Origin Hans Seymour?
Real Property (No. 19).

Devised.

This is the last mode of alienation which I propose to consider. This title comprehends a great variety of

A devise is a mode of alienation, & is a testamentary disposition of real property for $13, or a disposition of real property to take effect during or after the death of the owner.

The term "will" includes generically, the disposition of real & personal property.

A testament is a disposition of personal property to take effect on the death of the owner.

A will in its strict sense is the appointment of an executor, or it is not necessary, will to a will that any property be disposed of. If to the appointment of an executor, it is the disposal of personal property, the instrument is called a "will & testament."

The right of devising real property $13,$7,7, is said to have existed among the Anglos, but was abolished entirely in the feudal system for the same reason which operated to prevent alienation inter vivos operated to prevent alienation by devise.
Terms for year and estate were granted, as well as personal property might have been devised during the feudal system.

In whether a term for years could be devised be nova or created de novo by devise.

The suspension of the right of devising real property continued to the time of

3.

2.16.375

2.

236.

by the doctrine of uses, however during the

236.

3.

32.

32.537

3.

4.

216-216.

216-216.

216.

216.

216.

216-216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.

216.
Devises.

Certain modes of making devises were provided by 29 bar D. the st of friends & free men. This st provides the solemnity necessary to a devise.

Our st authorizing devises is similar to Henry 8. but extends the right further. the words of our st are "all land & other estates" may be devised by devise in writing. The expression in the revision of 1821 is that all persons at least of the age of 21 of sound mind to shall have power to dispose of all their real estate We have also a st similar to the devising clause in 29 bar D. therefore at least constructions given in England to these estates 28 32 31 35 are generally considered here as law.

The power of devising then in Eng. 76 77 78 depends on the st of devises 32 Ben 8th as at 2 Acl 376. planned by 34 & 35 Henry 8. of the mode is regulated by the devising clause in 29 bar D.

The power of devising in this state depends on a statute similar to that of 30 31 32 Conn 32 & 31.

And the mode of making devises depends upon a statute similar to 29 bar D. st bond. 33 31 32 34 35 onward. —
Devises under the Statute of Frauds.

A devise under the 1st. Hen 8, is called an 'irregular instrument in writing.'

This it prescribes nothing except that

"Doth require the devise to be in writing. Hence under this

Saying 12-14 it was determined that any writing

manifesting an intention to make a testamentary disposition of real property if not contrary to the rules of law should be considered a devise. An intention contrary to the rules of law cannot be affected even by devise, as no intention to create a species of estate unknown to the law,

An instrument then in the form of

45. 3. 6310 a deed and the actually delivered as a deed may

yet operate as a devise; if it appears on the face of it to be a testamentary disposition

Balden. Yet as I remarked on escrow if a

casting day, deed is delivered to a third person purporting to be a deed in present: the to be done on the death of the grantor they will be no devise but an escrow. To make such instrument a devise it must on the face of it appear to vest the property

in the death. Or again a devise may be written at different

times on different sheets of paper which need not be

all connected together. All these will constitute

an devise if such appear to be the intention

of the testator.
And one may make several devices, dispositions of the same subject in different times; the same subject at different times.

There is devise land in fee simple, to A. afterwards he devises to his wife a life estate in the same estate; this last is a revocation of the first devise pro tanto; it is the same in effect as if he had devised to wife for life remainder to B.

And where there are two successive testamentary instruments, the latter may annul, restrict, modify the former for in devises the last clause governs; the last devise takes effect in preference to a former one.

And a devise may by referring to another devise make that devise a part of itself for the purpose of explaining the testament's intention. As I devise all the land described in a certain deed. This deed being, secondly, a part of the device for the purpose of ascertaining the land, etc.

After a devise is made and published, the testator, by will, may make any number of codicils, by which he may explain, alter, to the original devise, the law annexes the codicils to the first devise, making them all one will, an instrument. This supposes that the codicil refers to the will.

