants to B. land, surrounded by his own, he impliedly grants a right to me to it. (Com. 257.) (Com. 16. Samm. 321. Cond. Com. 3 Co. 36.) For otherwise, the grants cannot be enjoyed.
Contracts.

In Equity, also, contracts are sometimes implied: Ex. if purchaser of land, having paid part of the purchase money, becomes bankrupt, the land stands charged with the residue. Furthermore, if an implied agreement, a trustee to that amount. 1 Bos. 207. 8. From ch. 423. 4. Bkt. 272. Ex. If security is taken for the purchase money. 1 Bos. ch. 426.

Absolute. Contracts are either absolute, or conditional. 1 Bos. 255. 257.

Conditional.

An absolute contract is one, by which a person binds himself, his property, absolutely, and unconditionally. Ex. A, in consideration of a lease, covenants, or promises, to pay rent, or in consideration of money paid, promises to deliver a horse, or to build a house. 1 Bos. 257.

A conditional contract is one, the obligation of which depends altogether, or in some respect, upon some uncertain event, upon which it is to take effect, or to be defeated, enlarged, or abridged. 1 Bos. 359. 2 Bos. 152. Co. 2. 201.

Thus, if A, agrees to purchase land, on condition that B. return from India, by such a day, the condition suspends the obligation to perform till the day, and if B. does not return.
Contracts.

So, of a promise to pay $100 by such a day; or, that he convey land by such a time. The same authority and [Form 258, 6th Ed. 201]

If A. sells property to B. on condition, that in a certain event, B. shall pay for it $100 and in another event but $50, the contract is conditional, quoad the amount to be paid. 1 Form 258, 6th Ed. 201.

If A. agrees to give B. for his land, as much as C. shall adjust it to be worth, A.'s obligation to pay, is suspended, till C. decides the value. Then he is absolutely bound to pay. 1 Form 258, 6th Ed. 201.

Unlawful Conditions: The effect of these varies according to the nature of the contract, and of the condition. 1 Form 261.

If an unlawful condition is annexed to an executory contract, the contract is void. Thus, if one be bound in an obligation created for the performance of an unlawful act, by either threat or promise, 1 Form 261, 6th Ed. 268. 1st Ed. 179, 182. 185. In this case performance cannot be compelled, because a right of recovery cannot be acquired by the commission of a crime.

So, if the condition is for the performance of any unlawful act, or for the omission of any legal duty, Exp. 179, 189, 2 Vent. 199, 2 Vent. 354. 3 Vent. 4th. - whole void. 2 Form 258. 7th Ed. 201.

So, if the condition militates against public policy, or the general welfare. Ex. A restraint of trade. 1 Form 175, 1st Ed. 187, 2 Vent. 222.
But the mistake is as follows: if $a$ is $a$ and $b$, when $a$ is $b$, the party is $a$.

If the contract is rescinded, the contract is rescinded and the contract is rescinded.

If the party is $a$, the party is $b$.

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But generally, if an unlawful condition is avoided, the consequence.

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Contracts.

So, bonds in restraint of marriage, are void: Esp. 183-4. 4Burr. 2225; the condition being unlawful.

So, of bonds for nondelivery of evidence: Esp. 184. 2Pet. 199. 2Wils. 344.

So, of bonds to secure a penalty for perjury; if given beforehand: Though if given after the time prescribed, they are valid: Esp. 182. 3Burr. 1553. 1M. R. 57. 3Wils. Convey. 399. 2P.R. 432. In the former case, they are an inducement to imprudence; in the latter, not.

All conditions, repugnant in their nature to the nature of the contract, are void. Ex. a covenant in fee, a condition that the feoffee shall not alienate; or shall not take the profits. The condition is against law, and the estate is absolute. 1Burr. 262. Co. Ch. 895. 2Vern. 239.

But a bond, or covenant, to feoff, that he will not alienate, or will not take the profits, is good; for this does not disable him to alienate; but merely subjects him to his bond. If he does. (Same authorities.) Ex. Bond, that feoffee shall have the profits. It makes feoffee, a trustee to feoffee.

Of Impossible Conditions.

Conditions may be possible, or impossible. Possible conditions require no explanation. See 1Burr. 263-4.
Contracts.

Inadmissible conditions are: I. Such as are so, at the time of the contract, being made, or II. Such as become so afterwards.
1Sa 2:24.

II. If a condition, inadmissible at the time of making it, but afterwards becoming admissible, by the act of God, or of the law, is annexed to a contract executed, the contract is not avoided by non-performance.
1 Sa 2:25. 1 Cor 2:5. 1444. 445. Some rule, if the condition becomes inadmissible in the act of the party granting the interest.
Same authorities. (See Sec. 6. S. 4. 2. 2. 2. If it becomes inadmissible in the act of the party, to whom the grant is made. In this case, the grant is defeated, or becomes void. 13B 446. 2 Ch 6. 1St 138.)

Ex. Tenement, grant 5, conditions that secession shall, within 6 months, go to London, on foot, fast, and clean. If secession dies within the time, the tenement becomes absolute. Same authorities and 16. 6: 28. 165. 17. 183. 1B 268. — In the estate is executed, and cannot be defeated, but by the default of secession. Acting Sei remini facit injurious. So, other words, the law will not enforce form of an interest already vested, unless he has been guilty of some default.

So, of secession 5, or condition that secession shall, within 6 months, perform a certain voyage for secession. The voyage is then prohibited by statute, the same, and 1B 268. 1B 268. 185. 1B 185. 185. 1M 57. — It becomes in- impossible, by an act of the law. Municipal Law. 27.

So, of a secession grant, 5, with conditions that secession shall, within 6 months, marry secession, and secession, within that time, marries another. Same authorities. — Here, performance being made impossible by the act of the secession, he can take
Contracts.

no advantage of non-performance. The estate, of course, becomes absolute in the seffee.

But if such a condition is annexed to a contract executory, and it becomes impossible, by the act of God, or of the law, the obligation is saved and obligation is discharged. 1 Brow. 265. 417. 420. Gil. 170. Phil. 259. 70. 8. 374. Soap. 67. 12. 8. 375. 27. 53. 125. 126. 127. Co. 8. 206. 6.

The rule is the same, if the condition becomes impossible by the act of the party in whose favour the contract is made, as to the obligee. 1 Brow. 265. 417. 420. Gil. 170. Phil. 259. 70. 8. 374. Soap. 67. 12. 8. 375. 27. 53. 125. 126. 127. Co. 8. 206. 6.

Note: Seeing, if the obligee disables himself to perform the condition, he cannot take advantage of his own wrong. 12. 8. 375. 27. 53. 125. 126. 127. Co. 8. 206. 6.

For, he is then liable even before the time fixed for performance. See also. 1 Brow. 265. 417. 420. Gil. 170. Phil. 259. 70. 8. 374. Soap. 67. 12. 8. 375. 27. 53. 125. 126. 127. Co. 8. 206. 6.

So, if a bond with condition, that I S. shall appear at such a court, and be dead in the mean time. 1 Brow. 265. and autho- rities supra. The obligee is discharged.

So, if it gives a bond, with condition, that he shall marry the obligee, before a day, and the obligee, in the mean time, marries another; same authorities, and 2 Brow. 265. 1 Brow. 417. 420. 8 Co. 92. Co. 8. 374. Co. 8. 206. 6.

So, of a bond, with condition, that obligee export certain goods to obligee; and a statute prohibits their exportation. Same, 1 Brow. 30. 101. and Tulk. 195. Municipal Law. 27.
If the act of a stranger is made necessary (by the terms of an instrument), as evidence of a condition being accomplished, and the obligor arbitrarily refuses to act, is the obligation discharged? [C. 276. Bl. 174. 5 Co. 25. 1 plank. 432. 12 R. 110.] — Note the case of insurance against fire. 2 H. Bl. 174. 6 H. R. 110. But that was the case of condition precedent. [C. 276. Bl. 110.] Note. Suppose the condition to be subsequent.

If a bond is conditioned for the performance of either the one or the other, of two things, and one becomes impossible, the obligor is still bound to perform the other, unless the impossibility was occasioned by the obligee. 1 Co. 29. 242. — Contr. 4 Cor. 59. 3 Co. 22. 10 Nod. 25. Salt. 170. Ex. To convey a house, a land, House burnt by lightning.

If the condition becomes partially impossible, by act of God, or of the law, still the obligor is bound to perform as much of it as is possible. Ex. Bonds for deeds of house and land— and the house is destroyed by lightning. Bond for a lease for 70 years and 7 days; afterwards for 999 years longer than for 49 years. Obligor is bound to make lease for 49 years. 1 Cor. 44. 45. 11 Cor. 284. 2 Co. 352. 219. 6. 2 Bl. R. 79. Salt. 532. 2 H. Bl. 183. 79. 3 S. 299. 211. 3 S. 319. 2 S. R. 224. 2 Cor. 31. Municipal Law. 26.
Contracts.

If a contract contains a clause, making the party bound, the judge, whether the condition precedent is complied with, the clause is void; and the jury are to decide whether it is complied with. 2 brid. 408. — Resolutions of Pennsylvania (1818) that on an agreement to sell goods for "approved" notes, vendor cannot arbitrarily refuse such as are clearly good.

III. If the condition is impossible at the time of making the contract, its operation depends upon its being subsequent or precedent.

A precedent condition is one which must be performed before the right or estate, dependent upon it, can vest, or accrue.

A subsequent condition is one by which a right or an estate, already vested, is to be defeated. 2 brid. 150-7. Cox 200.

Rule: If a precedent condition is impossible at the time; the right or estate, which is the subject of the contract, can never vest, or take effect: It is void, at first, for no right or estate passes, till the condition is performed. 1 brid 200. 2 brid. 157. Cox 200.

If the condition being impossible at the time, afterwards becomes impossible; the right or estate, to which the promise, becomes void, for it cannot vest. 60. Lease to A. to take effect from a certain future day, if before that day, B and D die, before the day.

So, if a precedent condition is unlawful; for no right can be acquired by performance of an unlawful act. 2 brid 407. 60. Lease to A. B, to take effect, on a future day, if before that time, he shall do a certain illegal act.
Contracts.

But if a subsequent condition is impossible at the time, it has no effect; the contract is, in law, unconditional. See. A feoffment with condition, that unless feoffee shall go to Rome in a day, the feoffment shall be void. 1 Term. 260. 2 Term. 1507. Co. L 200.

So, of a land with the same condition. It is single, same authority.

For in the case of the feoffment, the estate is vested; and in the case of the land, the penalty is delictum in praesentii; and a void condition cannot defeat either. 2 Term. 187.

But in the case of Executing contracts, as bonds, recognizances, if the impossible condition is incorporated with the body of the obligation, instead of being unenforceable, or adhered, the whole obligation is void. 1 Term. 167. 1 Term. 172. For there is no delictum in praesentii. No distinct bond, but creating a present debt. It is rather in nature of a condition precedent, as must be so, in effect. I think, in every case of this kind.

Of Contracts and Agreements, Required, by Statute Law, to be Written.

The Common Law distinction between Special and Simple, Contracts, see Scott's Consideration.
Contracts.

There is also a distinction between written and unwritten. Written contracts, introduced in certain cases, by the Stat. of frauds and injuries. 20. Charles II. 1 Car. 2. 2. H. 15. 4. 16. 2. 2.

Our Stat. on the same subject was enacted in 1752 and is substantially a transcript of the English. 22. E. 3. 3.

Under the Stat. of frauds &c. the following contracts or agreements will not support an action, or suit, in law, or equity, unless the agreement or some note or memorandum of it, is in writing, signed by the party to be charged, or by some other person by him authorized. 22. 20. 20. 21. 22. 28. 15.

I. Promise by Executor or Administrator, to answer, out of his own estate, for any debt or duty of his testator. Such a promise not in writing does not bind him.

II. A promise by one person, to answer for the debt, default, or miscarriage of another.

III. A promise upon consideration of marriage.

IV. "Contracts or Sales" of lands, tenements, or of any interest or concern in or concerning them. (See pages marked thus in page 5.) By "Contracts or Sales," are meant sales, or contracts for sales.

V. Contracts not to be performed within a year, from the time of making them.

VI. Contracts for the sale of goods of £10. value, a, in Cont. (57) of £15. value. It extends as well to Executor contracts, as to contracts for sale, to be executed immediately. Rtol. 11. 12. 21. 31. 63. 7. 14. 14.
Contracts.

