Municipal Law

Husband & Wife, N.Y.
A System of Municipal Law,

Composed in a Course of Lectures,
delivered at Litchfield in the State of Connecticut,

By James Gould.
Title of these duties, & copy of the record of it - enclosed.
This mark (2) denotes an addition to the text.

This mark (?) designates a note.

(58): denotes the beginning of a new important section.

Count of justice administer only the laws of the state by whose authority they are established. But it is part of a law of every civilized state that in certain cases, or cases of a foreign state to be taken as a rule of decision. (Comp.) (See also)

[Additional notes and scribbles]
Of Municipal Law.

Law in its most general sense what (1 Bla 38-9) applies to all kinds of action. Derived by some superior.

Law of Nature is the un revealed law of God or the will of God as discovered by reason. 1 Bla 39.

Law of nations is in general the law of nature applied to nations or States. 1 Bla 43. Vattel Pref 1.6.8

Municipal law, what (1 Bla 44) - Rule permanent uniform universal - i.e. universal & uniform as far as it extends. (For local usage are law). In other words general not personal within its own limits. (1 Bla 44.) By permanent it means not temporary as an occasional order or mandate - but continuing definite inflexible or for a certain period.

Different from contract - the latter is a promise proceeding from us - law is a command directed to us. 1 Bla 45.
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Different from natural law. The latter a rule of moral conduct - Municipal, of civil conduct. 1 Bla. 45.


Explanations in treaties, not impairing certain rights, are not opposed to pre-existing government (Constitution and laws). 8 Wall. 542.

By the supreme power - i.e. the legislature. 1 Bla. 45-46.

Interpretation of laws. 1. Words to be understood generally, according to their most known, usual, & popular signification. Terms of art according to their acceptance among the learned in the art. 5 Will. 293. 6 Med. 43. 4 Bac. 647, 1 Bla. 573. 857.

2. If words are doubtful, context to be consulted - They their meaning may be established by their connexion - Preamble often useful. - So to compare the law with other laws relating to the same subject. (1 Bla. 60. 1 Ves. 365. Palm. 485)

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3rd. Words always to be understood as having reference to the subject matter. Ex. Purchasing provisions at home; (bl. 52.) i.e. nominating the benefits by the Pope. (bl. 52.)

4th. Effects & consequences of different constructs to be regarded. Ex. "drawing blood" in the streets of Bologna. 1 Bla. 62. 4 Bar. 647. 1 Mod. 34.


Plowd. 282. 4 Bar. 647.

Hence arises what is called the equity of the law. (the construction of that wherein the law, by reason of its universality, (or meaning) is deficient.) By the equity of a law is meant a construction, agreeable to the reason & spirit of it. (bl. 54.) 2 Bla. 647.

1 Bla. 62. 3 Bla. 431.) As by enlarging, or changing its letter of it.

Division of Municipal law. 1. Lex non scripta. 2. Lex scripta.

Municipal Law: - Por non scripta

3. Particular laws observed only in certain jurisdictions.
   1 Bla. 63. 67. - These are all customary laws.

Called unwritten because its original institution is not
set down in writing - derives its authority from immem-
orial usage. 1 Bla. 63. 67. Time whereas the memory of man be.
1 Bla. 64. 5.

1st Common law: - This is a general custom (1 Bla. 63. 68.)
called "common", either to distinguish it from other laws, as
the Nat. civil or canon - or because it is common to the
whole realm. - [Mentioned by Edward the Elder after the abo-
lition of provincial customs by Alfred.] 1 Bla. 67. 72.

Common law likeness the other branch of unwritten law, de-
pend for its support on immemorial usage - conunercial reci-
tion, "time whereas the memory." - A usage, to be
immemorial, must extend back beyond the time of legal mem-
ory. - This is dated from the accession of Rich 1. 1372.
(1 Bla. 68. 2 Bla. 31. 2 Inst. 233. 2 2 Inst. 269. p. 16. - D. 1385.)
Municipal Law — Per non scripta

Where is the common law, or any other branch of the common law to be found? — In the records of cases, books of reports, judicial decisions, & treatises of the learned. 1 Bla. 63, 4, 69, 71.

By whom, expounded or ascertained? — By the judges of the 3d. of justice, the depositaries & oracles of the law.

1 Bla. 69

Records of cases, reports & judicial decisions, are only evidence of what the com. law is; not law itself.

1 Bla. 63, 72. Home decisions, often overruled, declared not to be law. 11 Bla. 70.

Precedent is a former decision on the point in question. It is only evidence of law, to be followed unless flatly absurd or unjust. Not to be overruled merely because the reasons on which it stands, are not discovered. — The onus lies upon him who objects to the precedent. 1 Bla. 69, 70. "Stare decisis," is the most important maxim in the law. Bull. 3.

1 East 425.

Testimony of learned jurists constitute another source of evidence of the com. law.
Municipal Law — Per non scripta

1st. Whence did the common law originate? How came it into existence? It was built up, in fact, by us of justice. Otherwise there would have been no customary law — of course, a failure of justice. Obj. Sovereign power wanting. Ans. Secured by acquisition of sovereign power & general usage. Entire branches made since the time of Rich 1st. Obj. Immemorial usage wanting. Ans. Deciding in new cases, an evidence of what the law has immemorially been.

2nd. Particular customs i.e. local usage. There are probably the remnant of those provincial customs out of which the common law was first collected by Alfred, 1 Bla. 74.
Municipal Law — Sex non scripta.

Exception to the above rules in the cases of grave kind to borough, city, or town. Customary, if the existence of the custom is within the one or the other. (1 Bla. 74, 1st 75.)

Law Merchant, called a particular custom, (1 Bla. 186.) not a local usage, but governing particular transactions throughout the realm, confined to them, but not to local custom. (3 Bla. 436, 1st 75.) 2 Bla. 155, 456, 467. (2 May 175.)

Chit. 13. 2 Edw. 27 12 & 13. 2 Kent 225, 319. (Comb. 45. 152.) A branch of the common law. Not not be specially pleaded. (2d 135.)

Not tried by jury, nor proved by witness. (2d 124.)

1222. (1 Bla. 204.) 2 Bla. 187. (1st 187.) (except in new cases, in which the custom is doubtful.) In such cases, evidence of the custom may be received. (1 Bla. 190.)

Chit. 12. 1 Bla. 295. 2 Bla. 653. 72-3. 2 Barb. 1215. 222, 1st 72. 2d 298. 456. 1st 235. (Comb. 33. 169.)

The custom is the law. The custom goes to the jury to prove the matter of fact, i.e. of the existence of the custom. 

To make an inquiry, as a matter of course.
Municipal Law — Sex non scripta

As to the legality of customs. — Must have been
1st. Immemorial (1 Bl. 76-7. Co. L. 113) — 2nd. Continued or un-
interrupted; i.e. the right — inheritance of the possession
only does not destroy it. (1 Bl. 77. Co. L. 114) — 3rd. Peaceable;
acquiesced in; being common consent (otherwise implied.
from immemorial usage) is wanted. (1 Bl. 77. Co. L. 114.)
4th. Must be reasonable; rather not unreasonable. (Ex. case of
putting beasts into common — goods, unless a sufficient
reason can be assigned against it. (1 Bl. 77. Co. L. 62. Lit. 293)
— 5th. Certain — ex. descent, to the most worthy of one's blood
(bod). 1 Bl. 78. (— 1 Kel. 565.) — 6th. Compulsory to contrib-
ute at pleasure, (bod. 1 Bl. 78.) — 7th. Consistent with each
other. Two contradictory destroy each other. 1 Bl. 78. 9 Co. 58

Customs in derogation of common law strictly construc-
ted. E.g. Infant, by custom of gavelkind, may by deed of foot-
ment convey in fee simple, or in no other way. (1 Bl. 78.) He can
not even lease! 1 Bl. 78. 9

Submit to the royal prerogative; as if the king purchases
Gavelkind. (1 Bl. 79. Co. L. 5.)
3rd. Certain particular laws, adopted by custom, and used only in particular courts. Ex. civil & canon, i.e. the civil & ecclesiastical law of the Roman Empire, &c. &c., &c., in the ecclesiastical, military, & maritime, of the University. 2 Bl. 57, 75, 82, 82. 3.

Of ye description of maritime law, adopted in our prize court.

Binding in Eng. by adoption, not on account of any intrinsic authority possessed by them in that kingdom (181, 79, 89). This adoption may be either by immemorial usage in each of justice, or by act of Parliament. In the former case they become a part of the unwritten law of Eng., in the latter, of the written. 1 Bl. 79, 89.
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Whether a com. law distinct from that of Eng. can exist in Eng.?—1. So far as that of Eng. is inapplicable to our situation, we must have a customary law of our own. (Indispensably necessary: otherwise a failure of justice.) That law, incapable of affording a single complete remedy, without the aid of new laws, is an unwritten law (Codification).

Besides of such law, it is only a collection of positive rules; it is not broad enough to reach a vast variety of cases; that municipal law must extend: therefore, Com. L. is a connected principle, extending to all cases:

2. So far as that of Eng. is absurd, or unjust, we may have only of our own. So far we are not bound to adopt the Eng. rules; we ought not. What then is to be done?—No rule in such case?—When inapplicable to our case, we must have a different rule.