A codicil is an appendage to a will, restraining, altering, or adding to the codicil, usually relates in whole or in part to the same subject matter as the original devise. If it does not in substance it is no codicil.

A codicil always supposes a previous will, the law in itself already executed. If one to day makes a devise of one piece of land, tomorrow of another piece of land, these instruments are distinct devises. If the latter cannot be called a codicil.
Device unduly. In the construction of 32:48 it was held that every devise must be entirely in writing but the word writing was used in its most extre
more sense as including loose notes, memoranda, letters etc.

It was likewise held that the devise must be completely reduced to writing during the devisee's life otherwise not good.

And it was determined that a devise might be good in part and in part void (as if the direction to the scrivener from the devisee was to make an absolute gift & be without authority annulled a condition. The condition only was void & the gift good). This indeed may now in some cases be law? And the same w' be the rule now but if the scrivener was directed to make a devisee on condition & it was written without condition it was held that the whole devise was void. This case is undoubtedly now law.

And under the 32:48 it was held that any writing that neither signed nor sealed & the in the hand writing of another yet of one willing could be found to affect such devise. Such writing was a good devise. And it is said that the testator's name need not appear at all in the writing.

A devise to this effect occasioned the devising clause in the 29:6 29:7 will probably the solemnities necessary for a devise.
WHAT INTEREST OR ESTATES ARE NOT DERIVABLE.

It was formerly held that contingent interest 3. Sec. 427 could not be devised as a contingent remainder 4. Sec. 291 device.

The principle of this rule was that as a devise was a species of alienation & since these interests could not be alienated to the judge held that it could not be devised.

But it is now clearly established that 186. 222
such interest may be devised as a contingent 144. 103
remainder before the contingency happens may be 185. 6203. 19 devised & upon the contingencies happening the devise may take effect. 425. 245.

But a naked possibility cannot be devised as a contingent power over another's
land — for such interest cannot be devised when not 600. 584. 48.
contingent. But on the other hand a contingency not coupled with an interest is not derivable.

that is a bare authority depending on a contingency over the estate of another is not derivable — indeed a bare authority is never derivable except by express provision in the instrument, creating the power.

An estate turned to a mere right is not 605. (251. 81)
derivable thus if the owner of land has been (243. 405)
courted the not barred by the 2. of limitation. 427. 411
the may not devise such land. The rule

here respecting devises follows the rule respecting alienation by deed.
What Estate are not devisable.

An estate per autre vie is not devisable under § 8. for this § comprehends only estate
both 41 in fact but it is real estate & therefore not
3th 450. devisable at common law.
122 425. Pron. 36-38. 218.

But by 29 bar 2.° estates per autre vie
226 359.6 are made devisable unless a donee qualify
214 37-41 the rule then is a special occupant named
that is unless the estate per autre vie is limited to
a man & his heirs.

But according to others in either case it
is devisable, and this appears to § 4 to be the
correct opinion.

But our § seems clearly to authorize the
device of estates per autre vie. for the ex-
ception in our statute are 'all real estate'
still seems to include all estate to which
some other person has not a paramount right &
will may continue after the death of the owner.

36 37-6
10 51
Pron. 701

Signities, offices & franchises are never de-
visable in many instances, descendible.
Here a fee age is descendible but never devisable

In 30 4 they cannot be devised
for they are not even descendible. & they are not
real property.

Pron. 10 456 Copyhold lands being omitted in the statute
are not devisable. They may however be indirectly
devised by surrender to the use of the owner with

A right of entry on lands depending on the non performance of a condition by the grantor is not devisable. The grantor has 411. His interest in the lands until the condition is broken is broken.

If it is asked why this right being personal to a contingent but may not be devised as well as a contingent under the benefit of a condition is personal to 288. 155. 6 devise in whose favour it is made + to his heirs + to his executors + a devise therefore could not take advantage of the condition.

The Devisor itself.