"Title by Sec. 23"

by the English statute, it is provided, that all part sales, or leasing, or lease, or leases of lands of, or of any interest in them, shall operate as leases, or estates, at will, only, except leases for a term not exceeding 1 year, reserving a rent of 2/3 of the unearned value. 1 B.C. 12, 42, 108, 92, 18. But the former are now held tenancies from year to year. 83 & 3. In those all part leases or for any term, however short, are placed on the same footing, as leases, however long, or sales of the freehold; i.e. they cannot be enforced, at law, or in equity.

The object of the statute is to prevent the breach of contracts, or agreements, of the above description, by fraud or mistake; it being said, that there is danger of fraud and perjury in doing it, i.e. of fraud, through the medium of perjury. 1 Wm. 2, 3 & 4. Hence the title of the statute.

1. By promises by Executors, &c. It has been said, that if the Executor has agents to answer to, his part promise shall bind him: An agent constitutes a consideration, advantageous to himself, so as to transfer the duty to him, personally. 1 B.C. 123, 125, 5 & 6. &c. To such authority, not being, can, clearly, sec. 13, & 2, 5 & 6, 308. &c. The duty is not transferred to him, personally, i.e. in his private capacity, by agents. The mere agent of agents subjects him only as executor, &c. Otherwise, it is he must be means, in his own individual capacity. Besides, the statute does not proceed upon a distinction between agreements, where consideration, and agreements without any. In a promise to pay, without consideration, courts have been writ, before the statute made. And if even part promise upon consideration, is good as a promise, the statute is a dead letter. 1 Wm. 2 & 3, &c. &c. A promise, proof of agents will clearly not raise an implied promise to charge.
Contracts.


Admitting as admitting a claim as to him to arbitration, may once hold to be and admission of effect. 75. & 391-2. this opinion is overruled. 75. & 455, Toll. 405. To an administrator may be desiring of the ascertainment the existence a amount, of a claim, without knowing whether he has effects.

But as, on such submission, the arbitrator awards that the administrator shall pay a certain sum, he cannot, afterwards, deny effects to that amount, as to the other facts. It is equivalent to a finding of effects, to that amount. 75. & 455, Toll. 405. Same rule as to Executors—see, Arand, 10.

Once holder, that payment of interest by Executor, may be an admission of effects to the amount of the principal, or rather, that it bars the way for bonds, to Executor. Unreasonable, and now overruled. 75. & 8. Toll. 404.

But acceptance of a bill of exchange, by shams, executor, is an admission of effects, and being in writing, binds him. Chi. 82-2, 172, 170, 131, 39, 174, 174, 1265, 1260, 1263, 1263, 128, 128. Otherwise, third persons might be deceived and defraud. Besides, the act claim, implies the admission.
Contracts.

So is a transfer by holder's Executive. Ch. 111-12. 3. 1849. 1767 2. 125. The endorsement being tantamount to the drawing of a new bill.

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And this the promise by executor C. he is writing, he is still not bound, unless some sufficient considerate be shown, as affects in his hands, or existence of a suit. Hull. 145. 1759. 123. 293. 39. 21. 337. Now it is a simple contract only 90. R. 333. n. The mere fact that the statute is.m. violated, is not sufficient, as a consideration.

In the object of the Stat. is not to make Executors liable at all events, and in all cases, when the promise is written, but in those cases only, in which, before the Stat. he would have been liable as a fraud. Torrie. 75. R. 333. n. 2 Stat. 203. 1769. 128.

And to make the executor personally liable, on his promise, the matter, there must have been an existing claim, which bound him as executor. Same, there can be no consideration. Act. 1 Stat. 206. n. 2 1 Stat. 130. 39. Inc. 47.

Page 71.

The consideration must appear in writing. *Note. Article under the 5th clause, post, q. 5. 1 Stat. 10. 3 Stat. 307. 115. 217.

In the Stat. requires the "agreement" to be written. And that term includes the consideration. i.e. the consideration must appear in writing.

So to take advantage of this clause, defendant must have been executor to when he made the promise. Act. 201. 24. 333. 39. Promise to one, in consideration of being afterwards, appointed administrator, is not within the Stat.
Contracts.

Not necessary, in an action on the promise, to aver facts. The defendant is subjected, if at all, de bonis propius. P.C. 208-9.

II. To answer for the debt, default, or miscarriage of another.

Under this clause, this general distinction is to be observed: If the promise, made for the benefit of another, is original, it is binding, the by part. E.g., if collateral. C.C. Art. 1057. Corp. 227. 17 Misc. 300. Sup. 191. 3 Bunn. 191. In the latter case, it is a promise to answer for the debt, & of another; in the former it is not.

Note. The one, "original" or "collateral," is not used in the face.
The original promise, is not a promise to pay another's debt, but our own. Collateral is to pay another's.

A promise is said to be original, 1st when the third person, for whose benefit it is made, is not liable at all; for the same debt, a duty, to the promisee; so that there is no debt of, or his part. P.C. 208, 210. Etches Ev. 212. Bull. 287. 3 Bunn. 1921.

2nd. When his liability (this before existing), is extinguished, on the promises being made. P.C. 223-4. (Questioned. Post.)
Contracts.

Stat. of Frauds. 397. Where there is a new consideration, arising out of a new and distinct transaction, or requests, and moves to the promise. Ch. 1876, Solomon, 252. 334. R. 82. 45. So that the original debt is not the measure of what is to be paid for another object, 254. 1876. Solomon, 252. 334. R. 82. 45. Then, whenever the case answers either of the above descriptions, the promise is not, in construction of law, in effect, to answer for the debt of another.

43. When the promise is made under a prior moral obligation, to pay for a benefit, received by another, Bull. 281. Peak, 213.

(22.) But when the promise is merely in aid of a subsisting, and continuing liability, (for the same debt, or duty, or the benefit of such third persons,) or to procure credit for him — i.e. where the promise is intended merely to furnish an additional security, and remedy — it is collateral, and, therefore, within the Stat.(Authorities to these distinctions; 2 G. 455. 3 G. 205. 2 N. 94. 1 C. 305. S. 20. 185-6. Peak. 27. Chap. II. 185-6. 1 B. C. 15-8. 176. 210. Conf. 407. Peak. 213.) For in all such cases, the promise is, in effect, to answer for the debt of another. 186. G. If says to a merchant, “Deliver goods to J. B. and charge them to me,” or, “Deliver them on my account; or “Deliver, and I will pay you.” The promise is original. For J. B. is not liable at all; J. B. is the original debtor. 2 Y. 81. 176. 210. 25 205. 185-6. 2 B. 28. 213. — It is not a promise to answer for the debt of another, but his own.

But if A. said, “Deliver to J. B.” (at supra) “and if he does not pay you, I will,” it is collateral. Conf. 227.

Here the intent is, that the charge should be, in the first
Contracts.

instance, e.g. J. S. the receiver: He is therefore, the original debtor; and the promise is, of course, collateral, 17 C. Cil. 129.

2d. Cat. 1080. Sale. 2d. Exp. 1859. — It is, therefore, a promise by J. to pay S. the debt, or aid of his liability, and to procure credit for him.

So "supply my mother in law with bread, and I will see you paid" holds collateral, so rather, according to the latest opinion Sen. facie, so: because of the presumed intent, as in last case cited in 1 R. 80-1. Cat. 2 2 9. C. Cat. 823. 17 C. Cil. 585. 2d. Sale. 58. contra. state.

Lord Mansfield once held, that such a promise before the death, line of the subject, was original; there being then no liability on the third person, cited Corb. 2 5 9. This opinion, however, has since been overruled, 2d Cat. 81. Act. Stat. 81. 269-10. H. R. 86.

Whether Lord Mansfield's construction of the promise is not correct, in other words, whether the intention is not, that the promise shall be made the debtor, in the first instance. — At any rate, it is now held, that when the promise is in this form, the court, in collecting the intention, are at liberty to consider all the circumstances of the case, and the situation of the parties. 17 C. Cil. 158. 2d Cat. 2 2 3. Ex Gr. "supply my mother in law with bread, and I will see you paid." the seaman having no friends, a means of the road here. This I think original, as evincing an understanding that the necessaries were to be charged in the first instance, to the promise. — "If you do not know J. S. you know me, and I will see you paid." Holder collateral. — To be first charged. 2d Cat. 101-2. Act. 218-11. Such was the evident intent.
Contracts.

So, a promise by me, that in consideration of your letting a house to me, I shall redeliver him, is collateral. This is plainly under

taking to answer for the default of another, to become his debt.


S. 27. C. 24. P. 118. Stott. 685. 5 Alk. 15. 1 Bac. 75-6.

And, as a general rule, a promise that a third person shall do an act, for not doing which he would be liable, is collateral. P. 118, 119.

Secur, if he would not be liable: Ex. If A. promises B. on suffi-

cient consideration, that C. shall pay, and if not, that he, A;

will, (C. not being sure to it;) the promise, is in substance original;

the in form, collateral. For C. is not liable, at all. Ex. Let me

your house, and I. S. shall pay you — if he does not, I will." Act.

223. Tit. 22. c. 262.

So, if an agent buys goods at another's, and does not name his

principal; the agent is found without writing. T. 213. 3 Amn.

1921. For he contracts as for himself.

It seems to make the promise collateral, it is necessary that the

third party, for whose benefit C. should not only be liable, upon the

same consideration, but that he should be, in some, liable, at the

time when the other's promise is made: Act. 1187, Act. 219, p.

22, c. 231; and upon the same contract with the promise-

p. 57, makes, or a phrase. (See, two last cases) Ex. If after goods are

delivered to B. F. for his benefit, by B., direction, that this should be

delivered and charged to me, he should contract to pay for them;

my promise is still original. He may not liable, when I promised.

The promise, in this case, would be collateral.
Contracts.

If the promise is by one of several Persons, already liable, it is original, and not within the Stat. For it is not to pay the debt of another. Ex. Promise to pay costs, by one of two defendants. Rob. 223. 3 Mead. 260. Comb. 362. 2 East. 325. 1 Mead. 213. 2 Selw. 2 Exp. R. 484.

When, according to the distinction under this class of cases, the promise is original, the action of debt; or of general indebtedness, although (not stating the special agreement) is proper. On the promisor is the original debtor. Seelig, where the promise is collateral? There a special declaration is necessary. As, upon a written collateral promise. Rob. 2 15. 1 Burr. 393. Rob. 375. 2 Bl. Com. 1065. For he is only a guarantor.

A promise in consideration that promises will extinguish a debt ag. a third person, is original. For it is not to aid of a continuing liability in the third person, or to obtain credit for him. Ex."Burr. I. S. I'll pay, and I'll pay the debt." 3 Burr. 1885. argued, submitted 1 Nom. R. 139. 1 Shot. Rob. 225. 2, 107. 130. Pet qd. Whether the rule is not correct. What is promise to pay? Not I owe debt; it is extinguished, before the promisor is bound to pay. The former debt ag. I. S. I. is only the measure of the amount to be paid, a rule of damages; and the consideration is surely sufficient; it being disadvantageous to the promissor. Indeed, the mere act of destroying the bond is sufficient consideration.

Where promisor is the purchaser of the debt of another, his promise to pay for it, is clearly not within the Stat. Rob. 225. 1 Nom. R. 135. 2 East. 325. This is a promise, not to pay the debt of another, but to pay for a transfer of it. Ex. Dr. "Transfer to me I. S. bond, and I will pay you the amount of it." Like a promise to pay for any chat.
Contracts.

Stat. of

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(See page 62 & 65 for the rule.) In Williams v. Elder, where landlord came to distrain on lessors goods for rent, J. S. to whom they had been assigned, promised to pay the rent, if the landlord would not distrain. Holden goods (that left remained liable.) Elffreda a lien, which he gave up, in favour of defendant, on his promise to pay. 3 Burr. 1880. Park. 891. 1 East. 225. 1623. 1214. 3 Burr. 1880.

The consideration in this case, arose out of a new and distinct transaction and moved to the promise. The abandonment of a lien (which was a valuable interest) in his favour. 3 Burr. 1880. Park. 891. 1 East. 225. 1623. 1214. 3 Burr. 1880. It may be considered of the funds being discharged to the defendant's favour. The debt may only the measure of the sum to be paid. Like a promise to pay another to resign his property to another. 3 Burr. 1880. Park. 891. 1 East. 225. 1623. 1214. 3 Burr. 1880.

Miscellaneous Rules.

A promise to pay a certain sum, in consideration of performing withdrawing a suit ag. A. L. for assault and battery, has been held original. In this was no debt, due from A. L. It did not appear that there was any default of in him. See 2 Burr. 457. 1 Rob. 891. 7 East. 1674. 3 East. 1674. 8 East. 1674. 16 East. 1674. 3 East. 1674. 4. The promise was not for performance of some duty. J. S. may now liable to pay the particular sum promised or to the particular duty, which the promise was intended...
Contracts.