Ob. to both the above prop:—Immemorial usage wants ed. Legal memory. Ans. This Eng. rule emphatically inapplicable to our country—merely arbitrary. This date of legal memory was established only 60 years after the accession of Rich I. (2 Bl. 31. n. "Astonishing that it should continue") when a custom 60 years old was good. Why not adopt the rule here, as it originally was, if at all?
II. Of the Lex scripta i.e. Statute Law 131. 85

Some part of the common law derived perhaps, from old Statutes not now extant. 131. 85

The oldest part that now extant is the famous Magna Carta as confirmed in Part 2. 131. 85. This is somewhat different from that of King John. 131. 85. 2. Stat. 1. Eng. 345.
Municipal Law

Ancient Engt. Stat. are bound to be binding here, as far as the common law of Engt. i.e. prima facie as (i.e. p.)

The reason assigned, in the Engt. books, why any of the Engt. Stat. are obligatory upon us is, that our ancestors on their emi-

gration hither, brought with them so much of the law of the parent country as was then extant, as a birthright.


27. 1 W. 75. 2 W. 363.

Engt. Law not being an origination, are not, like

our Civ. Law, at the mercy of the legist.

In some of the States, the body of the Engt. Stat. law has been

drawn to a certain degree, to be consistent with a progressive

set of the laws as they are enacted.

It seems like you consider that no Engt. Stat. since the reign of 4. X. is

enforced upon us, here. The Stat. since that reign being deemed anterior,

infinite above rule.

Of the Several Kinds of Statutes.

1. All Statutes are either public or private; or, general or special. 1 Blaw. 55

Public, one which regards the whole community;

Private, which regards particular persons, & private concerns;

& is in a sort of exception to the general law. 1 Blaw. 85. 86
Lex scripta.

Application of this distinction not always obvious.

Most public laws do indeed, literally be immediately operative on the community; to the members of the state, the whole community. Ex. Stat of friendly usage, limit to do a fret enclining that no person shall do thus or thus or that whoever shall do thus, shall be guilty be.

But in many cases, statute relating immediately & indirectly to a particular class only, are public. Rules of property, if the class of person, to whom a statute immediately relates, amounts to a genus, it is public; if to a species only, it is private. So if the statute regards an individual only. Ex. Stat relating to all mechanics is public to all tailors etc., private respecting all officers, qualified to serve legal process, public respecting all constables, private.

So, statute respecting 1st clearly private. 1 Bl. 56. 4 Co. 76. a. b. 19 Vin. abr. 426. 5 T. saund. 154. 1 Lew. 66. 2 Kay. 120. 391. 455. 639. 12 C. 195. 263. 248

"All sheriffs & other officers" public. "All Sheriffs" Sheriff of the County A. private.
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V. In Eng. every Stat. which concerns the King is public—
head of the body politic. 4 Bar. 640. 6 Co 77. 8 Co 28. 185. Holt 227. Sid 229.

VII. Hence a Stat. giving a forfeiture to the King, (or heir to the State)
of public use, that it concern only a species of persons. 4 Bar. 640. Sid 429.

So a Stat. which concerns the public revenue is public.
laying a tax on all corn sellers.

A Stat. may be partly public, & partly private. 4 Bar 640.

II. Another Division. — All Stat. are either declaratory
of the common law, or remedial of some defects in it.
(1 Bl. 86) — Declaratory declare what the common law is, & always has been. — Remedial of defects to introduce a
new law, by supplying the deficiencies, or abridging the free
exercise of the common law. (1 Bl. 86) — En. of declaratory.

Our Stat. defining the tenure of lands, in fee simple. (St. 225)
III. Statutes implicating a penalty or punishment of any kind are penal statutes. (4 Bac. 450; 1 Com. 414, 415.)

"Penalty," in its extensive sense, synonymous with punishment, broadly stated, is all that, giving higher remedy than the rules of natural justice require. For, however, they operate as penalty. Ex. Double damages. They are not so considered. Stat. 212. 1 R. 314. 1 Will. 125. Sec. 2.

Some action on Stat. 2.

Statutes not implicating a penalty or punishment of any kind are not here usually called remedial. (4 Bac. 650; 1 Will. 126. 7 S. R. 259.)

"Remedial," here used, as contrasting with act not from declaratory, but from penal, and called "beneficial."
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But an action brought by an individual on his own right to recover a penalty is a civil action—cho the law is penal. (Comp. 382. 391. 1 Walf. 125. 2 Yor. 753. 7 Yor. 253. 1 Kent.)

It is a suit between A. & B. not a public or criminal prosecution. Ex. Debt on the Eng. Stat against bribery.

IV. All suits are affirmative or negative—distinguished by their phraseology, i.e. from being framed in affirmative or negative terms. (A Bac. 641. 2 Inst. 700. 1811, 39.)

This distinction seems to be of no practical consequence—the suit is made to proceed on a supposed divinity in a rule of construction.

From what time Statutes have effect.

In Eng. every Stat. commences its operation on the first day of that session of Parle in which it is enacted; (1 Walf. 753. 1 Kent. 529.)

...unless some other time is fixed. (1 Bac. 636. 4 St. 117. 329. 222.)

1 Walf. 371. 19 Vern. 495. 1 Sed. 318. 17th. 234.

Bretactive in many cases. — The rule is now altered by 31 Geo. III. 17. It takes effect from a time of its enactment given.

1 Kent. 529. 17th.

In this country, as I conceive, it now takes effect from the time of its date. (1 Walf. 1 Kent. 420. 1 Sedon. 62.)
Of two Acts enacted in the same session, on the same subject (no time being fixed), neither has priority. (1 Ton. 22, 32; 4 Bac. 636) 6 Mod. 257. That if repugnant, the latter only shall have effect. 19 Ton. 520. The latter seems the better opinion.

In common law, no definite rule is established, but all must have the means of knowing the law, before their rights are affected by it. The decision must at least have stood, before it can take effect. The plaintiff is not entitled to affect from it.

Now, in cases, by statutes passed at the session in 1821, 42 V. p. 258, it is enacted, that all public statutes shall take effect from the passing of the same, especially those which are passed under a general form. The Construction of Statutes.

Construction what. 1 Dow. 6 370.

The rules to be observed in the Construction of Statutes are intended to aid in discovering what the law is; i.e. what is the will or intention of the Legislature.

In the construction of Statutes, especially remedial ones, three points are to be considered: The old law, the mischief, & the remedy: i.e. what the law was, at the making of the act; what the mischief or evil for which the old law did not provide; & what remedy the Act has provided. Construction such, as to suppress the mischief & advance the remedy. 1 Bl. 87. 3 Co. 76.

The first rule, principally important: For the object of the rule seems to be, to discover, from those laws, what the comm
The rules before laid down (pages 232) with respect to the interpretation of law in general, to be observed under this division, viz. That words are to be understood generally according to their most known, usual & popular signification. Terms of art, according to their acceptance among the learned in the art. Being dubious, context is pretable to be consulted. Other rules relating to the same subject to be considered. Words to be understood with reference to the subject-matter. Effects & consequences of different constructions to be regarded. Reason & spirit, especially if the statute is remedial, to be considered.
Sex Scriptae

Penal Stat. construed strictly or according to the letter.
(1 Bl. 88. 4 Bac 351. 3 Co. 78. Leach 107. 8 Mod. 55. Powd. 17)

Cor. Stealing "horses" instead of clergy by Stat. 1 C. 6. - Stealing
a horse; not. (Leach C. 172, 274). But the
rule, according to the true meaning of it, is, that penal Stat.
due to be construed strictly against the subject, not equitably
for him. i.e. 14. A person shall not be adjudged within a
penal Stat. unless he is within the letter of it; the clearly
within the spirit or reason. Here the construction is strict.

2d On the other hand, the within the letter, he shall not
be adjudged within the Stat, unless he is also within the spirit
or reason of it. (Leach 233. 324.)

The spirit of a penal Stat. then may be consulted to take
one out of it, not to bring him within it. He must
be within both letter & spirit to be punishable under it.
(Leach 387. 1 Bank. T. 34. Penal Stat. p. 33. 61. 116. 131. 135. 9
4 Bl. 193. 4 Bac 616. Powd. 17.) Cor. Stat. that "whoever
does a certain act shall be guilty of felony." - Madman
not within it. (4 Bac 649. Powd. 461.)

This rule is derived from the enormity of penal breaches from
account of crimes.
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The intention of the legislature is not, however, to be disregarded in construing penal laws against the subject. (12 Bac. 651. 3 Co. L. 7 & 8 Mod 65. Plow. 56. 4 Ir. 3.)

That intention, if apparent, ought to be the criterion in construing all laws. — Being the law is evaded, to the will of the legislature is the law.

If the repetition of an offence incurs an increased punishment, the offender, not subject to it, unless judgment has been given against him for a former offence of the same kind. — But he must have been convicted of the first before the second was committed; (12 Bac. 651.

1 Hawk. 168. 1 Chit. 324. 670. 685. Dy. 323. Boll. 324. Red. 82. 483)

It is not subject to the additional punishment. For it becomes a strict instance of the decision of Penal Codes. It is founded on construction.
3. The rule of strict construction as against the subject has not been uniformly observed. Ex. By Stat. 25 c. 3 a servant who kills his master is guilty of petit treason. — Killing master’s wife, held within C. (4 B. 637. Rowl. 86.)