The claim in 29. 12. 41 is that all devises of lands tenants to shall be in 288. 37. 6 writing. 24. That the devise shall be 288. 47. 8 signed by the deviser or by some other person in his presence & by his express direction + 32. 7 it must be subscribed by three or more credible witnesses in the presence of the testator.

Our 27 counts upon devising as already existing in the law & for that reason it would appear to be defective (this is the case in the old statute) but in the revision of 1821 it is altered see next page.
Solemnity required for a devise.

Our statute is almost precisely the same as 29 bar. 2° It prescribes 1° That all wills shall be
1st. Cont. in writing. 2° Subscribed by the testator. 3°
Itst. 3. That no devise of real estate contained in any
will or codicil shall be good unless such will or
codicil shall be attested by three witnesses of the
 subscribing in the presence of the testator.

The object of these provisions in these it is to
guard men in extremis against frauds; to protect
the heir. It is a presumption of law that
devises are made in extremis.

The first provision then is that devised shall
be in writing but no form is prescribed

Therefore any form will be good

under the 1st of this wills will now be good of the
solemnity of the 2d of frauds are observed
so the writing may be in the form of a letter
a memorandum, etc.

Hence as under the 2d of wills so under the
3d of frauds any instrument executes completely
may by referring in terms to another
29 bar. 2° Instrument may make that instrument a
18 bar. 3° part of itself even the the former instrument
3 (Bar. 1975 or the instrument referred to is not executed
19 bar. 226. according to the statute of frauds. Thus
26 bar. 274. if it makes a devise among his lands with the
373. part of devises of this devise is done executes if
the afterward devises issues by an instrument not
executed according to 29 bar. 2° yet these devise the
they charge the land be will be good
What interest are included in the title then

The next words are "of any lands or tenements" in any of the words are "real estate". This is descriptive of the subject matter on which the device is to operate.

Now under this clause it has been decided 2038 that this does not extend to such colonies as were planted before the statute was enacted 2032:70 and this is a good principle 204 that statutes made before a colony emigrated from the parent country are prima facie valid but if the law of the parent country before the emigration are prima facie the law of the colony then made after are not.

But a device executed in another country 20291 of land lying bare must be executed according 2025 to our law. Thus if a citizen of the US makes a device of land, for instance the device must be made according to the statute of this country. And if a man in some 2017 being a citizen of this state makes a device of land the device must be executed according to the law of Vermont. And indeed always governs the disposition of real property in the device of real property. Such is not the rule respecting personal property such by has no locality.

But the words lands + tenements in the it does not extend to any chattel interests as terms for years is for those are governed by the common law so that a term for 1000 years may be divided with the征求意见 required by 24612.
(2). What subjects are within 29 vicar? 

But a trust of inheritance is within 38th. 159 the statute, for instance an equity of 3 P.M. 185 redemption is devisorie. 4 must be devised 220. with all the solemnities required by 20. And if it holds an estate in trust for B. 13 may devise his trust but it must be devised with all the solemnities required in the devise of a legal estate.

And an appointment of land made by 19th. 410 will under a power must be made by 232. 425 will executed according to the statute. Thus 35th. 179. an estate is conveyed to trustees in trust for 232. 425. such persons as it shall by his will appoint 35th. 150. now the will or appointment must be executed according to the devising clause in the statute of frauds.

And if a legacy is given originally out 220. 255. of land the will declaring this charge must be executed according to the statute as if a man wills that I give to J. 100 to be paid out of my real estate: this is a disposition of real estate pro tanto therefore to be executed according to the statute. This is different from the case stated before of a legacy referred to in a devise.
And rent arising out of land is within the statute. The devise of freehold rent must be executed according to the statute. Rent is the reservation of part of the profits of the land; they therefore partake of the nature of land.

And a will giving the power to sell land must be thus executed, for this is indirectly disposing of the land. So it is giving to others a power to dispose of lands.