There must exist a third person, a debt, a duty, a promise, a capa of being agetained, at the time of the promise, (Sto. vii supra) to bring the promise within the Stat.

But a promise to pay, in consideration of promissors staying quiet, bought at S. S. for a debt, is collateral. The debt subsists at S. S. and no lien, or interest, or assignor, or abandoned, is promissor, as in the 3rd view. 3 Bl. 200-203. 5 Will. 94. 3 Burr. 1317. arguendo. 1 B. K. 301. vide 2 H. Bl. 312. Sum. 823. — Contra, 3 Burr. 1337, arguendo Amb. 538. (See next page)

And a promise, in consideration of promissors forbearing an action of trover at S. S. the promissor being the damages, is collateral, and within the Stat. 3 Sum. 433. Same duty. It is to pay the same sum, which S. S. is liable to pay, i.e. the interest of the property.

Suppose the promise to be in consideration of promissors withdrawing the suit. Would it not be good in England as a retrenchment, does the suit ever to bring another suit? (3 H. 298). So that if the liability is extinguished. — The Court not good, there retrenchment has no such operation.

Promise to pay a 1st debt, if plaintiff, notice, prepaid? S. S. taken on, means process, is collateral. Suppose, for the debt continues, and S. S. may be arrested again. (See Sheriffs of £.)
Contracts.

Being, I conclude, if he has been taken in final process, and
were thus released. For releasing him would discharge the debt.
4. Burn. 2482. 14 P. 557. 5 F. 525. 7 F. 421. 1 Coit. 57 contra.

(9)

Some have supposed, that where there arises a new considera-
tion, a prior promise to answer for the debt of another is good,
whether the consideration moves to promisee - out of a distinct
transaction - or not; and whether the debt is discharged or not.
3 Burn. 1177 p. Aquia Vmb. 330; as forbearance of a rent. But this is
Bull. 247-2. 2. Sup. 457. 7. P. 261. Sec. 873. - Statute would be
ignorable; and the rule under it, the same as at C. L. (Rob. 239.)
No the Prior promise would not be good at C. L. without con-
sideration. And if it were not good, whenever there is a considera-
tion, this stat. would have no effect.

p. 50. And this the promise is in writing, it is not good without consid-

(10)

A written promise to pay the debt of another, if he does not, is dis-
charged by promisee granting forbearance to the debtor. (Vmb. 337.)
There is a tacit understanding, that the creditor is to collect it of the
debtor, if he can.

§ 75. A Judicial Confession by the defendant, including the receipt of
proof, will prevent the application of the Stat. 1 Pr. 276, 2 Pr. 140, and
more paid into Court. Rob. 235. Dab. 15. 10 Cal. 294. -
For the prior promise is not made void, as a promise; the stat.
merely excludes proof evidence to establish it.
Contracts.

When, according to the above rules, the promise must be made to be binding, it is not necessary, in declaring, to state that it is an oral
promise. Sufficient if it appears in evidence. R. 282, 158, 159, 189. Bull. 279, 1 Bac. 175, 3 Brev. 189. For the same introduces a new rule of evidence only, not a new rule of pleading. 39 R. 155.
1 Stan. 9, 22, 3 Ch. 57, 214, 215.

This rule holds, as to all the contracts contemplated by the statute
Con. 289, 2 Brev. 140, 12 Mod. 540, 4 Bac. 607.

Ergo, demurrer to the declaration, confesses a promise in writing,
R. 282, 158, 159, 189. Or rather, it cannot be objected, under
the demurrer, that the promise is not in writing — no proof being necessary. That which dispenses with proof, is tantamount to full proof,
by the proper evidence.

Said, if such contract is pleaded in bar of another action, R. 282, 173, 189. Bull. 279, 1 Ch. 214, 189. Greater strictness required in a bar,
than in a declaration.

But it is necessary, in declaring, as well as in pleading in bar, to shew,
C. 56, a consideration. 73 R. 12, 212, 213.

A joint contract to pay the debt of another, and also to do some other thing, is within the statute in toto. For if one part of an ex-
thetic contract, i.e. upon one, and the same consideration, is void, the whole is so. No assurance. 3 R. 528, 79 R. 201, 4. R. 212, 173, 231, 1 Nen. 8, 173, 189. 3 Nen. 426, 428. A joint party
must be declared upon.
Contracts.

III. Agreements in consideration of marriage.

This section relates not to promises to marry, these are good by law.

41 contra.

It relates only to agreements in consideration of marriage,
i.e. such as are made by way of marriage settlement, a family
provision. 1 Sum. 278. 11. 270. 301. 20. Ch. 55.

These to be binding, must be written and signed. (No exceptions to
this rule, except in case of part performance, post.)

Formerly doubted, whether a partial agreement, of this kind, would not
be good, if it was stipulated, that it should be reduced to writing.
1 Sum. 278. 1 Ch. 213.

But such stipulation, it seems, makes no difference, and does
not take the case out of the statute. 1 Sum. 281. 1 Ch. 442. 301. 504.

If, however, such stipulation is made, and the execution of it is
prescribed by the course of either party, and the marriage takes effect;
Equity will enforce the agreement. 1 Eq. 23. 10. Ch. 135. 195. 301.
Ch. 325. 11. 15. 301. But this in done by way of relief against
privity, I conclude: Executing the agreement being the means of re-
lying on the promise.

And a partial promise, made on one side, to marry, is a suffi-
cient consideration to support a settlement made in pursuance of
it, on the other side, after marriage, or to support a promise
in writing after marriage. 1 Sum. 235. 1 Ch. 135. 702. 11. 195. 301.
Contracts.

197-207. For the Stat. does not make the contract by fraud void, but merely prevents the proof of it, by fraud testimony, in an action for a suit.

A letter, signed by one party, is a writing within the Stat. 1 Test. 179. 2 Bee. 321. 3 P. 311. 1 I. 110. 2 Summ. 399. 1 Nott. 247. 2 Yalt. 367. 1 S. T. 203. 3 H. 323. 2 Selw. 190-1. 105. 12.

But, it must appear, that the other party accepted the terms contained in the letter, and acted in contemplation of them, in proceeding to marry. Otherwise it is not binding. Thus, where the parties to whom the offer in the letter was made, were ignorant of the promise contained in it, at the time of the marriage, it was not deemed. 1 Test. 179. 2 Bee. 321. 1 Yalt. 367. 2 Summ. 399. 1 Nott. 247. 2 Bee. 321. 2 Selw. 190-1. 105. 12. Ex.: Where A. wrote a letter to his daughter, which was not shown to her intended husband. 1 Test. 179. There was no agreement.

A letter written to one's own agent, stating the terms of an agreement, already made by said, has been held sufficient. 3 4th. 323. 1 Test. 124. This, the fact a letter agreement, is a letter memo- randum of it - letter evidence.

It must furnish distinctly the terms of the agreement - Penn. 1 Test. 179. 2 Bee. 321. 1 Test. 124. 2 Selw. 190-1. 1 Yalt. 367. 2 Bee. 321. See 2 Bee. 321. 105. 12.
Contracts.

IV. Contracts for the sale of land, or for any interest in land.

Proot, 59.

p. 82

"Land, " A thing annexed to land, if sold in contemplation of

swearing, is not within the Stat. Ex. Trusts growing - Trustees.

S. 124. 6 East, 522. 12th. 592. 11th. 592. 13th. 342. 14th. 592. 342. 3 days;


And a part of agreement between the owner and occupier of land, that

each shall have a certain part or the rest, is good, recent. 1 (Baker, 397).

The part is not considered as land. (Note. In the English stat.

parch leaves for 2 years are good. Such agreements, however, appear

to be good, independently of that provision. Vide supra.)

Formerly doubted, (as under last head,) whether a part of contract

would bind, or not, if it was part of the agreements, that it should be

matter. 1 Mount. 273, 293. 11th. 577, 15th. 11th. 577, 15th. 577.

Now settled, that this makes no difference. 1 Mount. 281, 293. 11th. 776,

1 Mount. 281, 293. 11th. 776. 1 Mount. 281, 293. 11th. 776. 1 Mount.

Trust, promise to buy, for land bought, is good. 1 Mount. 777, 1429.

But our Court of Eq. has decided, that the law does not imply a

promise to pay, the value. Peace, v. Catlin.

Once decided in Eq., that a part of agreement to quarter, at the
time of granting, to buy, for any deficiency in the supposed contract,
was within the Stat. 1 Mount. 281, 293. Contra, since (Spence v.
Bakers, 1 Mount. 281, 293) (Note. In that case, notice was given for the
purchase money, and the promises recited.)—Conceded by the
Court of Eq., June, 1802, 23 E. 4, 290. 28th. E. 4, 290. 28th. 28th.

Suppose no obligation, given for the purchase money.
Contracts.

Might not a judgment lie? It would contradict no writing and the theory. Subject matter of the promise is only money.

But fraud agreements for sale of lands are binding, in some cases, notwithstanding.

Such agreements under the Stat. are good, if provable consistently with the object of the act, and the rules of evidence. There is no inherent improbability in the contract. The difficulty is in proving it. The Stat. merely introduces a new rule of evidence, to prevent frauds and perjuries.

1. Where there is no danger of fraud, a sworn, in enforcing the agreement, the case is said not to be within the spirit of the act. E.g., in a bill filed for specific performance, the defendant, in his answer, denies the agreement. No danger of fraud, or perjury, in acting on such proof. (Ct. 271. 292, 17 Am. 221. 440, Pre. Ch. 208, 344, 2 Am. 115, 3 Am. 81. 14 C. 600. 2. 2 Br. Ch. 585. 3 Am. 585. See 6 C. 20. 37. 554.

Besides, says Torrill, the contract is in writing; i.e., in the answer. (Ct. 292. But this is not a sound reason.

In this last case, if defendant does not insist on the Stat., he is clearly bound. (Ct. 155. 156. 2 Br. Ch. 585. 4 176. 12. 20. Pre. Ch. 285. 15.)

So, if he expressly submit to a decree of performance. Ct. 155. And if plaintiff alleges a written agreement; evidence of a fraud will be good, if defendant does not insist on the Stat. Ct. 155.
Contract.
Flax. 2c. As to the first example, if defendant (the) admitting the agreement, insists on the state by plea. Can the agreement then be enforced? 2 P. 154. 108. 2 P. 268. 314. 2 R. 3. 2 R. 155. 3 R. 155. 2 R. 2. 3 R. 3.
That the defendant have insisted on the state by pleading; yet, he having confessed the agreement, is his answer?
the facts must over rule, and the execution of the agreement deemed.
2 R. 2. 3 R. 3.

6. 2 6. 620.
In 2 R. 2. 620, rule laid down generally, that an agreement confessed is out of the state. See Lord Mansfield.

Decides contra at law, (i.e.) that if defendant, having confessed the agreement by answer in Chan. is insisting on the state, he is not liable on the agreement. 2 V. 3. 26. 1751. 54. 2 R. 2. 23. 2 R. 2. 187.
2 R. 2. 3. 2 R. 2. 187. 2 R. 2. 3. 2 R. 2. 187. 2 R. 2. 3. 2 R. 2. 187.
See 2 R. 2. 166. 2 R. 2. 3. 2 R. 2. 187.

As 2 R. 2. 159. the plea of the state is allowed, in 2d Thurlow, the agreement was not denied. But the decision was on the special circumstances of the case. (2 R. 2. 159.) The agreement was incomplete.
A 2 R. 2. 159. 2 R. 2. 159. 2 R. 2. 159. 2 R. 2. 159.
2 R. 2. 159. 2 R. 2. 159. 2 R. 2. 159. 2 R. 2. 159.
See 2 R. 2. 159. 2 R. 2. 159. 2 R. 2. 159. 2 R. 2. 159.
See 2 R. 2. 159. 2 R. 2. 159. 2 R. 2. 159. 2 R. 2. 159.

As remaining questions remain. 2 R. 170. 2 R. 180. 2 R. 270. 2 R. 270. 2 R. 270. 2 R. 270. 2 R. 270. 2 R. 270.
See 2 R. 270. 2 R. 270. 2 R. 270. 2 R. 270. 2 R. 270. 2 R. 270. 2 R. 270. 2 R. 270.

It seems to be now nearly established, that defendant may admit the agreement; and states the stat. cites 2 R. 270. 2 R. 270. 2 R. 270. 2 R. 270.
Contracts.
See Act 210.