Two Stats. of 34. VII. & 35. VIII. made the departure of a soldier from his captain without license felony. — Departure from a conductor, held to be within them. 4 B. 637.

Civ. c. 81.

Penal laws of one country cannot be enforced in another, so as to affect the rights of families in the latter. (Hale 79. 80.) Strictly local. — But the extend to aliens, while in the realm. (1 P. B. 123. 3 P. 733. Kellogg & Co. at Baldwin. L. C. Aug. 1801. 16 L. 28. Vols. 1. 2. 19 & 123.

(3 Comp. 185 & 22d. 193. 21d. 1st. 13th. 1st.

It has been decided in Conn. (Conner v. B., 3d. Conv. 1849.)

A man is not to be deprived of his life by a third party. When a penalty is repeatedly incurred by the continued presence of an offence (as in the case of nuisance, the only

penalty can be sued for at a time.) (Kreech. 2. 201.)


Law & Con. 1st. 1st. 1st.

Sec. 62. 7. 30. 201.

municipal
Statute partly penal, partly remedial - Construction strict as to the former, liberal as to the latter. (2 Boc. 652. Plow. 36, 59
Pre. Ch. 215.)
Ex. Stat. against fraud construed strictly as against offender, literally against the offense,
i.e. to set aside the fraudulent transaction. (1 Bl. 88. 4 Boc. 652
Plow. 57. 3 Co. 82.)

Different parts of a statute construed so as to make it possible, but a saving totally repugnant
to the body of the act is void. (1 Bl. 89. 16 Co. 47.)
Ex. Stat. viol. in the king, the lands of A, saving the right
of B.

The rules of construction are the same in counties of
at law, in equity, or relief. The mode of enforcing the law
is different. 10 Boc. 401. 435. 1 Midd. 2. 106. 107. 1 Bl. 54.
Conf. 1, 2. What sense are both to take.

When common law & Stat. differ, former going plan to
the latter - So, if two Stat. are repugnt. Boc. 637. 641. 2 Corn. 226.
1 Corn. 381. 19 Vom. 511. 4 Mac. 287. 1 Co. 111. 115. 1 Bl. 226.

1 Bl. 89. 2. If latter part of Stat. is repugnt. to
former part; former part repealed as far as repugnt.
(11 Co. 63. 4 Boc. 638.) - These rules are founded on
the supposition that the last expression of the will
of the legislature must govern.
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As every Stat. in its nature repealable, a clause in a Stat. that it shall not be repealed is void. (4 Bac. 635, 4 Inst. 43)

But the law does not from a repeal by implication
in a repeas should be clear. (4 Bac. 638, 11 Intro. 63.
10 Intro. 115, 1 Rob. 85.) to have that effect.

Said that affirmative Stat. do not abrogate the common law. (4 Bac. 641, 2 Intro. 208.
They do if they imply a negative of the Common law. 151. 89. Com. "acting upon Stat." 6.) Ex. Suppose 6 days notice to a draft good at Common law. & a Stat. requiring 12. (Land 252.
How 208) The only sense, whether it is, or is not, consistent it to Common law is of the Stat. either a higher or lower punishment for a given offense than is included in an older Stat. the elder is repealed. (Stat. 202.
But 2026) 4 Bac. 644, 12. 1902, 58. 4 Stat. 8.

On the principle of a penalty that inflicts a lower punishment than the Common law.
10 Intro. 327, 11 Intro. 294, 2 Bac. 2025. 2 How 30.

But if they

2. Bac. 663, 124.
1 Intro. 457.
Municipal Law -- Sec. scripta. -- we construe
the last words ab initio, as the incapacity in which the penal law
affirms that, it is said, does not repeal an affirmative stat. (This rule, said to hold, only where there was
an antecedent, com. law remedy. "An affirmative stat. concerning anything that was not at com. law, implies a nega-
tive of all other things" 2 Show 30.

The Rule arbitrary & unmeaning. -- Affirmative stat.
does repeal an affirmative stat. if it implies a negative of the
old one. i.e. if repugnant to it. 1 Park 89.) Its being repug-
nant or not, decides the question. This discovers the inten-
tion. and the intention of Legislature is ultimately the
criterion, in all cases. 4 P.K. 2 4 Bar 647-8 Ploix 232. 11. 60. 73.
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Stat. repealed by 2 different. Stat. 2 of which are repealed the first continuing repealed by the remaining one. 4 B.C. 43.

If a Stat. which has been repealed is revived, the repealing Stat. becomes void. 2 Inst. 665. 4 B.C. 435. i.e. it is void, it is inoperative. 43.

Stat. repealed — duly done under it, before the repeal, good. Secy., if a Stat. is declared null. 4. What do declared by the legislature? 4 B.C. 635. 4 Inst. 235. Such a rule is arbitrary.


When one Stat. is expressly repealed by another which makes different provisions on the same subject, to continue for a limited time, the former does not revive, on the expiration of the latter, unless the intention of the legislature to that effect be expressed. 3 East 283. The extra clause to be dealt with. The repeal was not intended to be limited to 30 years after the provisions.

General Rule. that Stat. cannot have a retroactive operation. 2 Inst. 665. 4 Inst. 45. 1 Inst. 45. 1 Inst. 45. 7 Inst. 477.
Sex scripta.

But as to civil rights, rule ought to be rigidly observed.

Hence, if a right, after being violated, & before judgment against the offender, is repeated, & a new one made, it is not punishable under either. (1 Bl. R. 464. 1 W. & B. 169. 2 Par. 666.

Roth. 59. ) unless there be a process in the latter. U. S. v.

Treadwell. April 1808. arg'd.) — But the former is made
in Ex. 1. 5 offenses committed in one if repeated. (1 Bl. 464.

But a stat. not essentially retroactive may become so by an improvident phrase, if a covenant to do an act lawful at the time, be made unlawful by subsequent statute. — Covenant annulled (Sall. 195.

1 Pom. C. 296. 6. 1 P. C. 278. 1 Rolle 441. 2 W. & B. 326. 1862.

5 Mt. 57. 374. 5 Bl. 269. 2 P. C. 218. 1 Tindl. 211. All 27. 8667.)

Ex. Covenant to export goods to a foreign, — & then was declared
against that foreign. State — or exportation prohibited.

Contracts (141.) — Here, if a stat. is not

It does not affect retroactively. — It has 5035.

prior act, but merely prohibits a future one.

So if one covenant not to do an act, which is afterward
made his duty by that — covenant annulled. (Sall. 195.)

Ex. Covenant that an apprentice shall not leave his master's service. — By a subsequent stat. he is compelled to enter an army. — Then the annulling or suspending of the covenant is not the object of the law, but the mere consequence of a rule

which legislature has a right to make.
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But if one covenant not to do an unlawful act, and afterwards that makes it lawful, it is not annulled both. 198. Section 1420 is not forbidden by statute. No inconsistency between?

If a contract declared illegal by statute is made while the statute is in force, a subsequent repeal of the statute does not make the contract good. 138, 166, 65. Ex. Late Slade act.

If complete performance of an agreement is made illegal by subsequent statute, still if it can be partly executed consistently with the statute, enforced in part in equity. Slade at law. Ex. Agreement by Dean & Chaplin to lease for 90 years, decreed for 40. (P. 256, 257.) 163. 1 Mont. 259, 211. 3 B. 6, 399. 23 B. 254, 286. 31.

1 P. 448, 450. Ex. cases. (See Contracts, 52.)

This is applying the doctrine of Ex. 326.

So if a literal performance is prevented by act of God.

1 P. 6, 448, 450. (See 256, 257. 259.) (No. 24, p. 1) Contracts 52, 142. Ex. Age to come. House blaze. House destroyed by lightning. Constitution. Constitution with it requires the general statute to be

Constitution of U.S. prohibits ex post facto laws. (I have been imposing the obligation of contracts. Art. 1, sec. 10.) 256.

Herein, it is said, certain laws, whether or not, are not in force, they do not cease to exist, but are only not

Is it requiring what is impossible one of no validity. 1839.

Said that laws contrary to reason or the law of God are void. 3 Co. 118. 3 Rob. 39.

Do the Legislature clearly intended to make an unreasonable or wicked law? As to collateral consequence, unreasonable & probably unforeseen the rule is (1819) if possible, 1 Fed. 23.) That it ought not to construe the act as not to affect any transaction. It is unreasonable. But to extend the rule further, we are to exact count of justice, above of legislation.

Whethere laws opposed to a written Constitution are valid is a different question. They are not. Usage of U. S. Ct. (Federalist V. 2. Page 293. No. 9) cited. 2 Le 143. 147. in consequence of 25 of justice in the last 200. it to decide the question. (U. S. v. Holt, Jr. Washington, in装 at Context 1803.) 2 Bull. 305. 6 Wh. 203. S. C. 321. 158. 4 ed. 316. Bar. 172. 172. 129. 129. 17. 1840. 129. 185.
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General Rule. (When a Stat. enables a C. to do a matter of justice to a party, C. bound to do it in cases, setting within the Stat. 1 May construed as "Shall" in such cases. & indeed in most cases. Ex. Stat. & & & Stat. May authorizing C. R. to award costs to def. in certain cases on information. 4 Keb. 644. 2 Haw. 153. 374. 5 Haw. 113. 1 Sh. 538.