With regard to the solemnities. The devise must be written, the attaining under our law. But it must be signed by the testator or by some other person in his presence and by his expressed direction.

The words of our statute that it shall be subscribed by the testator, omitting the clause 'or by some other person in his presence,'—

Sealing is usual in this state in England, but it is not necessary in this here in England. In the Kit is silent. The common law has nothing to do with devises for they are created by statute.
Devises. What amount to signing with the can?  

It was formerly held in England that signing alone by the testator with signing on the principle that sealing amounted to signing within the meaning of the Statute. But it has since been decided that

willing, 33. 313. signing is necessary. This appears to be the case. 62. 67. correct opinions for it is much more easy to counterfeit a seal than a signature. 48. 49. were required chiefly to guard against this kind of fraud.

3. 3. 136. of the testator written by himself in any part of the instrument is construed a signing only. 40. 40. it appears that it was not intended as a signing. 66. a. In a. this can be made under one Statute. 50. 11. The testator's name is written in the commencement of the devise by himself, but the whole devise is not in the hand writing of the testator?

3. 22. 29. the testator the written by himself in the body of the devise, 29. of the instrument was not intended as a signing. 68. 68. this the devise will not be good as where the devise in form it was held that his writing his name in the body of the instrument was not a sufficient signing.
But when the testator's name is written in the body of the instrument by himself; then Prob. 65:6, is no other signing the issue probandi lies on the party objecting to the sufficiency of this signing.

The next requisite is that the devise must be subscribed and attested by three or more credible witnesses.

The statute shall be attested by three credible witnesses of their subscribing in the presence of the testator.

Now the attesting witnesses are to attend principally to these objects: the sanity of the testator, the signing of the testator of the subscribing the will by the testator.

They are to attend to the sanity of the testator for the signing contemplated by the Bull. 364 statute is not merely the physical act of the testator's signing, but a legal signing to which sanity is necessary.

When a devise then is offered to a court of probate or to a court of justice on a question of title the devise must prove the sanity of the testator. The burden lies on those who claim under the devise. This is diff. from the rule in case of deeds. The maker of a deed is presumed to be competent but the maker of a will is presumed to be in extremis,
But the testimony of the subscribing witnesses is not conclusive as to the sanity of the testator. The signing of the testator or their own signing, whatever the subscribing witnesses may testify it may be contradicted on either side.
Devised.

It is not indispensable that the witnesses 3 see
who have actually seen the testator sign, an acknowledgment signed 84
by him to them that the name appearing in the will was 2MM 506
written by himself is sufficient.

In a will attested by three witnesses unless they see the testator sign or hear him acknowledge them 268455
But the testator's saying this is my will is not 264852
sufficient evidence of signature. This is not an acknowledgment 27373
ment at all that the testator signed the will.

In 2648, proof of hand writing be resorted to in such case.

It is said however that a written declaration by 2977
in the hand writing of the devisors that his name was 27768763
written by himself is sufficient evidence of the fact of his 3085284
signing. This appears to me extremely questionable.

How can this hand writing be better evidence
of the signing than, the hand writing of the signature
itself.

The third thing to which the witnesses are to attend 2973858
in the publication, this is a common requisite. 29801
the act of publication of a will or devise is
tantamount to a delivery of a deed.

By the publication of a will is meant 2951
some declaration, a some act of the testator
amounting to a declaration that the instrument
is his will but there is no established form
of publication but any act of declaration by
the testator importing an intent in the testator to dispose
of his estate (by that instrument) is suffi
t And hence delivery of the instrument as a deed Blamp.407
is considered as a constructive 2953
publication. & it was even held that this
was so where the witnesses were deceived with respect
the character of the writing by the delivery.
The declaration "this is my last will and testament" is a sufficient publication, and this is the usual form.

And a publication may be inferred as where the form of attestation is in the testator's hand writing to this effect: signed and published in the presence of three witnesses, 4 Bunn. 144, and the expression "take notice".