If insisting on the fact prevents a remedy on the agreement, the rule itself, that confession in the answer, takes the agreement out of the fact, seems arbitrary and groundless. 2 Br. Ch. 50.

And if the court, knowing the agreement to be by fact, can enforce in one case, i.e. when the fact is not pleaded, why not in the other? as little danger of wrong, in the one case, as in the other.

It is also a question unsettled, whether a defendant in Chancery, on a bill for a specific performance of a past agreement, for a sale of land, is bound either to confess, or deny it, in his answer. 100th 170.

Decided by Lord Mansfield, that he is (case cited) by Lord Thurlow: 2 Br. Ch. 50. 10th 311-12. — Contrary, 100th 170. 114th 50.

See 100th 312.

Lord Thurlow of the same opinion; and that the only effect of the fact (as to the proof of the agreement), is to prevent the plaintiff from proving it, unless, 2 Br. Ch. 50. 100th 170. 10th 50. So that, if defendant denies it, plaintiff cannot prove it by fact. 100th 319.

Lord Mansfield, Hardwick, Mansfield, and Thurlow, hold that confession takes it out of the fact. Lords, Loughborough (now Lord Bute), Eyre (כפר) and Eldon, of the contrary opinion. 100th 65; because compelling the defendant to answer a past agreement, lays him under temptation to commit perjury. That there does not this objection hold equally in every case, in which defendant in chancery is bound to answer? Bearing by defendant is not what the fact was intended to prevent. Besides, this objection might be urged as to compelling an answer, even if the agreement is
Contracts.

If he is bound to confess a debt, it seems to follow that his confession takes the agreement out of the fault, and that indigence in the mind will not avail him. 

Yet it cannot be true, because he is bound to confess a debt. 

It has been held, in England, that a party to a parcel agreement for and of land, if he denies it to proceed, shall be bound to try for previous confession out of court; and the proof. 3 S. 3. 117. 118. 9. 2. 13. This cannot be true.

When the issue is raised, that there is no contract, said a person in the heat, a parcel contract for the purchase of land at a near sale, before a master in Chancery, under the order of the court, is binding. 17 Ex. 271-4. 1 Pl. 235, 176. 70. 229. 186. 332. 117. 115.

For and the like, of the setl. make the parcel contract void.

In a parcel agreement between the Selectors in Chancery to a unit between mortgage and mortgagee, was decreed. 3 S. 84. 12. 115. 2.

Again, according to several sessions, a parcel contract respecting an interest in land of if inferable from circumstantial facts, is shown which there is no danger of being in land. Ex. Sale of land by absolute deed, but vendor at the execution, giving an obligation to tender to the amount of the consideration, wronging in deed, paying the livery; does not account for the debt: being no rent; but pays interest on the obligation. From these facts it is said, a trust is implied for vendor (i.e.) he is considered as mortgage by virtue of a
Contracts.

Stat. of Franey.

Other exceptions to the general rule introduced by the statute, so as to mitigate, or deem the parol, that an act, made to prevent fraud, ought not to receive such a construction as would protect and encourage it.
1 Ab. R. 390. 1 Term. 294-9. 1 Tnt. 171-2. For the act ought to be liberally expounded. 1 Ab. R. 391.

To that, where a tenant, by not performing a part of an agreement, will practice a greater fraud on the other, there would result from a mere breach of the agreement itself. He is generally held to it in Court.
Ab. 131-2 6.

Therefore, a part of an agreement, performed or partly performed on one side, at the request or with the consent of the other party, will bind the latter. Or. It leads to Ab. by parol, 20 years. Ab. enters under the lease, and begins to build, or make other expenses on improvements. The contract is enforced in China's v. Shaffer. 1 Term. 172.
1 Term. 243. 1 Ab. R. 203. 200. 31. 1 Tag. 782. 3 S. 142. 2 Term. 373. 374. 19 353. 1 Tag. 83 297. 1 Tnt. 74. 1 Term. 399. 1 Term. 159.
1 Term. 23. 341. 3 Term. 370. 1 Term. 180-2 5. 1 Tnt. 77-5.

Otherwise, A. might take advantage of the other party's fraud. In his accepting or permitting part performance by B. (not extending to par- form himself), in itself, a fraud. 1 Noy. 2433-5. 2 Serg. 562 U. 26. 9 Mard. 37. 8 R. 59. 1 Br. Ch. 417. 1 Ab. 158 397. — Basing the

set aside. (A. acquiescing) afford presumptive evidence of the agreement.
Contracts.

...and thus the danger of injury is diminished.  *Comm. 389.  ...Whether this circumstance has any operation?  *Comm. 131-2.  138.

In such a case, the agreement has been enforced, the the terms of it were not breachly settled by the parties.  *Comm. 382.  *Comm. 117.  46.

*Comm. 592.


*Comm. 783.  *Comm. 449.  *Comm. 18.  38-19.  7 *Comm. 747.  of *pos.* it is, if the *pos.* of the *pos.* of a *pos.* building or makes improve-


This takes *pos.* under the agreement, is deemed sufficient *pos.* to a subsequent *pos.* (comm.) So that the first *pos.* under the *pos.* agreement, will hold ag. him.  *Comm. 302.  *Comm. 365.

*Comm. 384-5.


32.
The payment of earnest (P. Ch. 5 Ch. 1 scroll. 175. 1 scroll. 5) is, in all the obvious, not a part performance — This is not, as an instance, a part performance; not subsequent to, and in pursuance of, the agreement, but a mere declaration as making the contract, a form or stipulating. In this case, says Torrell, damages may be recovered at law for non-performance (1 Born. 30 C.). But the payment of earnest does not take the case out of the Statute. P. Ch. 5 Ch. 1 scroll. 720. scroll. 154-5. The earnest itself, may, doubtless, be recovered back.

Questions, whether the receipt of the money, is part performance, may be proved by oath. (Born. 30 C. 5.) If not, the rule that such part performance, takes the case out of the Statute, seems clear. However, the rule itself, having now, to be generally denied. scroll. 153-4. a. In 3 N. 4, it was proved by paid.

And a part agreement, is part performance, to render, does to bind the vendor, will decree ag. his heir. Born. 369. 5 N. 2. scroll. 303.

But to take the part agreement out of the Statute, on this ground, the act done, must be such, as would prejudice the party claiming. unless the agreement were enforced. Hence-part performance, by one of the parties, will not entitle the other to a decree. 7 T. 4. 87. 541. scroll. 135. 153. 5 Br. 3. 45.
Contracts.

And the act, claimed to have been done in fact, performance, must to take the agreement out of the statute), as such, as in the opinion of the court, would not have been done, but with a view to perform the agreement. Henri, it is not considered a part performance. Ee. Le sees agreed to take a new lease, if, and continued in the same manner. This may not have a part execution, as to take the case out of the statute. Le sees only remaining, to be may before. Treg. Am. 378. Est. 139, 64. 1547, 162. 1289, 389.
1 Sack. 74. 2 Bro. Ch. 547. 6 Ack. 4. 1 Bl. 6. Ameb. 5 8. Rev. Ch. 551.
1 York. 175. 1 Bro. Ch. 412. 6 Bro. Ch. 45.

Giving to the sufficient (note, 44). Suing, if giving directions for compliance. Going to view the estate, it. Where all necessary, introductory, or ancillary to a compliance. 1 York. 175. 6 Bro. Ch. 45. 6 York. 174. 40. 156. 60. 586. 1 Bro. Ch. 412. 3 Rev. Am. 34. 379. 6 York. 41.
1 Mad. 363-4.

Marriage, is not, of itself, conside as such a fact, performance of a part agreement in consideration of marriage, as to take the agreement out of the statute, as between the parties to the marriage. For, in the terms of such contracts, they are not to have effect, unless the marriage takes place. To consider marriage, then, as a part performance, dispensing with written evidence, would take every case out of the statute, and leave the contract, as at. C. S. 1 Torr. 369. 1 Sack. 74. 1 Bro. Ch. 587. 60. 8 York. 108. 1 York. 175. 176. 372.

But it is said, that a small contract, in consideration of marriage, in a third person (as a father to one of the parties), is taken out of the statute. In the marriage, if it takes place with his consent. Being a fraud should be effected on the parties to the marriage. 1 Torr. 297. 4 2 Torr. 372.
2 Sack. 261. 1 Torr. 397 6 389.
Contracts.

So, where the wife was allowed by the husband, during coverture, to receive the interest of a certain sum, which he had before marriage, agreed to settle to her separate use; the agreement was adjudged binding, it is said, on the ground of past performance. 1 Pech. 3d. 2 Ed. 2d. 3d. 5 c. 174. 2d. 597. 3d. 597. 2d. Courts hold such be bound by his own past performance? It was no prejudice to the wife. (Note. The plea was bad, in this case, and the agreement decree, on the special circumstances.) 3d. 597.

So, cutting down timber, in pursuance of a marriage agreement, was held a sufficient past performance, to bind the other party. 1 Pech. 3d. 2 Ed. 2d. a. 29.

Our Court of Errors have held, that past performance in paying money, does not take a past agreement out of the Statute. Once held to be Sup. Court, that a complete performance on one side, by payment of money, did. 3d. 397. And the Sup Court, have added, hold mere past payment insufficient. See also, 2 Dov. 2 d. 35 d. that payment of fact, and making repairs, takes out of the Stat.

Upon the same principle, i.e. to prevent fraud, even a written contract, respecting an interest in lands, or any other subject, may be contradicted by proving the past agreement, if there was any fraud in the execution of the instrument. Ex. Grantee, having obtained a deed, refused to execute a defeasance according to agreement. Act. 190-1. 3d. 397. 2d. 423. 1st. 187. 1st. 187. 625. 1st. 187. 203. 16d. 1st. 187. 203. 16d. Ca. 52. 52. 1st. 187. 203. 16d. See case of a mortgagee (3d. 397), desired as to the contents of the deed. Proof of the past agreement being the necessary means of forcing the fraud.
Contracts.

The same may be done in case of mistake in the execution. 1 Bl. 18. 19. 1722. 47. 2 H. 375. 2 Sir. 213. 2 M. 359. 1 Term. 433. 2 Term. 571. 4 Term. 199.

So, a written agreement (ut supra) may be controlled by a past one, to rebut an equity. 2 T. 299. 1 Term. 240. 1 Term. 294. "Jones of Chasemore.

This rule is peculiar to Equity.

In England by sect. 11 Geo. 2. 2nd indentifying a plenipot for use and occupation, lies on a parcel lease; and the agreement as to the rent, may be given in evidence, to ascertain the damages. 2 Bl. 185. 2 T. 375. 2 M. 327. 2 Bl. & 2. 1249. 1 Bl. 235. 1 Term. 314.

At common law, a plenipot would not lie for rent; the debt would. 2 Bl. 185. 2 T. 375. 2 M. 327. 2 Bl. & 2. 1249. 1 Bl. 235. 1 Term. 314. 2 T. 242. 3 Dec. 186. 3 Term. 152. Bull. 137. Peak 241. 2 Decem. 234. 2 Con. 579. Debt being considered as the higher remedy, the, as to the principle.
In Connecticut, such a lease does not create a tenancy at will. It is a mere license. But a hemp seed on a quantum valebatur, 4 Eliz. 222.

Possession must not be adverse in this case. 6 Edw. 3, 150. 375.

V. Contracts not to be performed within one year from the making. (90)

Ex. A promise to pay, or to an act two years hence.

Holden that this clause does not extend to any agreement concerning lands or tenements. 10 Eliz. 280. 3 Edw. 159. 1 Edw. 314. 527. Because, (I suppose), the preceding clause has made all the provisions intended to be made, as to contracts of that kind. They are generally of no effect, whenever to be performed. Suppose, then, a lawful contract of this kind (i.e., concerning land, and not to be executed within a year), confected, or partly executed. It is binding, I conclude. (90)

Where the performance is to take place on a contingent event, which may, or may not, happen within a year, that contract is not within the statute. Ex. On the return of a ship, 2 De C. 280. 2 Eliz. 167. Hull 280. 3 Edw. 575. 3 Eliz. 1371. 2 Eliz. 17. 175. 3 Dalk. 9. Holt. 320. 3 Eliz. 214.

So, to pay on her marriage. 2 Edw. 313. 2 Eliz. 215. 4 Edw. 167. (90)

So a promise to leave a sum of money, to be portioned by will. Hull 280. 3 Edw. 1271.
Contracts.

The making of a contingent contract, coming into existence only on the contingency actually happening within a year, if the contract is good, or not at all, absolute. E.V.May, 311. 9 Ex. 1281.