If a Stat. makes a new law, concerning an old offence, & appoints certain particular judges to execute it, jurisdiction of C. R. not excluded. - So if it provide that all crimes of a certain denomination shall be tried by certain judges. 1 Haw. 8. 9. 9 Co. 118. 1 Salk. 564. 1 Mod. 452. 1 Bur. 1042.) - The ancient jur. of C. or of gen. jurors is not to be resisted by implication.

If it makes a new offence & directs that it be tried by an inferior comm. law C. the cause may be removed into B. R. by certiorari de. 1 Salk. 524.) The ancient power left by B. R. of superintending & controlling such inferior courts, being not expressly taken away by such enactment.

If it makes a new offence & establishes a new jurisdiction for the trial of it, done. (1 Haw. 9. 151. 196. 2 Hal. 5. 364.)
...Lex scripta...

...If I say that the jurisdiction of (B) is wholly excluded in this case (p. 815). 2 How. 307. n. 495. 5 For. 7, there is no issue present of it. 44 No ancient control or restraint established.

...by that a special authority is given to certain persons affecting the property of individuals: it must be strictly pursued; it must appear so upon the face of the proceedings. 1 (p. 816): Otherwise, the proceed are void. 7 Those concerned in the resolvers. Ex. Com. 35. of Highway.....

If a Stat enables a body of men to do certain acts, by vote of a majority, it constitutes a certain number a quorum. 7 In whether a majority of the quorum, unless it be also a majority of the whole, can act for the whole? 7 Simb. 745. 7 Such bodies are the creatures of the Stat. I have no other power than are expressly given, or necessarily incident to them. Such power not necessary to their existence, 7 1 (p. 817). 3 Rod. 18. 1 Rod. 813. 10 Co. 30. 1 Rob. 94. 3 T. R. 594. 1 T. R. 570. 822 7 822...
Municipal Law.

An authority conferred by Stat upon two or more persons of course is joint & not severable, unless otherwise expressed; it does not survive. (Post 67, vide Dealing, p.53.) Ex. will intnds last

Sons if the power is of a public nature. Serm. (Psai. 117, 24. 103. n. 442. Co. L. 181. "Swift's" 1. 2. If being then in nature of an office, But if then made con

commodating, &c. to the business or person in a joint situation. Ex. the author of u. Select Men of a town, in Con. a majority can act so as to bind u. town, &c. often.

But if a power of a public nature is given to several, the act of the majority in the execution of it, (all being present) is the act of all. (1 Bos. 229. Co. L. 181. b. Bun. 1017. 1020. 3 Y.R. 592.

In case of corporations (all being summoned) the majority of those present may bind the whole. 2 Atk. 212. 18 Co. 236-7. Concerning Street that it may be.

"Void" in this, often construed "voidable" — often taken in its strict sense. 1 De. 37. 3 Co. 59. b. 60. Cor. Cte. 207. 2 Y.R. 605.

7 Y.R. 310.

It has been said that "void" without more, might be constructed "voidable" — sec. of the word. "to all intents & purposes" was added. — Not the criterion — "Void to all

intents & purposes" has been construed voidable. 2 Y.R. 604.
Sex scripta

[Handwritten notes]

Rule: If the object of the Stat. would be defeated by adjudging the act voidable only, it must be adjudged void. Otherwise it may be adjudged voidable. 1 Bl. 87.

2 N. R. 413. 1855. 1566. 2696. 2. Our Stat. against fraudulent conveyances, void as to creditors. Stat. 217. (355)

Sundry Stats relating to same subjects, all to be considered in construing one. 2 Bl. 66. 236. 286. 1028

Rule of construction the same in equity as at law. remedy or relief (i.e., the mode of enforcing the law) is different. 2 Bl. 458. 4. Tor. 22. 1 Ill. 266. 1 97-8

Doug. 1267. as to construing contracts. 23. p. 1.
Municipal Law

Of Pleading. Statutes &c.

the mode of prosecuting upon them.

Merely to plead a Stat., nothing more necessary than to state the facts, which bring the case within it.

Stat. of limitations: (31st May, 11, 221.) It. of frauds;

("Laws of Massachusetts," etc., and the Act of 1855.)

Telegraph: It is, however, then a plain contradiction, as a

reason, from necessity, or correctness of language.

Further, it cannot appear to contradict the Stat.

Counting upon a Stat. consists in an express reference to it, as by the words "against; the form &c. of the Stat. in such case" made. Do, or by other words, adapted to the case, as "by virtue of the Stat."

Sometimes

Reciting is distinct from both — (that it is specially the case that Stat. are pleaded by reciting them.) Reciting a Stat., is quoting its contents.

General Rule: Of public Stat. judges are bound to take notice, ex officio, i.e. without being set out. Of private, not bound to take notice, unless specially plea
ded. (See 1 B. & C. 4 Co. 76. Cro. E. 236. 12 Q. B. 178. 1803 35.)

The reason of this is, present knowledge of the law is all that is needed in such cases.
In Conn., however, as well as in Eng., if action is to be brought on private facts, it must be set out. Likewise, Conn. law rules privy in this case. If not set out, the cause of action does not accrue in y. dec. 21, 1838, 42 V. 355, 41 76, 1860 57, 2 East, 341.

A public fact, when required to be pleaded, need not be recited. Judges take notice of its provisions, ex officio. Hawk. 2 S. 187, 41 76. [I.e., to recite] Necessary to set out a private fact in order to take advantage of it, in public fact.

Judges take notice of its provisions, ex officio. Hawk. 2 S. 187, 41 76, 10 Co. 57, 2 East, 341. Farr. 125.
Municipal Law.


Not so (it is said), if in an immaterial part. (Bro. C. 376. 136, 522. 4 Bac. 659. The case is tried by verdict. 2d: 241.

But, in fact, generally, if misrecital of a public Stat is not fatal unless the party pleading "is himself up to the Stat" as recited by the words, "contra formam statuti predicti," or similar words. (2nd Ray. 582.)

If the conclusion be, "contra formam statuti," generally, Judges take judicial notice of the true Stat. of Misrecital is a surmouflage. (2 M. & N. 516. 12th Ray. 382.)


This seems to be the case, that, if the misrecital is in a point immaterial. (Doug. 20-2. 2 M. & N. 516.

The effect, then, depends upon the mere act of counting words of Stat.
A note refers to 'A.M. 125' and mentions a 'Protest Act.' There are references to '332' and '356.' The text contains a variety of legal terms and phrases, such as 'plea,' 'order,' 'proceedings,' and 'court.' There are also references to '36A' and '36B.' The handwriting is relatively clear, but the content is dense and requires careful reading.
Municipal Law.

Port public & part private; named of reciting the pub. part, 10 B. 57. 3 Rob. 227.

It was necessary to recite the title of any Stat., nor the preamble, nor body of the Stat. 1 Com. 230. 3 B. 633.

4 B. 655. 656. 3 B. 35.

Ergo: once held, that the misrecital of the title of a public act was not fatal, on demurrer, surplusage.

5 Kaye 77, Hardw. 322.

Since decided conter. 4 B. 658, 6 Mod. 621. The reason is this: "Leg. himself up to it as recited." Sced. En. 14.

The recital of the Stat. is the recital of the Stat., of which it is the effect of the recital, if false, the recital becomes part of the Stat.

The recital of a Stat. where recital is necessary must contain its date, and place where enacted, and the party on whom the recital is made. 1 Com. 281. 4 B. 657.

2 B. 281. 4 B. 211. 19 Pen. 507. 2 B. 232. 474. Comp. 474.

No. 25. Section 8 or Stat. 327. This rule, however, is applicable, it seems, only to private Stat. As public Stat. never require recital.
To declarations &c. on private, not wit. till record may be pleaded. 14 Co. 76. 2 Mod. 57.

Secs. of public. Stats. 14 Bar. 685. 8 Co. 28. 4 Co. 355.

(Note a question of fact) Whether there is such a publ. stat. is not a question of fact. The judge knows it judicially.

General rule: — In declaring upon public, not

necessary to count upon the act. (19 Vin. 503. 1 Bbr. 35.

Earth 382. 4 Co. 601. 1 Com. 230.) Suits to state facts, not

being yca. within it. Exhibiting a town in Com. for want or privy

third, dept. of a highway.

Exceptions:—1. (But) If there be a remedy at comm. law

by Stat. it is said to be necessary — GC 56, not known,

which remedy is pursued. (1 Com. 293. Tu. 584. & Bbr. 13.)

— or rather the comm. law would be presumed to be pursued.

said no Com. support yca.Stat. must be achieved. Not l. law.

2. So, in actions on penal, they must be counted

upon the public, i.e. in all cases in which penalties

are inflicted, & actions or prosecutions brought to
Municipal Law.

recover or enforce them. (2 Hawk. 251; i.e. 82, 6, 25) 116)

3d. If a public that gives a new action, i.e. one unknown
at com. law, is counting upon it necessary, the court
must be required. The court, in countering the action, was authorized
in respect to that. (2d. 33, 2d. 33, 3d. 41)

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The court must be required. The court, in countering the action, was authorized
in respect to that. (2d. 33, 2d. 33, 3d. 41)

in, the action brings unknown. It the com. law, the
time brought to show when the title is known. It
rather, without that countering, he will be required to declare
an act com. law must be here that it will not
time, by that law, he cannot recover the place wasted. In the
into possession of the.

action, or

Where it extends an old remedy to a new case the
general rule holds. (2d. 33, 2d. 33, 3d. 41)

Wrongful
be executed for goods of taker, carried away in his
life time. [Sometime called Stat. 4, book 3, 3d. 41]
Trespass being a com. law action, no new form of
procedure is necessary. The form of already not being actual
by est. stat.