But the publication whatever it is must be in the presence of three witnesses. The jury may require a publication, even in the case of three witnesses. They are not attesting witnesses unless they hear or see what amounts to a publication.

It is necessary to the validity of a devise that the whole instrument be present at the attestation of the witnesses. They are to attend the devise, but if half of it is present and half in another place they attest only half of the devise.

But unless there is positive proof that the whole will was not present the jury may presume that the whole was present, so whether the will was or was not present is a matter of fact for the jury to determine from the circumstances of the case.

It is held that if a devise is made on three sheets of paper, each witness subscribes one of the sheets, this is sufficient even to the whole will to be present when each of the witnesses subscribe at different parts of the devise, the names of the witnesses are unconnected. This rule supposes the whole will to be present when each of the witnesses subscribe at different parts of the devise, and it is not material in what part of the devise the names of the witnesses are.
Witnesses must subscribe in the presence of the Testator.

The 1st requirement that the witnesses subscribe in the presence of the Testator. These words are in construction synonymous with "within his visible view." If then the Testator is where he might have possibly seen the witnesses subscribe this is held sufficient, thus if the Testator is in a bed with the curtains drawn & the witnesses subscribe in the room where 236 377 by putting aside the curtains he might have seen them, this satisfies the rule. As also when the Testator was in a carriage near the door of an attorney's office & the witnesses subscribed the will in the office it was shown that the witnesses might have been seen from the carriage.

This provision is intended not only to prevent fraud by the substitution of a false instrument but to prevent any mistake as when a Testator has provided several wills.

But the subscription of the witnesses in a contiguous apartment yet in such a situation that they could not be seen by the Testator this is not sufficient even if they retire to the other apartment by the express direction of the Testator.
And this requisite requires a mental presence if therefore he is in an insensible state during the attestation the devise is not good even if it was signed by him while he was in sound mind.

It is clear from these rules that the subscription by the witnesses was done in the room where the testator is yet if done in a clandestine manner the subscription will not be good.

The fact that the attestation was in the testator's presence need not appear on the face of the instrument that the devise is the usual form of the devise is stated in the instrument yet it must be established as a matter of fact either by direct proof or presumption. This is in its nature an extrinsic fact.

If the witnesses are all dead the fact of the subscription is still presumptive evidence that it was in the present. In the English statute this attestation must be subscribed by three or more credible witnesses in the construction.

Boths. 55. of this fact it has been determined that Port. 10020 if a devise is made & subscribed by two 650.082 witnesses & a codicil made attested by 3ellers.22065 yet this is not a suff attestation to sell 22065 real estate either by the codicil or the first devise.
Again if an original devise is not duly witnessed by three a codicil duly attested with three witnesses the original devise is not made good by the subscription to the codicil. Yet if two devises are made at different times as to several distinct parts of the testator's property not attested until the whole is completed the two parts will be considered one will the attestation of the latter give validity to the former.

The reason I take to be this a codicil is made to affect an instrument already complete and not to consume a give validity to the original instrument if it is made for the purpose it is no codicil but a part of the original devise.

But when there is a codicil on the same paper the question whether the subscription was intended for one or for both is a question of fact for the jury.

And the question whether a subsequent writing is a codicil or a part of the original devise is decided. If the subsequent writing disposes only of personal estate it is attested by three witnesses the subsequent writing is conserved as a part of the original devise not a codicil for it was considered as a codicil the attestation of three witnesses was unnecessary. But if the subscription by three witnesses is a proof that the testator intended the writing for a part of the original devise not a codicil if the subsequent writing disposed of real property the presumption is that the attestation was not intended for the former writing.
It is not indispensable that the witnesses subscribe in the presence of each other at the same time. As they must all subscribe in the presence of the testator.

But it is altogether the most safe mode for them to subscribe in each other's presence, unless they do one of the witnesses cannot testify to the subscription of the others.

Now in a question of title at law, one witness is sufficient if he can testify that the other subscribed in the presence of the testator.