This clause, then, extends only to contracts, which, according to their express terms, are not to be performed within a year. 3 Ex. 1281.

Thacker 30, 214.

And even as to these, it is held in Corn. that where the promise is made upon a contingency and accruing consideration, it is good, though by force, if to be performed within a year from the time when the consideration is complete. Ex. Thack. Promise to pay for boarding one's child two years. Haddon good. 1 Abb. 39. 32 Ex. 1287.

VII. The sixth class of contracts contemplated by the statute seems not to require a diligent examination. Even by that, that the consideration need not appear in writing; the promise (the term in the statute is "bargain") only, being required to be written. East 307.
Contracts.

Rules, applying to all, or several, of the different contracts contemplated by the Statute.

The construction of the statute is the same in Chancery as at Law; the remedy, or relief, may be different. 1 Ch. 52. 669. 3 Ch. 430-1. 12 H. 22. --- Intention of the Legislature governing both, and construction is merely the means of discovering that intention. 10 Conn. 370.

"Agreement," or "note or memorandum in writing," what?

An writing, I suppose, which is intended to furnish evidence of the contended, is an agreement, or a note or memorandum, within the Statute.

Therefore, a letter written by one party, in a "note," 12 H. 179. 374. 1 Conn. 27-3. 2 Conn. 72-3. 8 Conn. 318. 3 Conn. 329. 1 Conn. 201. 2 Conn. 322.

A letter written to one's own agent, stating the terms of an agreement made, holds sufficient. 3 Conn. 323. 12 Conn. 121.

But it must distinctly furnish the terms of the agreement. 374. See also, not binding. 12 Conn. 179. 3 Conn. 326. 11 Conn. 121. 1 Conn. 290. 3 Conn. 580-7. See 2 Conn. 127.
Contracts.

...But the terms of the agreement, a memorandum may be made certain, by reference, in the matter of agreement or memorandum, to other documents, or extrinsic facts. 3 Bro. Ch. 311. Oct. 107. 1791. 1182. Inc. 350. 2 Beav. 178. Oct. 117. 561. Agreement to convey for the same price as J.J. gave—on the same land, as is described in such a deed.

p. 23.

...It must also appear that the other party accepted the terms, and acted upon the offer. 18 Mont. 79. 201. 1182. 381. 257. 562. J. McNeil. 3. Seems, there is no agreement. 5 Tor. 327. Oct. 107-8. 192-3.

When the writing refers to something extrinsic, by which it is to be made certain, if the subject is not made sufficiently certain by the thing referred to, itself, no parol evidence is admissible to make it more so. 5 Tor. 162. 257. 562. Ex. Gr. Reference to a deed, which does not ascertain the subject or terms. Agreement too uncertain.

(94) An advertisement, written, or printed, (post 95) by one of the parties, and containing the terms, is a sufficient note. 16 Hil. 14. 125. 529. 3 Burn. 192-1.

1 50.

And, in the first five classes of agreements, embraced by the statute, the consideration, as well as the promise, must appear in the writing. The agreement of is required by the statute to be in writing. 3 Act. 10. 110. 283.
Contracts.

6 East 387. 4 Barn. 12 Ad. 176. 8 Johns. 3, 210. 1 Hill. 440. 17 May, 12.

Rule, where the guaranty is simultaneous with the original undertaking, and the form but one transaction. 8 Johns. 29. 11 St. 221. 7 Hill. 446. n. Sect. 24.

Secus, as to contracts for sale of goods of $10. value, un.

dep the English statute. Note, a memorandum of the bargain only is mentioned. 6 East 387. Ad. 117. "Agreement" by not mentioned. "Bargain" construed by "promise."sent. 1 Hill. 440. 5 East 10. 9 St. 545. 17 Hen. 272. 15 July, 1876. 14 St. 1. 190. 3 Johns. C. 210.

An instrument, intended to be a deed, but failing to operate as such, from the omission of some requisite, or by a change in the relative situation of the parties, may be considered in Equity as an agreement or as evidence of an agreement. Ex. Bond to neg. intended wired to convey lands to her. 2 St. 242. Ad. 19.

(Being a deliveria of present, it is as a bond, avoided, by the marriage.) So, of an instrument in the form of a deed, but not witnessed, as our statute law requires.

An agreement imports the trinity and absence of both parties. Hence, a mere entry in a public book, is no evidence of an agreement between lord and tenant. 14th 497. Ad. 109.
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Signing. What?

Not only a subscription in usual form, at the foot of the writing, but the name of the party to be bound, written by himself or authorized agent, in any part of the instrument, is intended to give authenticity to it, is a sufficient signing. 1 Idaho 116, 2 Eq. 2d, 32 - 17 Iowa 36, 137 Pa. 283, 11 Iowa 117, 177 U.S. 496. 23 Am. Cases, 38. 1st Ed. R. 190.

E.g. Where the name, written in the body of the instrument, is not intended to give authenticity to it. E.g. A. having agreed to lease to B. by said, omitted instructions for drawing the lease, in these words: "This is to certify that A. to party... This is no signing by A. As his name was inserted merely to explain the stipulations, and not to authenticate the agreement. 1st Iowa 160, 7 Iowa 71, 10 Iowa 283, 22 Ind. 221. It may not be in the form of an instrument, not intended as such.

It seems to have been formerly understood that one party making alterations, with his own hand, in the draft of the agreement, was a sufficient signing. 1st Iowa 250, 1st Iowa 160, 2d Iowa 284.

But this opinion is overruled. 7 Iowa 71, 1st Iowa 160, 2d Iowa 284.
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But one's signature, as a subscribing witness (the knowing the contents), is a sufficient signing to bind him to any stipulation, recited in the writing, on his part. Ex. Where marriage, p. 14, articles, reciting that the mother of one of the parties had agreed to advance $1000, as a portion of money subscribed by her, as a witness, she was held bound, though not in form a party, for the signing was intended to give authenticity. 12 T. 2, 521. Port. 1854. – The subscribing witness may be considered, in such cases, as having adopted the agreement, as the. Code, 123. 4. Or, at any rate, it may be considered as a note, or memorandum, it.
Contracts.

In the last case it is said, and also is found, for procuring it to sign, made by subscription a signing authorized by C. And a signing in the procurement of one party, is equivalent to a signing by his agent. 1 Story, Co. 217. 2 Co. Co. 211. 12 Ch. Co. 164. L.P. for it is not a signing in his name, and does not import to be a signing for him.

At any rate, if the party, not signing, brings a bill for specific performance, he is bound, (concl.) for he then recognizes and virtually affirms the agreement as to himself. 11 Mere. 34. Co. 124. Doubtless, the Court would not, in such case, enforce against defendant, but upon condition of performance by the def.'

So, an auctioneer subscribing highest bidder's name to the condition of sale, is said to be a sufficient signing for both parties. (In this subscribing) he is said to act his agent for both. Bull. 288. 1 H. R. 599. 3 Swim. 1921. Den. 52 B. 303. Where the auctioneer brings the action in his own name.

The rule is held to apply only to the sales of goods. 13 B. E. 107. 1 Bow. 365. 1763. Swim. 321. Peake, 86, 217. — Swim. 97, 64. 249. 1st. 115.

Later, where the subject matter is an interest in land — There the "agreement," or some "note of it," must be in writing; which the subscription, by an auctioneer, is held not to be. (St. R. 157) The case cited was that of sale of the afternoon of land.
Contracts

It has been doubted, indeed, whether sales at public auction are contemplated by the statute at all. The transaction being public, and no danger of perjury, Bull. 287, Col. 257, 3 Beck, 1924. But it does not appear, by any direct authority, or by any reasonable rule of construction, that such sales stand upon a footing different from others.

A printed name may be a sufficient signature. E.g., A traders bill of parcels, with his name printed. (Ante 94.) 2 Doug. 271, 228, Col. 124. For the name is printed by his procurement, and delivered as his signature.

It is not necessary, that the authority of an agent, signing for his principal, should be in writing. The statute requires only, that the agreement to be in writing, signed to. Tit. 7, Ch. 75, Contracts. 76. 42. 3 Wood 427. 7 Mc. And. 226.

See Title to Sect. 30.

Not necessary, that the identical contract stated, should be signed. Sufficient, if it is acknowledged by a writing that is signed. Col. 441. 3 St. 318. See 3 R. 733. Ev. Letter to one's own agent, stating the terms of an agreement already made. This is a memorandum in writing of the agreement.
Contract.

The bare meeting of an agreements with the party on one hand, does not dispense with the necessity of signing. 1 P. W. 770. 6th. 121.

Of the Consideration necessary to support a Contract.

Contract is "an agreement, upon sufficient consideration, to do, or not to do, a particular thing." 2 Bl. 442. According to this definition, a consideration is of the essence of every contract.

Consideration is the material cause of a contract; that, in consideration, on an account of which, each party is induced to give his assent. 2 P. 390. 2 Bl. 443-4.

Considerations are of two kinds: I. Good. III. Valuable.

II. If good consideration is that of kindred, or natural affection between near relations. 2 Bl. 297, 444. 3 P. 473. 1 P. 397. 17 Bl. 427. 16 R. 837. The most distant relation embraced in the term "near relation," is that of uncle or nephew; or the 3d degree.
Contracts

Such a consideration, in contracts executed, is sufficient, as between the parties. Or, Grant by deed from father to son, in consideration of natural affection.

But as against creditors, and bona fide purchasers, generally deemed fraudulent, and set aside, 2 Bl. 397.

And an executor contract, on such consideration, may be enforced in chancery, in many cases. 1Bom. 307. 369. 17 Ten. 337. 2 F. N. 176.

III. Valuable: This consists in something of pecuniary value. As money, goods, labour, marriage (2 Bl. 397).

Indemnity to prevent fees for becoming equity. 1Bom. 412.

Contracts on valuable consideration, may be made in either of four ways:

I. By stipulating, thus: "Io, ut des." As loan on bond, or promise. Sales, or contract, expressed, or implied, to pay of.

II. "Facio, ut facias." As where labor, or service, is to be performed by both sides; or forbearance on one side, and some act on the other; or mutual forbearance.

III. "Facio, ut des." As an act to be performed for remit.

IV. "Io, ut facias," the counterpart of the last; in the last inverted: As giving, or agreeing to give, something, for an act to be done. 2 Bl. 444. 445. 1Bom. 335-6.
Contracts.

Contracts, under the present view, are divided into two kinds. II. Special. III. Simple. 7 T A. 331 n.

A Special contract, is one, which is entered into, and evidenced, by specially, i.e. by deed, or writing sealed. 2 Bk. 405. 2 G. 1 Co. C. 391.

A Simple contract, is a contract by word, or one reduced to writing, but not sealed. A contract in writing, but not sealed, and a bond contract, are, by the common law, upon the same footing, in point of solemnity. 2 Bk. 403. 3 Co. 357. 2 Bk. 405-6. In strictness, indeed, a writing, not sealed, is mere evidence of a bond contract.

In Co., written instruments, containing express promises, a covenants, whether sealed or not, are, in general, treated as specialties. And the English law relating to specialties, applies here generally, it is said, to written contracts not sealed, as well as to those sealed, if they contain an express promise, or covenant. 1 Sm. 313. Contracts v. Walker. Ch. C. 53. Frontier, county, January 1812. See 5 Sm. Co. 2. Fed. pr. to the extent of this position. Does it extend to any other unsealed writings, than promissory notes, not negotiable? (expressed to be for value received)
Contracts

It is clear that an executory contract by parol, is not binding, without a consideration. 1 Som. 350. 355. 2 Chit. 445. Selkirk 129. 3 Sci. 312. 319. 3 Chit. 28. 5 Chit. 143. 5 Monk. 526. 533. It is virtual factum; and, ex modo fase, non existere actum. Ex. A promise to give me £100. - or to be low, without remedy, etc.

But if owner delivers them to another, on letter's promise to carry, or bestow labor upon them, without remedy, deems delivery sufficient consideration, and promise binding. 3 Sci. 462. 5 Chit. 149. 9 Chit. Doct. & Reid 129. 1 M'Int. 164. Gabellement 512.

But by Wilmot, a contract, in writing, is good, without consideration; at common law. 3 B. & C. 1870. 2 Mac. 445. This proposition is too broad. 1 Som. 339. 422. 244. 442. - As to the case, but by Blackstone, of a promissory note (2 Chit. 445), it is to be observed, that, as between the original parties, an actual consideration is necessary, and must be proved. 1 Som. 341. Chitty 57. 2. 59. 3. 35. 2. 121. 5 Chit. 441. 75. 7. Doug 514. 62. 1. 15. 6 Monk. 335. 4. 14. 242. Scot. 574. Bull. 274. 62. 15. 1. 75. 100.