To make the rule, about given, it appears,
not penal.

In actions on public state [beneficial (no beneficial
law) counting, not necessary] no action being
necessary. As if a Stat create a right, negating a duty.

A Stat not must create a right, but
when does not expressly give any remedy, but leaving
the com. law to enforce its provisions. (p. 382, Vol. 212)

The com. law furnishes the action.

For a right of remedy
is given by statute of
just alone, but
by both together.

What want of a
provisions right,
consisting of con-
secutive acts, is at
the law. That act
as a Stat. any the
hours, statute is
in the state, is, to
be enforced by the
leading inside.

To prevent Stat. it is also a rule, that
If one Stat prohibits an act, & another inflicts the
penalty, both to be counted upon, the public
(S. 135, P. 206, 19. Vol. 506, 45. Boc. 655), an offense may be laid in one indictment, as against
com. & the Stat. law. But this is done by different
 counts. (p. 285)
Municipal Law

If a temporary protection statute, having expired, is continued by a subsequent one; it counting upon the law only (4 Oar. 648, 658; 2 Stra. 1066) - that counting the law, the latter only continuing its duration, or renewing its continuance by act or expiration.

The words, "contra formam statutis," may be rejected as surplusage, in an indictment, &c., if the offence is at common law only. (5 Y.R. 159, 2 Hawk. C. 25, 2 Cranch 235, 1 Vart. 422, 16 Johns. 194, 1 Sum. 362, 3 Kent Bag. 471.) 14 Oar. 52.

Exceptions in the enacting clause of a statute must be negatived on a declaration or complaint upon it. (Omission not cured by verdict.) Those in a separate substantive clause need not. (1 Bin. 154, 5 Y.R. 83, 14 Y.R. 141, 2 Boc. 650, 656, 141, 1 Bin. 57.)

Action on Mat. A. 2, 3 Dowl. 129, 4 Plow. 410, Doug. 331, 1 Bin. 114, 6 Y.R. 559, 1 East. 646, 2 M.N.X. 544, 1 Bin. 76, 38. 497, 7 Y.R. 27, 8 Y.R. 542. (Note.)

Hence, p. proviso in such a statute, limiting its prof. to one, may not be negatived, for it does not en- ter into the description of offense; whereas, p. proviso cont. is 141, 1. 05. 643.
In the former case, the exception enters into the description of the right or offence. In the latter matter of defence, 

When there are two subsisting remedies, one at common law & one by statute, as may be (121), either may be pursued. (2 Haw. 312. n. 2 R. 729. 803. 805. 

The statute remedy is cumulative. 

And if the party, in this case, pursuing the statute remedy 

I cannot support his case under the statute, he may, in 
the same suit, resort to the common law remedy & recover, 

if the case is supported at common law. (I. 780. 2 B. 181. 

R. 900. An act to establish ... for 

main statute, rejection or such consequences. 42 

(Statue 26. 1945, 204. § 3. § 4. § 5. § 6. § 7. § 8. 

The act of 1845, 29. § 1. 29. § 2. 29. § 3. 29. § 4. 29. § 5. 29. § 6. 29. § 7. 29. § 8. 

right of action.
Municipal Law

Same rule holds in public prosecutions. (18 Jan. 211)
2 How. 302. 356. 2 H. 138. 2 H. 212. 2 H. 121. (It is worth

consideration that the contrary view is held in England.) The question is

formerly held to be the contrary. (Cont. 6. 231. 307. 97. 5 Co. 99.

2 How. 170. 1 (Page 64 ante) (2 Mc. 149. 5 5 R. 169.

5 Bac. 419. 1 Pet. 421.

[Introduce Section 15.] 5 457

But if that which was no offense at common law, is

made an offense by statute, in a particular mode of proceeding

for it, (a particular remedy) for the punishment for it is, in

the statute described, it is said, can be prosecuted;

but not, in any other mode, if not described in the statute.

4 Bou. 641. 654. 1 Co. 3 644.

4 Bou. 45. 7 Co. 312. 4 1 Mar. 2323. 2 Mar. 803 815. 3 634

6 Mod. 86.

On the statute providing for prosecution by information,

the indictment will not lie. (Ca. 1248) 12 C. 25.

15 B. 203. 204. 12 122. 12 122. 12 122. 12 122.

&c. in the same action,

in the same action,

thus, a statute

in the same action,

acts, of every person that acts a private wrong, to

acts, of every wrong, to be sued for by any

But this rule to be taken with qualifications.
1st. When the particular mode of prosecuting is prescribed in the prohibitory or enacting clause.

2d. When there is no prohibitory clause; as if the State enacts: that, 'whoever shall do such an act, shall be punished therefor.' In these two cases the particular mode must be pursued. (1 Burr. 544-5. 4 Y.R. 205.)

2 Haw. 302. & 2 Bin. 803-5.

In these cases the offence is made to depend on the fact that they cannot be described in a prosecution. The mode of prosecuting is prescribed in the enacting clause of the statute. The statute does not require a statement of the mode of proceeding.

Sec, if the particular mode is prescribed in a separate substantive clause. Then any proper comm. law proceeding may be pursued. (4 Y.R. 205. 2 Haw. 302.) In such cases the enacting clause itself is the enacting clause, and prescribing the particular mode, being a distinct enabling clause, cannot be rendered ineffective by either omission or inclusion of the enacting clause, e.g. (1 Burr. 544.) when the enacting clause, ‘whoever shall do such an act, shall be punished.'

That which is prohibited by law was before punishable, and can be punished by a comm. law proceeding, the comm. law remedy and mode of proceeding may be pursued, the statute prescribing another particular mode. The latter may also be pursued. (3 Burr. 203. 803, 834. 4 Y.R. 202. 2 Haw. 302.)

See note, as a remedy, independent of that prescribed by the statute. If the statute does not provide...
If a Stat. create a right or offence by giving no remedy or sanction; the Com. law will lend its aid to enforce the one & to punish the other, as a misdemeanor. (1 Binn, 544; 2 Binn, 159; 3 Sim., 220. Doug, 425. 19 Sim., 512, 518. 2 Binn, 633; 2 Inst, 55, 74. 6 Sim., 226. 1 Com., 229, 230. 5b.)

Where two such an act, shall be guilty of a misdemeanor (not prescribing any part, burning, or note of post.)

So to obstruct the execution of powers, granted by Stat., is an offence at com. law; the indictment need not be brought, not to conclude "contra formam statuti." (Doug, 425.
Who may prosecute on Penal Statutes.

General principle of com. law: Public offense not to be prosecuted by an individual in his own private right or capacity. The public is the party injured; ergo the remedy is the public. (2 Hawk. 265. Jot. 481. 2. 5. 6. 7)

In Eng. the kings. (2 61. 2)

In Eng. indeed, private persons do prosecute offenders, for the king, & in the king's name - even where no part of the penalty goes to them; or even by indictment - particularly in most cases. Called prosecutor, or informers. (2 T.R. 47. 190. 198. 205. 225. 3 Leach 71. 242.

Any individual may do it even in case of felony (Leach 242.

257. 233. 231. 229. 223. 198. 192. 260. 3 Bar. 562

This practice not allowed here - in some states, I believe.
There is, however, a mixed species of prosecution, partly public & partly private, called *qui tam*, which is an action by individual & there, as wife is in Eq. as in Shade. A *qui tam* prosecution is one brought partly in behalf of the king & partly at the suit of the individual proceeding. (2 Hawk. 284. 4 Bl. 308. 1 B. & C. 37.)—The individual proceeding alone. It is both as well of the king, as statute, as in his own right. The king as such, the suit, is *qui tam*, a suit in part. To call from the words of the Compt. "Qui tam pro domino Dei." 3 Bl. 162. Com. Dig. Action on the C.i.

Prosecution
That are by action or information.

*Qui tam* actions are carried on by civil, *qui tam* informations, by a criminal, process. 3 Bl. 162. 4 Bl. 308.

*Qui tam* complaint, accompanied with a forthwith process, are properly *qui tam* informations. These are criminal proceedings.

But proceedings, it commences as a civil by, 3 G. & S. 4. 4. action.

An action, brought by an individual in his own right on a penal statute, is a civil suit. 1 Camp. 382. 4 H. 756, 758.

1 Wd. 125. 3 Bl. 162. 7 H. R. 257. 1 H. S. 179. 1 Root.
Pop. Scripta. — actions.

Once time bros., but one thing is certain, if the crime be

generally <br>

penal, to recover a penalty, or

forfeiture, of some kind. (4 Bli. 298.)

Indeed, as understood at present, they are treated & considered as crimes of penal status. (1 Bli. 27, 29th. 1 L. 346.)

not known at common law. The action from pro domino, quae quam scripta, was known, it seems, in certain cases, at common law. (2 Hawk. 377. 1 Rob. 191. 1 Rob. 78. 19. 2 Rob. 677. 6 Cr. 360. 361. 532-3)

Popul. act. A popular action is one given to any person, who will sue for a penalty, incurred by the violation of a

Act. Sec. 1st. 7th. 8th. 9th. given to the people. (3 Bli. 160. 2 Bli. 437. 1 Jac. 5. 2)

Dictionary) to anyone who will prosecute.