Though, after a negotiable note is negotiated, promise cannot, indeed, in general, affect the grant of consideration; because a third person becomes the holder, and he ought not to be affected by the grant of consideration, between the two parties. 3 B. & C. 174. 71. 5 Monk. 335. If it were otherwise, third persons, who are bona fide holders, must be defrauded.
Contracts.

(104) But at common law merely, reducing a contract to writing does not supersede the necessity of consideration. Ante, 103. I conceive that in strictness, and in judgment of law, a consideration is necessary to the validity of a sealed instrument, or specially. Though 1st. Plaintiff need not prove a consideration, and 2nd. the defendant cannot, at least, over the want of it. For 1st. From the solemnity of the instrument, a consideration is presumed: And, therefore, the Plaintiff is not bound to prove one. 1 Trol. 974. 1 Scam. 232–3. 2 Trol. 304. 3 Burr. 1837. 1 Trol. 584. 2 Atk. 445. 2 Hare, 200–

2nd. If a consideration being presumed, or implied, if defendant might disprove it, he might contradict his deed, which cannot be. He is estopped to deny it. 1 Trol. 340. 2 Atk. 295. 3 Trol. 424. 1 Poc. B. 344. 4. 1 Reg. 729. 1550. 64. 5. 70. 6th, 10th, 18. 2d.

Suppose, that the want of consideration appears upon the face of the speciality. Is it void? 2d. As considered (ante) 2 Atk. 577. 4 Atk. 2072. 3 Trol. 1859. 7 Trol. 477. 3 Hare, 408. 1 Trol. 368. 7 Co. 40. 2 Atk. 182.

Conclusion: That, on principle, a consideration seems necessary to the validity of a speciality, when the contract is executed. But that it is binding, unless the want of a consideration appears in the instrument, or in some other instrument of equal solemnity, which is a parcel of the contract. vide, 1 Atk. 234. 1 Reg. 95, 97.
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See 1 Fawcett 341-2. That on voluntary covenants under seal, only nominal damages are recoverable at law. This supposes the contract obligatory. But is the want of consideration supposed to appear in the instrument? What is the meaning? 3 P. Wms. 222. 3 H. 248. 1729. 314. 20th. 14th. 16th. 19th. 235. 20th. 16th. 13th. 12th. 11th. 10th. 28th. 475. as to relief on voluntary bonds in equity. If the want of consideration does not thus appear, how can it be proved? It cannot be proved. See Lord Kenyon in Trehearne v. Hanay, 3 T.R. 418. If it does not appear, is not the contract valid, or void, in the?

The rule that a consideration is necessary to every contract, applies, practically, in its full extent, to executory contracts only. A contract executed, by delivery of the subject, is good without consideration, as between the parties. As a gift. 1 Bac. 238. Doug. 24-1. 2 Esp. 577. 16th. 95. For the contract being executory, by the parties, the law will not receive it, though it would not enforce the agreement, if executory. 106

Holden in Court, that the consideration expressed in a deed "title" of land, is conclusive evidence (between the parties) of the existence of the consideration; presumptive only, as to the amount, and receipt of it. 16th. 70. 40. 19th. 97. 479.

A consideration may arise, it has been said, only in one of two ways:

I. From something advantageous to the party promising, or undertaking; or,
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II. From something disadvantageous to the party in whose favour C. is to be

I. From something advantageous to promise. C. By. A. consideration of my selling and delivering goods to A. E. today, he promises to pay half after. Here the consideration is something advantageous to him.

The quantum of consideration is immaterial. The law does not, in this instance, regard precautions. Sufficient
if there is any value. Ex. A. P. 213. 217. 216. 121. 270. 315. Cons. of a man; because of its value.

Sale, or insignificant, considerations are not deemed

But any thing, however trifling, to be done by him, in
whose favour the agreement is made, is a sufficient con-
dideration. Ex. A. leases to B. B agrees to B rent becomes
due, and C. promises to pay it; if A. will show him the
lease. Here show that the lease is a sufficient considera-
tion; and gives A. an action on the promise. 1 Conf. 243.
Conf. 127. 130. 240. 272.

The mere relation of landlord and tenant is a suffi-
cient consideration for a promise. Ex. Declaration, stating
the defendant to be tenant of, and that, in consideration,
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Hereof he promised to carry away from the farm, straw 
6. He held sufficient. 152. 2372.

III. From something disadvantageous to him, in whose favor Ex. A, having a bond against B. delivers it up, to be cancelled, on C, promising to pay the contents. 1 Com. 344. 345. 1 Com. 45. 2 Com. 342. 2 Com. 56. 849. 851. 755. 3178. 1 Com. 22. Comm. 123.

As a consequence of the general rule (page 125) as to the two modes, in which a consideration may arise; it is also a General Rule, that a contract is not supported by a consideration altogether past, and executed. Ex. The consideration, that one has hired my servant, or dog, changed one of a趋势, or built me a house gratis of promise to pay. 15 This is not binding. There is no sustai ning consideration; no previous debt, or duty; and no benefit, or disadvantage, accruing to either. The cause = quence of the promise. 1 Com. 341. 12. 272. 1 Com. 5. 362. 3 Com. 442. 141. 853. 1 Com. 33. 2 Bulst. 73. 53. 87. 95. For the promise is not the presuming cause of the consider
eation

But though a part of the consideration be past, and executed, yet, if a part is sustaining; the contract may be good. Ex. Let us, in consideration, that lessor had been paid, and paid the rent, promises to save the latter harm= less in future. This is good. For though the occupation and rent paid, were past, yet the lessor was to continue in Joyce; and to pay future rent. 1 Com. 549-56. 2 Bulst. 73. 3 Com. 74. 2 Com. 829. 3 Fuld. 95.
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The general rule, in page 108, is too narrow (Comp. 290. 294). and the rule, that a past consideration will not support a contract, is now somewhat relaxed. 2 So. 375. 1 Bur. 187-2. See 2 Batt. 84. 2 Scroll 111.

Thus a contract, on consideration past and executed, is good, if there was a previous legal duty on Promisor. Ex. If one, in consideration of a previous indebtedness, promises to pay, it is good. Here, however, the duty continues. So, where the defendant promised, in consideration of the plaintiff having buried his child. (Note. "By statute 43 Eliz. it is made the duty of parents to bury their children") 2 See 43 Eliz. 2 Pom. 350-1. 1 St. 2d 415. 1_scroll 198. H. & B. 250. Cro. Eliz. 138 3 Bur. 187-2.

So, if there was a prior moral obligation on Promisor; this is a sufficient consideration. Ex. Promise to pay a just debt barred by the Statute of Limitations. 1 Fam. 285. 3 Bl. 92-97. Comp. 290. 294. 1 St. 2d 415. 2 Pom. 357. Comp. 290. Close 95. 2 Batt. 147. 2 Promises by overhearing, to pay for medicine, before furnished to a pauper. 2 Batt. 281. 2 Rep. 213.

So, a promise, by putative father, to pay for past nursing of his natural child. But the law will not, in such case, raise an implied promise. 2 East. 580.

So, a consideration past, will support a contract, if the consideration accrued at the request of the Promisor, for the contract, though subsequent, supplies itself with the previous request, by relation; and, therefore, operated, as if
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made, at the time of the request. Ex. Promise to pay, in consideration that A. had, at my request, bailed my servant.
1Cor. 317-2. 2 Vent. 278. 3 Salk. 96. 1Bulst. 130. 39. 272. Hob. 115. C. Ch. 489. C. J. 15. C. R. 42. 252. Bul. 29. 10. 385.

It has been held, that a mere stranger to a meritorious act, done by another, cannot support an action, in his own name, on a contract founded upon it. For he does nothing advantageous to promisor, or disadvantageous to himself; who is a stranger to the consideration. Ex. A. in consideration that B. will acquit him of a trespass, covenants with D. to pay.
C. 100. E. C. cannot sue upon the covenant. 1Bom. 343. 355.
S. 12. 330. 1St. 529. 397. 1Ch. 153. C. J. 120. C. R. 87. 23. 3Hob. 441.
S. 17. 1 Vent. 5. — Fed. vide. 1Bom. 101-2. 8Mod. 117. C. J. 443.
S. 24. 3F. V. 35-5. 7Bom. 252-3. 185. 4Fir. 15. 3Bom. 289. Bull. 85.

This rule seems now to be confined to deeds inter partes.
3Bom. 145. 7. 9Bom. 139. C. R. 77. C. R. 729. 1Bom. 23. 1Bom. 235.

But in the case of joint agreements, it seems settled by the late authorities, that the third person may maintain the action.
3Bom. 145. 7. 1St. 101-2. 1John. 140. 23. 23. 1St. 132. 2Bom. 290.
C. 219. 8Mod. 117. He is to be considered, nonad vitam, as adopting, and ratifying the contract by his subsequent consent.

In such cases, the promise should be laid, as having been made to the plaintiff; and proof of a promise to another, for his benefit, will support the declaration. 1Bom. C. 101.

III.
Contracts.

It has always been agreed, that a consideration moving from one, will support a promise to him, in favour of another, who is nearly related to him. E.g. Promise to A, in consideration that he would perform a cure, to pay his daughter. 1 Porr. 353. 17 Text. 318. 332. 2 Ser. 210. 4 Ay. 336. 2. But it appears from the foregoing rule, that no such relation is necessary; and that the promise is good, in favour of a stranger.

Then forbearance of a debt is the consideration, there are 2 requisites: I. It must be either general (i.e. perpetual), or for a certain fixed period. II. It must be of an action in which the promisor, or person claimed to be liable, is chargeable; or, in which there is, at least, a colorable liability on his part. 1 Porr. 353-4. 3d Eliz. 2 St. 205. 2d St. 91.

I. Ego. Promise to pay a debt, in consideration, that the plaintiff would abstain from suing, (no time being limited, and the forbearance not being specified to be perpetual), is not good. 1 Porr. 353-4. 3d Eliz. 2 St. 435. — From the next day.

But promise to forbear a year, or a reasonable time, is a good consideration. Court to judge what is a reasonable time. Same authorities, and 2d St. 205. 4th Bt. 168.

(112)

II. Promise by a mother to pay a debt due from her son, who was dead, if plaintiff would forbear to sue her, is not obligating. There is no consideration. She was not liable; forbearance is no favour to her, no disadvantage to promisee.
Contracts.

[Text continues...]
Contracts.

The mere act of entrusting property with another, or his undertaking to do something respecting it, is a sufficient consideration. C. P. 104, 105. 910. 919. 620. Co. 18c. 607. 527 R. 143.


The preservation of the honor and peace of a family, has been held a sufficient consideration in chancery. Etc. Agreement between father and son, and natural child, to prevent family disputes. 1st. Corn. 356. 1st. 3.

So, the compromise of a doubtful right, has been held sufficient in chancery. 1st. Corn. 353. 1st. 10. 1st. Conn. 4. 241. 353. 2 Rep. 254.

Not necessary in contracts, that the consideration be expressed in direct terms, as a consideration. Sufficient of one can be collected out of the whole agreement. 1st. Corn. 353. 1st. Corn. 457. Co. Agreement for settling boundaries.

But if an express consideration appears upon the face of the contract, the better opinion is, that no other can be implied. Expremum factum est. 4 Th. B. 2d. 21. Co. 40. 1st. Corn. 308.

Contracts, when distinguished with reference to the forms of their considerations, may be divided into three kinds. Doug. 555.
Contracts.

I. Where the contract, which is stipulated on one side, is in consideration of performance of what is stipulated on the other, these considerations are terms mutual. Ex. A. agrees to pay B. for doing a certain act. Here the doing of the act, by B., is a condition precedent to his right to the payment. 1 Com. 357. 1 Ten. 177. 214. 3 Alb. 95. 7 H. 106. 1 H. 240. n. 12 Mc. 450. 10 H. &. 380. 176. Bl. 274. 5. 277. arg. 31 n. 7 Co. 10. If he does for the price, he must aver performance; 1 T. R. 136. see. Headings, 26, see also Tender; a what is equivalent to it: A. tendered, or, that he was prevented by defendant; 1 T. R. 538. 645. 25. 1 Bl. 176. Sug. 259. 1 Am. 1235. 2 Barn. 106. 106. 1 Ed. 455. 11. 11. as the case maybe, that he was at the place, ready to perform, and defendant absent; and that thing he was prevented from performing. East. 203. 208. 579. 1 T. R. 125. 1 N. 455. 2 N. 1240. c.