Sometimes the whole penalty is given to the prosecutor; sometimes a part. (2 Hawk. 265. 1st. 3 Bli. 161.

In either case, the action is called a popular, if it is given to any person, generally. (3 Bli. 161. 2. 2 Hawk. 265. 1st. 3 Bli. 161.

Con. Big. Acton. 1st. 3 Bli. 161.
Sex Scripta

The may have qui tam action in these two cases. Term.

When a Stat. inflicts a penalty against any one for disposing another of his right or interest without appropriation to the one who is injured by the violation of the Stat (not the public or king) shall have the penalty. 3 Edw. 2d cr. 159. Com. B. Action on 12. 17.

Ex. for not settling out titles. Right of suing given to him, by Stat. The form of action is specified, by ex. con. law.

Due tam prosecutions in what cases.

1. If for an offence, immediately injuring even to the public only, a Stat. gives a penalty, ( ) or part of a penalty, to the individual, who shall prosecute for the offence, any person may have a qui

Tam action. Ex. A Stat. against smuggling. gouvern. law should time to, make prosecute.
2. If a statute is to be considered as an act of the parliament, & to be
for the benefit of the king, or public. (1 Bot. 37. 2 Hawk. 265. fol. 377. 378. Oxford
427. 3 Com. 318. 4 Co. 13. Dy. 95. Com. Anon. 1 Stat. 6. 1
In this, the right gives an interest to him who shall
enforce it. (Lut. 26.)

But when a statute is to be considered as immediately injurious to
private individuals, or as giving a private
right of action to any private
person, it gives rise to an
action for the benefit of
such individual. (1 Bot. 37. n. 2, Bot. 234.
2 Hawk. 265. fol. 377.)

In the case of private individuals, the right of recovery is
entirely in the private individual or in the
crown for the benefit of the crown, under the statute. The crown
for recovery is given to any private
person, without the right given.

3. If a statute is to be considered as injurious to an individual, as well as to the public, & expressly gives
the individual injured a right to bring an action,
the right of action is given to him. (Especially if the
king or public is entitled to a fine.- If it seems, the no
fine is given to the king.) (1 Bot. 37. 1 Com. 223. 9. 2 Hawk. 377. 4 Co. 13. 4 Co. 134. Dy. 195. 6 Co. 134. 3 37. 15.

Ex. Stat against scandalum magnatum.- If it is
should prohibit private revenge. If it be so.

This statute is intended to prevent the use of violence to the point against.
Sex. scripta?

If a stat. expressly allot a penalty to the party grieved by the offence, he may sue for it, without joining the public. (1 Com. 51) "Action upon Stat.," 1187.

So, I conclude, may any one, where the whole penalty is given to the person, etc. 2 Chit. 187.

In Conn. actions qui tam are brought on the Stat. against forgery, perjury, theft, breach of peace, &c. (2 Com. 188.

Generally, when a fine be is given to the public or king, &c. a civil remedy to party injured by an offence, the fine is inflicted, of course, on conviction in the civil suit, as the capitation for fine, at common law, in Br. pages 506. 636

Carth. 390. 220.

But, according to our practice, fine is not inflicted in such cases unless the party in the civil suit may recover it. (1 Stat. against defamation, breach of peace
(Stat. 41, 336-7.), perjury, suit, &c. (Stat. 529) and it is where done of late, in my case, I believe.
Municipal Law

If no form of action is prescribed for the recovery of a debt in a case, the most usual action is

[Redacted text]

Decided to be a proper action in Conn. in an action (on the

[Redacted text]

If a penalty is given by Stat. partly to the king, & partly to the prosecutor: the king may prosecute for it.

[Redacted text]

A bona fide conviction on a qui tam prosecution, by action or information, is a bar to any action by another in a public prosecution.
the
dependency of a qui tam action &c. may be pleaded.
It is said "in bar" of a subsequent prosecution,
(See in Law or statement § 2) 1 Bac. 41. Crook 261. Rot. 269.
(1 Rot. R. 49. 134.) Dr. In bar, a abatement?
In abatement. 1 2 Hawk (275), fol. 3 Bac. 1423

Note: A suit, is considered as pending, from the time of
the purchase of the writ, not from the time of action
merely. (2 Wack 275 or 391, Crook 677, Bac. 11, 3 Cro. 48 a.
3 Bac. 1423.) vide Hall 39, 7 Cro 30 a.
In Conn. from the time of service. I believe. (Case of
Tindall in Colling County. "Pleas & Proclamations." 1, 2.

I swear, according a penalty, or sum of a penalty, to give
Under a penal statute, giving it to any person, who will
not produce his any
See for if there is any right attached in him, under the
Act, till action brought. (1 Bac. 37. 2 Hawk. 391, fol.
3 Inst. 194. 2 W & Bl. 310, 311. 2 Bl. 437. 2 Oce. 141. Ros. 1169.
3 Bac. 1423.

Power of a remedial Act. (1 2 Hawk 341.)
Municipal Law

But by commencing an action to acquire an indeterminate right not consummated till judgment is given, the action lost. The penalty, like property unoccupied, in a state of nature. (2 Bl. 437)

Hence, the king may bar the prosecution, by releasing the whole penalty, or by a pardon, before the action is brought. (2 Yau. 275 = 392, post. 3 Inst. 194)

But after action is brought, the king can release only his part of the penalty. (2 Bl. 437. Cr. 3. 195. 11. Co. 65. 4. Boll. 82. 3 Inst. 194. 1 Rom. 229.) For a right of recovery is attached to the process by the commencement of the suit.

Nor can the court in any way discharge or suspend the suit, as to the other party. (2 Yau. 275 = 392. 229)

The parliament, it is said, can release the whole even in this case. (2 Bl. 437.) But on the whole rule excepting the law, the legislature could not do it in any other way.
sex scripta

But it seems that the king cannot, even before action brought, bar the suit of the party grieved by the offence, where the penalty or part of it is given to him: for as to him, the statute to a certain degree, at least remedial. (2 Hunk. 376 = 392, 374. 4th. My. 1001. Illno. 55.)

His right is antecedent to the action brought.

2 C. 311. (part 55.)

The prosecutor in a popular action, it seems, might also at common law release his part of the penalty after conviction. (2 Hunk. 376 = 392, 374. 4th. My. 1001. Illno. 55.)-2 actions in the common judges, be of common, for this reason, that it is then not conclusive, or ascertain'd.

But, by Stat. 4 Geo. VI. no conviction recovery in a popular action, shall be a bar to a subsequent action so brought by another individual: and no release pending the action, shall be of any avail in such cases. (2 Hunk. 376 = 392, 374. 4th. My. 1001. Illno. 55.)

Would not a conviction recovery or a conviction release be void at common law? 1 Bur. 305. 3 Co. 77. Vin. abr. 46, "vacat."
Municipal Law

And by Stat. 18 Eliz. he may not compound the prosecution at all, till after answer made in Court, nor then without leave of the Court, on pain of the pillory to be
1 Edw. 13. 2 Edw. 397. 1 Bo. 1 & D. 15. 5 Eliz. 48. 167.

It is discretionary with the Court to grant a case leave to compound. Bow. Rob. 14 Edw. 3. 26 Eliz. 2.

On a true sealed writing, the King's right to the composition is to be held into Court 4 Edw. 7. 1 Bo. 1 & D. 15.

The King's right to prosecution would not at common law, bar the king's right to prosecute as if given after conviction (see 1 B. 1 & W. 1. 30 Edw. 3. 26 Eliz. 2. 2 B. 1 & W. 1. 26 Eliz. 2.)

The King's right to prosecution is to proceed on a sealed writing. If given after conviction.

Suppose the prosecutor practises fraud to defeat public prosecution; as by delay, that the Stat. of limitation may bar it, and then with drawn: would not he be punisheable as for a misdemeanor?

If, in a popular action, dies, relents, with draws, or suffers a nonsuit, public may prosecute in it, or continue a new prosecution. } 2 Bank (278 & 392. 3)
Sex Scripta

11 Co. 65. b. 66. a. 5 Co. 48. b. 3 Pl. 62.

But where the acting is given to the point proved, the
bing gis, the whole act is shown, the king cannot proceed in it.
2 Lord. 322. 3. (275. 84.) (S. 2. 107.) In the right hand
of the master cannot go to the king, nor can the king present
for the representation of the decree.

If two are convicted in one case, when a two
be dealt with, as two are in some cases in fields;
no one only one.

Rule: - At common law, two in their nature, see;
which cannot be deeded to two persons of course.

Case 1: Where a penalty is given as a result of
a new law, the old Co. 3. 40. Sec. 182.

2. Where no new law of the State, a single
penalty a person to have been committed, Co. 3.
78. 4. 20. Sec. 28. (1767.) He, however, the king shall put such a law.

Case 2: However, one and one law to be corrected,
new law, the same day, one law, that being one law
Act. 2. 4. 177. (1772.) He, however, law, the law, one law.

Case 3: Where no new law of the State, a single
one to be convicted, the law, one law.

Several acts may constitute but one offense: Only
one penalty in such cases. Ex. Labouring for a whole sal.

(Com. 3. 40.)

Any number of continued acts may constitute but one
offence, if done, that same, in such a case, not one law.

(Com. 40.)

Distinction in common acceptation between penal-
by. 4. 20. 40. 20.

3. The state, more

Continued,

Com. 3. 40. 20.

And the language of it, that it contains
state has thus a single, and the same, if a single
at conviction, that the same, it publishes the same law, the
of. 20. 40.

To 20. 40. Patient, it is intended by a multiple written.
In popular actions, plaintiffs in England entitled to no costs, unless expressly given by the State. Seeing when the penalty is given, to the party wronged, the remedy:

*In re cond. for making done & Inter. 2nd & 3rd.*

1) 1st Fl. 511, 519, 2nd Fl. 791.
2) 2nd Fl. 206, 2nd Fl. 274, 1st Fl. 19, 200, 17, 201.

In Court, the defendant always recovers cost, when plaintiff wins. But if he loses cost, it is apportioned.

**End of Municipal Law**

Written by...
Of the Rights of Persons.

The subject matter of municipal law is divided into two general kinds: (Rights & Wrong) (1 Bl. 122. 3 Bl. 1.) The object is to guard & enforce the former, & to prevent or remedy the latter. 2 Bl. 1.

 Necessary that rights be first understood - wrongs being but privations or violations of rights. 3 Bl. 2.

Rights of two kinds: 1. of Persons; 2. of Things. (Wrong also of two kinds: Private, & Public. 1 Bl. 122)

Persons as contemplated by municipal law are of two kinds: 1. Natural. 2. Artificial. Natural are human beings considered in their natural capacities: i.e., formed by the God or Nature. Artificial are such as are created by the law, i.e., called corporations, or bodies politic. E.g. Cities, corporate towns, or societies - & other incorporated companies. (1 Bl. 123. 467.)
Rights of Persons.

These derive their existence from the act or charter of incorporation. Created to maintain a perpetual succession, for the purpose of perpetuating certain particular rights. (1 B 1. 457.)

Of the rights of persons, considered in their natural capacities.
These are of two kinds: 1. Absolute. 2. Relative.
1. Absolute are such as belong to individuals, considered as individuals, such as belong to them even in a state of nature. (1 I. 123.) These constitute what is called natural liberty. (1 I. 125.) These rights (so far as their enjoyment is consistent with the preservation and welfare of civil society) are enforced by municipal laws. (1 I. 123.)

It is obvious, then, that absolute rights cannot appertain to artificial persons. Since they derive even their existence, of course all their rights, from the institutions of civil society.
Right of Persons


1. The absolute rights of persons are the principles of law which relate to them, being few & simple (181, 124-5). I shall treat of them very briefly, giving only an outline of the law on the subject & referring to Black's Law in the head of wrongs. (181, 134) For a more particular discussion of them, (181, 134).

1. The right of personal security consists in the right of enjoying one's life, limbs, body, health & reputation. (181, 129)

2. Personal liberty as here used consists in the power of locomotion, i.e., of removing one person from place to place, without restraint, except by due course of law. (181, 134) The right of personal liberty, then, consists in the right of locomotion to.
Rights of Persons.

3. The right of private property is the right of using, enjoying, & disposing of, any acquisitions, without control, except by the laws of the land. 1 Bl. 138.

The right of private property is founded on natural law, its modifications by the tenure, by which it is held, & the method of preserving & transferring it, are derived from society. 1 Bl. 135. 2 Bl. 3. 8.

II. The relative rights of persons are those, which grow out of the relations of civil society, or such as belong to individuals, considered as members of civil society. 1 Bl. 129. 146.

The civil relations from which relative rights result are either public or private. 1 Bl. 146.

1. As to those relative rights, which arise out of public relations, see 1 Bl. 146. & Allow. End of government & govern. ed. magistracy & people.
II. The private relations from which relative rights & duties result, are the four following:

I. That of Husband & Wife
II. That of Parent & Child
III. That of Guardian & Ward
IV. That of Master & Servant
Of Husband & Wife

1st. Of the rights & duties resulting from the relation of Husband & Wife.

Marriage regarded by some law from own as a civil contract. [181, 433.] - Husband & wife are regarded as but one person in law to many purposes. [181, 422.]

Of the consequences of marriage as it respects the husband's right to the wife's estate.

The general principle, by which the law, as to this branch of the subject is regulated, is founded on the husband's duty to maintain & protect the wife. His estate as is sufficient property so far as his to enable him to discharge this leading duty.

1. Of wife's personal chattels in possession.

*) In the case of personal chattels, absolute, vested in the husband by marriage. [281, 485.]

*) In general, 

The form & requisites of contract will be considered in connexion with the mode of dissolving it — viz. law of divorce.
The right to use.

He may dispose of it at pleasure, & may beguile it.

1 B. 289. 60. 256.

If he die intestate, before the wife, it goes to his executors. 1 Com. 555. 1 B. 289. Co. L. 351. b.

But he has no beneficial interest in personal property, which the wife has in her own right, of what she holds as ex. 1 Co. L. 351. 1 B. 289.

So also, husband is entitled to the personal chattels of the wife, acquired by her during coverture. 1 Com. 555.

1 B. 290. 290. 115. (post, 53.) Ex. Legacy.

To the avails of her labour. 1 B. 290. 292. Ch. 127. 114.

II. Of wife's personal property in action, or choses in action.

Of this husband may dispose at pleasure. 1 B. 289. 582. 556.

But reducing it into possession, or some act of own.

ship necessary during their joint lives, to give husband an absolute title: otherwise it coming to her, on his death.
Wife's Chores in Action. cont'd.

A right to...

And would go, it is said, to her representation (regarding) on her own death: but for the Stat. 29 Ch. 11 infra sc. 183, 185.

1 Rol. 362. Moon. 352. 3 or 2 Med. 186. 2 Bar. 425. 1 Bar. 289.
1 Shaw. 25. Chit. Pl. 21. 2 Bl. 435, 437. 4 Bl. 174. 3 Ch. 273. 4 Ch. 273. 1
Bar. 12 Sci. 3. 7. Sec. 26.

He long all title in this case as husband. (2 Bl. 434-5) Sec.

But by Stat. 31 Ed. III. 1 29 Bar. 11. (2 Bl. 436) he may take it as administrator. Chit. Pl. 21. 2 Ve. 431. 4 Tol. 434. 473.

Not liable in Eng. to account to her representation.

By Stat. 31 Ed. 3. Administrator in case of intestacy, in general, was given to the next friends, who (in case of wife's dying) were construed to be her husband's residvum. (1 Rol. 324. 4 Tol. 34. 4 Tol. 11. 4 Tol. 44.)

I Tol. 324. 4 Tol. 34. 4 Tol. 11. 4 Tol. 44.

"Administer" in case of intestacy, in general, the right of representation, in case of intestacy, in general, not liable to account.

To such right in C. 166 such right in C. in case of intestacy.

And where it is held that such right in C. of intestacy, in case.
Wives' choes in action. Cont'd.

A settlement by husband on wife said to be an absolute purchase of her choes, so that he not only has them if he survives, but if he dies first, they go to his representatives. (Pr. Ch. 63. 312. 412. Re. 206. 2. Ver. 591). He is considered as a purchaser of them, by the settlement.


But, how is it a sale? The wife is an agent, not bound by their acts. (Pr. Ch. 209. Not. Ch. 41. 2. Ver. 40. 2. Ver. 54.)

If the settlement is made after marriage, it is not a sale; it is not a purchase. At least, not of the whole. (Ch. 2. Ver. 243. 3. Ver. 438.)

If both parties are intestate, it is a joint tenancy of the judgment. (1 Mod. 179. 336. 187. 189. 1 Bar. 245. 1 Ver. 396. 1 Com. 555. 557. 337. 1 Com. 578. 579. If there is no judgment, evidence must be given of intention to treat as an intestate joint tenancy.)

If either dies before collection, i.e., absence in the will, installment in the will, assignment in the will, annuity, interest in the will, and in the will, annuity in the will. (Pr. 1. Part. 1. Ver. 245. 3. Ver. 396. 1 Com. 555. 557. 337. 1 Com. 578. 579. If not in the will, then assignment in the will, assignment in the will, annuity, interest in the will, and in the will, annuity in the will.)

The estate is given to the husband's representative.
Husband & Wife.

A contract by which one is bound to the other to pay money to the other is subject to his control, not to that of the party receiving the money, so it becomes payable, but cannot discharges * 19 East 237). For the debt gives the one nothing more than an authority to receive of money: this she may do as per her contract, by her consent.

III Of wife's Chattels real.

Chattels, such personal property as are of the nature of estate in land and * 1885), as long as years, mortgages, &c. (2 Bl. 382).

Over them, husband has no more extensive right than over her choses in action.

The chattels real of these are liable, during their joint lives, for payment of his debts, inaction are to be taken in execution, choses not so. (1 Com. 555, b. 2, c. 46, s. 351, 1 Roll. 341, 9. 63. 4, &c.) For such chattels is a kind of property liable to exceed to husband in joint lives, legal. It is 63. 5.

husband is or possessed of wife's right, joint interest continuing in her, unless by his nonsense of it. 68 East, 11, 112. 12. 2 Bl. 344, 5. Athen 693, 3 9, to 127.

1 Roll. 344, 1 Com. 554.
Wives Chattels real.

Go to survivor. Husband has right to dispose of them absolutely, during joint lives. (D.C. Ch. 418. 2 Bl. 234. 6th 4. 36. 6.)