II. Where performance on both sides is to be concurrent, then neither can compel the other to perform, till he has performed his part, or done what is equivalent. (Ex. Offer 10. or, is at the place appointed, ready, and demands performance and he refuses.) Ex. A. promises to deliver B. a load of wheat on such a day, for such a price. 2 N. 240. c. 1 Com. 33. c. 5 Co. 59. East. 24. 179. 120. 7 T. R. 125. 5 T. R. 359. 4 T. R. 117. Alb. 171. 112. 113. Sug. 199. 655. 785. 176. 46. c. 363. 38. 539.

If a place is appointed for performance, it is sufficient that the plaintiff was there, ready, and defendant absent. No tender is necessary, in such a case, to entitle plaintiff to recover. East. 213. 239. 4 T. R. 757. 7 T. R. 125. 1 N. 455. 56.
Contracts.

If defendant was to perform on request, it is sufficient that the plaintiff was ready and requested, and defendant refused. 1 East, 203.

If, then, the agreement is, that one shall do an act, for doing which, the other shall pay; the doing is a condition precedent. 2 Orm. 32. a. b. 22. N.B. 12 a. 240 a. Here action lies for the money before the thing is done. 1 Squa. 32. a.

Ort. 38. b. N.B. 42. 2 Tor. 71. 2 C. R. 312. 1 N. 35. 2 Selk. 71.

So if in the last case, (i.e. where a day is fixed for payment) no time is fixed for performance on the other side. 1 Squa.
32. a. 22. N.B. 228. — In both cases if the money is not paid at the time appointed for payment, the party promising it is liable, whether the other has performed or not.
Contracts.

III. But where the promises are mutual (or independent), i.e. where the promise on each side is the consideration of the promise on the other; performance is not a condition precedent on either side. Better may sue, without avering performance. 1 Tom. 325. 8 Tall. 177. 24 Yost. 167. 20 Vesc. 293. 3 Bulst. 187. 3 Hard. 162. 5 Hold. 411.

Sec. v. In Equity. Here plaintiff must aver performance, or readiness to perform, though the covenants are mutual. Otherwise equity will not interfere. 1 Tom. 318. 73 T. C. 184. Hinch. 445. 12 2nd R. 20. It is interposition being discretionary.

He who seeks equity, must do equity; the court will interpose only on that condition.

If the agreement is in this form: I promise to pay $100, you trans- ferring stock to me, and the converse; the promises are not mutual (i.e. not independent); and neither can compel performance, till he has performed. 3 Hold. 112. 70th. 623. 1 Tom. 312. 12 Hold. 373. 176. 8th. 250. 4 T. R. 701. — Dec. Arg to the case in 3 Hold. 1312. Vide 8 Y. R. 372-5.

Where the covenant of going to only part of the consideration on both sides, and a breach of it may be held for vio damages, it is independent. 1 Saund. 326. 1st. 11th, action lies, unless Plaintiff has performed in part? 1 Saund. 326. 20 T. R. 572. 176. 3 273. 4 New. 240. 6 Y. 170. 373.
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The question, whether promises are mutual, or dependent, is to be determined by the meaning and understanding of the parties, to be ascertained from the object of the agreement, and the nature of the contract, i.e., from the order in which the intent requires their performance, not from the order, in which the stipulations precede, or follow, each other. Doug. 515. 13 R. 173. 114. 130. 8 St. 373. 570. 576. Talk. 171. 1 Tamer. 320. a. note. 21 Tex. 248. H. 248 a. n.

Where the promises are mutual, i.e., independent, it is no bar to an action, that the plaintiff has not performed his part. Doug. 535. 2 Gil. R. 1312. 1 Fyls. 203. 3 Rev. 41. 10th. 10. Compen. 55. Each may have a cause of action against the other, at the same time.

The English courts, have leaned, of late, against construing promises independent. 12 Tamer. 767. 8 St. 371. Grofe. 1 argues, Wilkes 1 R. 496. 1 East. 519.

Mutual promises must both be binding, or neither will be so: i.e. the contract must be of such a nature, as will bind both sides, and both must be made at the same time. Seeg, they are not a facies. 1 For. 355. Talk. 24. 4 Coh. 88. Note. Are not the terms of this rule rather too strong? For a voidable undertaking, or agreement, by an infant, will support a promise, made to him, by an adult; though a void one will not. See Thront and Child. Jones says, "if such a nature as may bind both." Ex. not illegal, or void, on either side.
Contracts.

At Common Law, fraud in the consideration of a contract (119.) by especially, does not, in general, vitiate it: As in the quality, or value, of the consideration. Ex. Bond for the price of an unsound horse. Though fraud in the execution, does.

2 Chit. 384. 2 Bacc. 594. 2 B. & J. 112. 27. 3 Leav. 422.

Absent ment in the second case; not in the first.

Ex. Deed falsed, read wrong instrument substituted by artifice -- Case of markman, p. 88.

But Chancery will relieve against contracts of any kind, (120.) for fraud in the consideration. 2 Torn. 145 & 60. 9 M. 225. 9 St. 290. -- At law, the party defrauded must resort to his special action for the fraud. And such appears to have been the general rule, in relation to contracts executed, without deed: As in sales of goods, under false representations of dominancy, &c. Tock. 233. Campb. 39. 4 Cves. 35.

2 St. 159. But this rule, is, in the last case, much relaxed by late decisions. See Trakay on the Case, 17. -- Does it now hold at all, in case of simple contracts?

But our Courts have held, that a total fraud, in the consideration of a note, a bond, i.e. when the promisor has received, and is to receive, nothing, is a good defence at law: Ex. 1 Bost. 365. Ex. Georgia land frauds.

And therefore, that in such cases, relief can not be had in Equity. (Knight, v. Morgan.) -- If the instrument is in dupe, at law.
Contracts.

Seeing, where the fraud is partial, where the relief is in equity, for courts of law must give judgment for the whole amount, or for defendant. Cannot apportion.

But according to our rules, though the fraud is total, yet if the obligation is not in suit, (or if all the obligations are not in suit), relief may be had in equity. Seeing, the promise must remain in jeopardy till promisee would bring a suit at law.

Interpretation of Contracts.

The object of construing contracts, is to ascertain the intent of the parties. (1Forn. 370.)

And the contract, however expressed, cannot be carried beyond that intention. (1Forn. 370-1.)

Thus if A. grants that unless he pays £1. 10s. per annum, B. may distrain for it on A.'s manor: a rent of annuity will not lie for it, because there is no grant of annuity or rent. (1Forn. 371. Co. Leis. 145-7.)

But it is a good rent charge, for which B. may distrain. For the manor is charged with the right. 1Forn. 371. Co. L. 145-7. 2Tolle 426.
Contracts.

Contracts are to be carried to the full extent intended; if the words can be so construed, as to effect it. Ex. Just establisht to raise money out of the profits of an estate, carries, in Equity, a right to sell; if the sum cannot otherwise be raised within the time. 1 Cor. 372.

Words are to be understood according to their ordinary, and most known significations, unless there are decisive reasons to the contrary. 1 Cor. 373, 375-6. Plowd. 163. "Municipal law." 1 Ch. R. 53-5. C. E. Ch. 575. Levit. 57. 2 Cor. R. 5-4.

Thus, if A. agrees for 20 barrels of ale, he is not to hold the barrels, after the ale is out. 1 Cor. 374. Plowd. 85.

Seces, of an agreement for a hogshead of wine, Tondee has the hogshead. Some authorities. Such is the understanding of the parties, in such cases. Such the usage.

So, a lease for twelve months, is for 48 weeks only, i.e. 12 lunar months. But a lease for a треверн months, is for an entire year. So understood by the parties. "Bills of Exchange, 80." 1 Cor. 375. 2 H. Com. 141. 5 Co. 37.

Words, expressive of quantity, are construed, as understood, at the place, where shipped, or used. Ex. "Barrels," "hundred," of. 1 Cor. 376. 2 H. Com. 172. Ex. If to be delivered at another place?
Contracts.

But of money is made payable by contract at a place named, its denominations are to be understood according to their import, where it is payable. Ex. Contract in London, to pay £100, in Dublin. The sum to be paid is £100, Irish currency. "Frr. 407. 8.T. 88. 896.

If the language is ambiguous, the intention may be inferred from the subject, the effect, and the circumstances. "Frr. 570-7.

I. From the subject.

Cov. 84. 425. Cov. 84. 225. 225. 274. 84. 379. 584. 425. 811. Cov. 84. 274. 301. for "Covenant broken" 425. 80. 811. 91. 1.
In the intention, as inferable from the subject, is merely to guarantee against higher title.

(125)

Grant of Common out of all my manors. Grantee has Common only in Commonable Places. Not in Grantor's gar-

So, grant of all the trees growing on my farm, does not include fruit trees growing in my garden or on the land, if there are other trees growing on the land. "Frr. 378.
Contracts.

So, from necessity, no reg magis valeat, if an instrument voidly may be construed, and take effect, as if it were in form, and in substance, an instrument of a different species. Ex. Hoffman v. Hard.

"A grant, a joint grant to his companion, operates as a release, a coherent never to sue a debtor, as an acquittance."


II. From the Effects.

Thus, if construing a contract according to the ordinary meaning of the words, will render it ineffective, or fruitless, a different sense may be put upon them. 1 Cor. 383. 3. Leon. 211. Ex. Receives £100. Which I promise never to pay.

Ex. Where may of conditions, are used in limitation of estate.
2. Eliz. 135. 1. 1 Post. 255. Co. Eliz. 255. 1 Cor. 383. 3 Leon. 211.

So, if an annuity is granted for instructing one's own, or other's service to be done, the grant is conditional, though not so expressed, for otherwise the grantor would be without remedy. 1 Cor. 383. Nov. 14.

III. The circumstances attending the transaction, may be considered, to explain a contract, which might otherwise be doubtful, or be construed against the intention of the parties. 1 Cor. 385.
Contracts.

Thus if A. grants an annuity to B. for considec impendendo it shall be intended to mean (his) professional counsel: Counsel in law, if he is a lawyer. In physic, if a physician. 1 Form. 385.

If one having goods, in his own right, and as executor, grants all his goods; the grant is construed to include his own goods only. 1 Form. 385. 3 Mod. 277. See also, Co. Eliz. 705. Eliz. 40. 735-7.

(Signed)

So, where there is a recital of a particular claim in a release, followed by general words of release, the latter are qualified, and restrained, by the former. 4 Bea. 229. 16 cent. 74. 3 Mod. 277. 2 E. & B. 603. 1 Cen. 79. 6. Ex. A. had a judgement on bond against B. for £1000. A gave B. legacy of £50 and died. A. on receiving the £50 executed to B. an executor a release, acknowledging the receipt of the legacy, and concluding with general words of release, viz., "I release demands, against him as executor. The debt is not discharged. 1 Form. 591-2. 180. C. & C. 170. 4 Bea. 290. 5 Mod. 277. 3 Co. 79. 170. 2 Esp. 243. 2 E. & B. 235. 2 Cen. 597. Chit. 119.

Sec. (Cont.) where the receipt of a particular sum is acknowledged, and no particular claim recited. Ex. F. in full of 3 Mod. 277. Chit. 19. 1 Form. 155. 2 Rob. 500. Cont.

(Signed)

But if, after the application of these rules, the intention remains dubious, the contract is generally to be construed, most strongly, against the party bound. Ex. Grantor, Grantee, of the words are his. The schools have explained.
Contracts.


Exception, where there is an ambiguity in the condition of a penal bond. Construction is in favour of obligation. In the condition is intended for his benefit, and to discharge him from a penalty, which is not favoured. 1 Bov. 397. 33. 17. 5 Co. 22. 23. 6.

Hence, if one is bound in a penal bond, conditioned to pay money at such a feast, and there are two feasts in the year, of the name, the money is payable at the last, not at the first. 1 Bov. 397. 4. 33. 17. 6. Secur, of a covenant, I conclude.

So, (it is holder), if one is bound in a penal bond, to make a sufficient and lawful estate in lands, by the advice of a seer, and he makes an estate according to A. B's advice, whether sufficient and lawful, or not, the penalty is saved. 1 Bov. 399. 3 Co. 23. 6. Perks. sec. 775. 61. Would not county decree a sufficient assurance? 4 Bov. 450. 1 Co. a. at 8. 16.

Exception also, where the application of the general rule (page 27) will occasion an injury to a third person. Thus, if tenant in tail makes a lease for life, not expressly for whose life, the life of the lessee shall be intended. Seeing, the dower, or reversion, might be injured. (Bov. 450. Co. L. 42.