Considered as quasi joint tenants (Cod. 357. 6th 5. 10.)

But by act executed, during their joint lives, husband may dispose of them - to vest in possession after his death.

For, since not a right of future enjoyment passes instantaneously (Cod. 2. 57. 1st 3. 24.) so that the transfer comes within the description of a disposition during lifetime; being adverse to no interest in the estate of another.

I.e. legally, he can dispose of them.

For, she is not liable for husband's debts after his death (1st 3. 24.)

To the extent of two years' continuance of marriage; after the death of the survivor. But he, who has made her subject to his debt, is also subject to hers.

Nor in Eng., to her creditors, if she dies first.

For, she is not a joint tenant of a chattel real, merely by demise, she being the whole going to the other tenant. For title is prior to the survivor. (D.C. Ch. 3. 2nd 4. 10. Co 2. 5.)

But, if she dies, during continuance of marriage, to vest in her entirety by actual possession. If not, the survivor.

The heirs are, during continuance of marriage; not personal.

For, the interest passes to her, as soon as to vest in possession after his death.
Husband & Wife

during coverture, he may assign them, even inequitably, without consideration. (2 Coh. 294-301. 1 Bl. 7, 15. 16. 305. 396. 399.) For the legal title is at his disposal, and chance cannot control the right to dispose of it. (5 Coh. 467.) He is under no necessity of wanting to sell, to enforce his title to possession.

IV. Of the Wifey’s real estate of inheritance.

Real estate. Husband has sole usufruct during coverture. Cannot, by force, devise at common law, alone. It being necessary to enable descendants, if he dies intestate, or if he marries again, to support his family, or to provide for his creditors. (1 Bl. 236, 380. 1 Bl. 25. 11.)

1 Bl. 236. 2 Inst. 510. 1 Bl. 236. 10 Co. 42. 3 Bl. 183.

Nor can husband & wife, by their joint act alone, convey inheritance, except by fine or recovery. (1 Bl. 391. 2 Inst. 515. 1 Bl. 244. 3 Bl. 689, 690.

See Stat. of Conn. (1 Bl. 245.) It may be done by their joint act. (1 Bl. 444.) In NY, she being probably examined, as to a burden of her act.

By Stat. 32, Yor. VIII, husband & wife are enabled to make leases of her fee simple, or for tail for 3 lives, 21 years.

(1 Bl. 390, 319. 3 Bl. 22. 378. 5 Co. 22. 2 Sam. 180 b. 4.) Such leases are, therefore, valid during the term, though w'h. w. d. die before their expir. of it.
Wife's real estate

...right to use... if husband grants larger estate than for his life, in wife's... they... land... no forfeiture of in other cases... tenant in possession... (2 Bl. 273, 274, 9 Co. 120; 2 Scob. 681; Co. L. 326.) For the convenience... she to... estate during his life... and, if forfeited to her, she... estate... immediately... attached to her...

But it will enure only as a grant for his life, at most, possibly for life; as the wife may die, she must be entitled to curtesy. (2 Co. 304, 2 Co. 320.) It has been... circumstances, where... entitled to... has... death... and... it... property... not... grant... not being... for services.

In his lifetime, the real estate.
On his death, jointly solely in the bar. On her death, the... vest, in her... but husband, in case of child born... estate... capable... an estate for life in the whole of which she died seized, by curtesy of Eng.

(2 Bl. 128, 6th, 35, 52, 1 Bar. 650, Co. L. 30.)

Mortgage, 32.) She is entitled to... in the world's capacity of re-... to the... estate... it is only an equitable... the... cannot be actual... (2 Bl. 128, 35, 52, 6th.)

In good kind... husband has... without having issue. (2 Bl. 128, Co. L. 30.)

Co. L. 3, 432.

Our tenure... according... to good kind... This kind of... act... adopted here. But... under such circumstances... been... allowed here.
Husband & Wives

The right to cut in is a remainder a several.

To cut in to cut in, the remainder must die first.

The survivor of the wife must be actual, not merely possessor.

2 Bl. 127, b. 2129, except in case of some incorporeal hereditaments.

But it has been determined in fact, that actual possession is not necessary. Thus the right of dower is not extinguished by

First, the right to cut in, the marriage must be legal. Issue must be born during the life of the mother (8 Co. 35, 1 Pan. 669, 666, 3 Kr. 263, 2 Co. 30, 2127).

By the birth of issue, husband is tenanted by the crown.

The issue is to be consummated by the wife's death. 2 Bl. 25, 2 Co. 30.

Sought by custom in some. Decision 25 or 30 years ago.

Standing only during minority of the issue. But husband not entitled in favour of collateral heir. In late decisions. Usage - late decision contra, i.e. that husband should hold by the custom during life.
Wife's real estate.

It is the custom in many places to make provision for the support of the wife during her life, in the event of the husband's death, by creating a life estate in the wife, which vests in her during her life and reverts to the husband at her death. This is known as a life estate in the wife, and it is a means of providing for the wife's support in the event of the husband's death.

The husband is entitled to the income from the real estate during his life, and upon his death, the property reverts to the wife, who is then entitled to the income from the property during her life. Upon her death, the property reverts to her heirs.

If the husband and wife own property jointly, they are each entitled to one-half of the property during their lifetimes, and upon their deaths, the property reverts to their heirs.

In some places, a husband may be required to provide for the wife's support in the event of his death, by creating a life estate in the wife, which vests in her during her life and reverts to the husband at her death. This is known as a life estate in the wife, and it is a means of providing for the wife's support in the event of the husband's death.

The husband is entitled to the income from the property during his life, and upon his death, the property reverts to the wife, who is then entitled to the income from the property during her life. Upon her death, the property reverts to her heirs.

It is important to note that the laws governing these matters vary from place to place, and it is advisable to consult with a local attorney to determine the applicable laws in your area.
Husband & Wife.

Husband cannot, by his dissent, defeat a gift to the sole & separate use of the wife. -- Tho' he may, in common purchases. (Co. L. 3 b. 356. 1 Bar. 303. 1 T. P. 556.

But where the interest has been vested, no dissent can defeat the gift. -- Co. L. 356. & 2 T. P. 272. 5 Co. L. 318. 1 T. P. 103. R. 241. 3 T. P. 293. 6 T. P. 334. 1 T. P. 245.

After death, the spousal interest is to pass per stirpes. 6 T. P. 30.

A transfer in the lifetime must be by deed. 6 T. P. 38.

But property real or personal may be given directly before marriage or after by husband or other. (1 T. P. 126.

2 T. P. 179. 3 d. 1. 1 T. P. 270. 5 T. P. 434. 3 T. P. 618. 2 T. P. 655

1 D. E. 444. 1 T. P. 94. 21 T. P. 1525. 3 T. P. 95-95.

And a wife's representation have at same right as other co-owners. She does not lose by her election to dower. If she refuses the portion, her interest passes, by statute, during her lifetime. 3 T. P. 264. 2 T. P. 272. 3 T. P. 293. If she cannot bind? A wife has been held, that it is a joint issue, if absent. The interest passes by her interest to the issue of the husband in her marriage. 2 T. P. 95.

1 T. P. 17. 2 T. P. 270. 2 T. P. 1221. 2 2 T. P. 345. coll. 6 T. P.

3 T. P. 112. 6 T. P. 29. 1 T. P. 18. - 2 T. P. 94. On what point?

2 T. P. 94.
Husband & Wife.

I. In Eng. & Conn. (under the Stat of distributing) if husband die intestate, leaving issue, his wife has one third of his personal property absolutely.

If no issue, one half + debts of husband being first paid.

II. Dower. In com. law (S. 11. § 31) wife entitled to life estate in one third of all the husband's inheritable estate, of which she was seised at any time during coverture & which any issue, that she might have had, could have inherited. (2 Bl. 129. 131. S. 11. § 36. — Vid. Est. for life.) — This life-est. is called dower.

Husband cannot, by alienation, bar him of this right. 

The must yein in a judicial conveyance. 

At least cane 1st. 2d. 3d. 4d. 

In what est. 

having coheir's 

interest to proceed. 

She must join in a 

line of descent. 

In S. 4. took S. 5. she may lose her right by 

confessing. 

S. 3. Bl. 3d. 


Real est. 

From.
Husband & Wife.

She is entitled (not having failed herself as before),

Any issue which she might have had, could not inherit.

If any issue she might have had, could not inherit.

Done in special case. (2 Bl. 131. Litt. sec. 53.)

First Marriage Indict. 1821. Sec. 11 & 12, 1650.

But she must have been the actual wife at the time of his death. — At common law, Divorce a vinculo takes away the right. (2 Bl. 130. 7 Co. 90. 5 Co. 95. 1 Bl. 68.)

Divorce a mensa et demoura not. (Co. L. 32. 33. 2 Bl. 130. No. 108. 6 Co. 463. 9 Co. 19. 3 Co. 127.) For the marriage is not destroyed by such a divorce.

If husband dies before the age of consent, wife still to be endowed. (3 Co. 128. Co. L. 33. a. 42 a.)

But she must be above the age of 9 at husband's death (3 Bl. 131. Litt. sec. 36. Co. L. 33. 3 Co. 128.)

Wife has done the same act at the marriage. (3 Co. 128. Co. L. 40. a. 1 Bl. 675.)
p.64. De la force solaire huit première