Though if made by tenant in fee, the lease must be for life's life. 1 Bov. 400. Co. L. 42.
Contracts.

Subject to these rules, the words are to be construed in the most comprehensive sense, in which they are generally understood. Ex. Covenant of warranty against the claims of all men, is a warranty against the claims of all persons.

1 Forn. 407

And an indefinite expression is construed as a universal one, in relation to the subjects, to which it extends, unless there is some manifest reason for restraining it. 1 Forn. 407. Ex. Two joint tenants make a bill of sale of "all" their goods. It includes as well their several goods, as those held jointly.

So, if one reciting that he owns "divers" houses, makes a bill of sale of them, "all his houses." 1 Forn. 405-1. 57 n 457.

"Divers." When legal language is used, it is, regularly, to be understood according to its legal acceptance. Ex. Limitation to one heir, as long as he pays such an annual sum, extends to all his heirs successively. 1 Forn. 402. 2 Coll. 233. East. 25, 35. n. 716. 25-35. Ex. Do not the more heirs, in this case, manifestly mean, as a term of description?

So, on covenant to satisfy, after request, and due proof, all encumbrances by covenants in apprentices, judicial proof is intended (ie) proof made in an action against apprentices. 1 Forn. 405. Foot. 217.
Contracts.

Contracts are to be construed according to the general intent, appearing in the whole context, though opposed to particular words in the instrument, or agreement. 1 Poff. 403. and vide Severis. Ex. Covenant by lessee, that he has made no former grant, by which the lease may be defeated, but that lessee may enjoy without hindrance by him, or any other person. Disturbance by any other person than lessee, 3. 124. granter, is no breach. 1 Poff. 413. Bro. 240. Mos. 58. Co. 8. 43. 615. "Covenant broken, 4. 2."

If the thing stipulated for, is not delivered, or done, as the 4. 25. contract requires, its value, at the time fixed for performance, is, in general, the rule of damages. 1 Poff. 405. 3. Bro. 81-2. 17 Err. 217. 18. Co. cta. 221. T. 405. 2 Barr. 110.

Except where the thing has afterwards risen in value, then the value at the time of trial is the rule. 1 Poff. 409. 2 East. 211. 2 Err. 294. Otherwise the party claiming must suffer by the other's neglect.

But its afterwards falling in value will not diminish the damages. And any fluctuation in its value, before the time appointed, but which is then past, makes no difference.

If several deeds, or instruments, are made at the same time, between the same parties, respecting the same subject, they are all considered as parole of the same contract, and to be taken together, for the purpose of construction. 1 Poff. 410. 2 Err. 516. Ex. Absolute deed, with a defeasance separate; these make a mortgage.
Contracts.

Of Annulling, discharging, and Voiding.

Contracts.

Premise: If the terms of a contemplated contract are accepted on both sides, the contract is not consummated; and either party may retract his offer. 1 Cor. 384. 3 T. R. 148, 253. See 1 Cor. 217, 247. — For, if in bidding at auction, before the goods are knocked down, 3 T. R. 148.

But an offer once made, accepted by the other, becomes a contract: So that either, by tendering performance, according to the terms of the agreement, may bind the other. 2 Bl. 447. 16th. 41.

Thus if A. offers £120 for a house, and B. says he will take it; A. by tendering the money, or B. by tendering the house, may close the contract, or rather bind the other. 2 Bl. 447. 2 Bre. 241. 2 Corr. 63-4. 76th. 41.

So, if on such an offer accepted, earnest is paid; or, if a future time is fixed for performance, the contract is complete, and the property bound. 2 Bl. 447-8. Nov. 42. 1 Corr. 331-2. 176. 44. 353. 45. 62.

But if on the offer being made and accepted, nothing more is done; i.e., if there is no payment, no delivery, no earnest, no future time appointed; and the parties separate, there is no contract. 1 Corr. 231. 2 Bl. 447. 5 Corr. 322. 329. 82. 30-6.
Contracts.

So, if A. agrees to sell goods to B. if A. within a certain time shows a desire to buy them, and B. within the time, gives notice to A. that he will take them according to his agreement, A. is not bound. In these cases, at first, no contract. The agreement must bind both, or neither. But, if the terms of the first offer, B. may at liberty to accept or refuse; if there was then, no contract. And if B. refuses afterwards, there is no new contract.


Before a right of action has accrued on a simple contract, the parties may rescind it by mutual express consent, expelling their mutual deficiency. In these is no consummated right destroyed by it. 1 Barr. R. 212. 2 Cow. 46 Bar. 265. 4 Co. 97 383. 1 Conn. 1, 136. 2 Stev. 44. Watts, 97 114 A. 234. 1 Mod., 250. 12 St. 5 53. - Mutual agent is withdrawn, before either can make a claim against the other.

But, after breach, it cannot be discharged, by agreement, without a release by deed; unless there is a new agreement substituted and executed, i.e. an accord and satisfaction. 11 Barr. 412-13. 318. 12 Mod., 5 53. 3 Conn. 1, 136 2 Co. 97 383. 1 Conn. 1, 136 2 Mod. 250. 14 St. 259. Watts 234.

Here there is a right consummated; and the question of a sent is at an end.
Contracts.

As to the acceptance of a bill of exchange, a drawer may be discharged by manner, after the bill is payable. Chitt. 13. 167 Doug. 223. 247. "Bills of Exchange," c. 48. Edw. 3. 47.

This seems to be a positive rule of the law merchant.

But an agreement may, in equity, be revoked by a long omission, or both sides, to execute, a claim under it, &c. An agreement between lord and tenant, to enclose a part of the common, delayed for 25 years. 1Torn. 413-14. 420-1. 2Deo. 73. 117. 2Eg. Ca. 41. 217. 9 Mod. 2. 3. Here is a presumption abandonment.

So, where there was an agreement between husband and wife, that she should have her proventis in her separate use, and she permitted the husband during the whole coverture to take the profits himself, she was presumed to have abandoned the agreement. 1Turn. 221-2. 441. 2Dow. 82. 1Ch. 32. 22. 1 Steph. 409. 3Ed. 2. 4. 117.

But this presumption may be rebutted by proof, that she was dissatisfied during coverture, and that the husband took the proventis, under an engagement to fulfill the agreement.

1Turn. 422-3. 18th. 203.

And a contract consummated, and executed, may be revived even by one of the parties only, where there is a provision to that effect, in the original contract itself. Ex. A sells a horse to B, but on an agreement that B may, in a certain event, return him. On the event happening, B may receive and recover the money paid, as had and received it. 1Turn. 415.
Contracts.

11 R. 135. 7th. 201. Comp. 415. Aug. 23. 2 East. 145. 3 Sep. 82.
17 12 R. 351. This is a defeasible contract.

But, according to Powell, if A. contracts with B. for $100. 3, 143.
ity, at such a price as A. will name, the parties can't annul it, because the have informed a third person to perfect it. 1 Pom. 415-18. 1st. Dec. May 91.

"What right has J. S.? This I must, cannot be law. 3, 143.

But a contract may be released after, as well as before, action accrues.

A release may be express, or tacit. The former is a regular acquittance, by deed; the latter, by destroying or canceling the instrument. 1 Pom. 418.

If he who is to be benefited by the performance of a contract, 3, 50. 51.
prevents, it from being executed, it is "dissolved." 1 Pom. 418,
420. 8 Co. 91-2. 1st. Part. 201. 1st. Co. 6th. 374. 1st. Pom. 205. or rather, the other party is discharged. But the party preventing is still bound to perform his part.

And in such case, the party who was to perform is in the same 3, 112.
condition, as if he had actually performed. Ex. A. covenants to build a house for B. for $100. — B. prevents him from building. — A. may recover the $100. 1 Pom. 419-20. Co. L. 2 106.
Contracts.

So, if A. makes a payment to B. with condition that it shall be void, on A. paying £100 to B. or on a certain day, and on the day, B. the payee, is out of the realm, so that A. cannot tender, A. may rescind, as if the money had been paid. 1 P. 420. Co. Litt. 39 b. 4. Will not Equity consider A. as trustee of the money for B.?

A contract may be annulled by a new contract of a higher nature, for the same thing. Merger. Ex., a simple contract merged in a bond. So in a judgement. 1 Term. 423. 1 Ch. 45. 1 C. 21 b. 6. 3 T. 134. 1 C. B. 164. Bull. 155. 1 Barr. 9. 3 East, 254. "Sumpert 32." For the intention of the parties is not to furnish a twofold remedy, but to substitute a higher one.

Seeing it is said, if the bond is given by a stranger. 1 Nor. 129. 2 H. 136. 4. It is then only additional security. C. 94. 33. 24. not a substitute.

And a contract of a given degree cannot be extinguished by a new one of the same degree; i.e. the latter, as a new contract, is no bar to an action on the former. 1 Term. 424. 1 Barr. 4. 7 a. 4. 1 C. 177. 1 T. 117. 2 C. B. 428. 1 East. 282. 5 H. 257. 2 T. 26. 2 Ast. 170. "Sumpert 80." In this way, it may discharge the original contract.
Contracts.

But where a contract of a lesser nature is inserted in one of a higher, merely by way of recital, or to constitute it, and enlarge the remedy, it is not merged. Ex. Tr. 219, 120, 7; 1 Ch. 254. Co. El. & 174.

Here the simple contract is not intended to be turned into a specialty. The latter is designed only as additional security, not as a substituted one, and may be used as evidence in an action on the former. But the latter is subjected but once. "Account"

Contracts by deed, cannot be annulled or discharged, by (1) fraud. Co. Litt. 147. 1 John. 425 
(2) perjury. 1 Ch. 42. 174. 10. 174. 2 M. El. 254.

No by writing, unless sealed. 1 Sam. 277, 21. 2 M. El. 55, 37.

No by merely delivering up the instrument, to obligor to deliver the possession of it. 1 Peter. 425. Co. El. 147.

Even payment, or accord and satisfaction, "of a bond," is not a discharge. Though payment of the "money due upon it" is sufficient. 1 John. 425, 426. Co. El. 254. 2 M. El. 174. 174.

This distinction appears to relate only to the form of handing.

So, accord of the "damages" accrued on a covenant, is a good discharge for the damages. 1 John. 427. 55, 43-4. Co. El. 427. 427, 427. 2 M. El. 174.
Contracts.


So if obligor marries obligee, the contract is generally extinguished at law, by the legal unity of the parties. 1 Bowd. 438-9. 444, vide "Husband & Wife."

Sec. 4. A bond or promise made in contemplation of marriage, and to be executed, or performed, after the determination of the contract, is void. 1 Bowd. 442-4. Hod. 216. Law. 2nd. 571. Sec. 235. 1 D. Ray. 375. 1 Ch. Ca. 117. 1 Ill. 208. "Husband and Wife, contra."

Contracts may also be discharged by acts of the Legislature. 1 Bowd. 444-5. Sec. 195. 8 Mod. 57. 2 Pitt. 223. "Municipal Law." Sec. 4. A covenant to do an act, afterwards prohibited by statute.

So by the act of God. Ex. A lease covenant to leave all the timber trees growing, and they are blown down by tempest. 1 Bowd. 450. 10 Mod. 285. 1 Co. 98. Tr. 835.

So, if A. sells a house to B. to be returned to A. and the house dies of disease, without A. fault, lessee is excused. 1 Bowd. 447. 1 Calm. 541.
Contracts.

So, if A. contracts to serve B. a year, for a sum to be paid in half-yearly instalments, and B. dies, after the first instalment, and before the last, A's executor is not liable for the debt last. 1 S. 448.

But a contract becoming partially impossible must be performed by [June]. 1 S. 448. Boro. 284. "Municipal law" 25.

So, if one is bound in a bond, conditioned to deliver lands by a certain day, and dies before the day, the penalty is void; the equity will decree a conveyance against his heir. (Lq. 22. 18.)

But the act of a third person cannot, regularly, vary a contract. Ex. Bond, by A. & I. S. conditioned that B. shall appear in an action on 5 days notice, and that if judgment is against him, A. will satisfy it. B. appears on 5 days notice, and the judgment is against him. A. is not bound to satisfy it. 1 S. 451. "E. Jones, 441."

Though, where a contract is, by the terms of it, to take effect, or to be varied, or annulled, by the act of a third person, his act will operate upon it, as provided for in the agreement. Ex. Contract to buy property at such a price, as B. shall name. The parties are bound by his decision, and if he refuses to set a price, the contract becomes void. 1 S. 415, 18."