A will cannot be formally proved in chancery unless all the witnesses are present at living.

The English statute requires that the witness be 'credible'; but this word appears to be unnecessary, it is omitted in our statute. For if it means 'competent' it is surely unnecessary for a man is not a witness unless he is a competent witness. If it means 'entitled to credit' it is wholly nugatory for it is evident that it appears that one of the witnesses was not entitled to credit: yet upon the testimony of the other two, the devise may be adjudged good. If the word credible has any meaning, it means if the witness is considered as the time of examination.
It has been decided that a devisee in the devise is not such a witness as the statute requires, at least it is not so as to the interest given to himself. But to that the devise is void unless [Pay 585] there are three witnesses besides him but as to the rest of the will, you can be a witness. See below

and doubts, a person legally disqualified is not competent to attest a devise. And if he subscribes his name as a witness the will is precisely the same as if he not subscribed the instrument. (Jennings, 1793, 110.)

But assuming that one of the witnesses is a devisee and that for that reason he is incompetent to testify to any part of the will, will a release given by him of all claim under the will qualify him to testify in support of the other parts of the will. This was one of the greatest questions ever argued in the Hall. It was held by Sir, by Sir, chief justice that it would not. (1793, 116, 117.)

The same doctrine was held in the case of Jennings and Coney. (Coney v. Jennings, 1793, 179.)

But this opinion was also delivered in another (1793, 179.)

But the question was decided in favour of the devisee in such cases, in this appeal in the case of Jennings v. Coney, 1793, 117.) to be correct. It is an universal

rule that a release renders a witness incompetent. (1793, 179.)

Their bias is removed when they testify. (Jennings, 1793, 110.)

In this rule may be found the opinion of Lord Eldon who held that a devisee or legatee cannot become competent to testify in support of a devise under which they claim a legacy. (Jennings, 1793, 110.) That even if they release all claims under it that they are still unqualified.
Devised.

"Credible"

The superior court have decided that the rest of the will in such case would be good, but this judgment was reversed in the supreme court. The case is not repeated (Wadsworth v. Hamp).
A legate or devise on the other hand whether he is a subscribing witness or not is always a good witness of the devise.

Pon. 135

He is in a will having no beneficial interest Dury 134.

In a will having no beneficial interest Dury 134.

Pon. 135: And a legatee is always a competent witness 1261, 427 where it is indifferent to know whether the will is of or not. If there are two wills in each of which he has the same legacy, he is competent to testify in favour of that if he is subscribing witness.

Where there is a disposition of real or personal property in the same instrument if it is not executed according to the statute of frauds the word as to the real estate yet it is good as to the personal property.

Who may devise?

The rule seems to be that all persons who are able to convey at common law real estate by deeds or who are not disqualified by the express words of the statute may devise.

The words of the statute are all persons may devise.

But this includes only natural persons Pon. 139

But this includes only natural persons Pon. 139

+ not bodies corporate or aggregate or sole.

Nor bodies corporate or aggregate or sole.

Pon 139: An aggregate corporation

And as to natural persons there are four Dyer 354: 16 exceptions & there are expressly excepted in the 1261, 427 explanatory Stat of 34 Geo 5th. They are the following Pon 140: 12

Infancy; idocy; non sane memory & coram.

Infancy idocy non sane memory & coram

But on the construction of 32 4s the rule a?

have been the same or similar principles.
Who may Disinherit?

It has been held that a person deaf, dumb, and blind can not devise, for such persons were considered as wanting understanding.

At this day I presume that a person deaf, dumb, and blind could devise if it could be shown that such person has such intelligence that the presumption must still be that they are disqualified.

6 Ed. 23
6 Ed. 23

It is not enough that a testator can remember common events; he must have a disposing memory and means understanding enough to make a rational disposition of his estate.

By an idiot is meant one who from his birth never had any understanding. One who in common parlance is called a mental fool.

By a lunatic is meant one who has lost his understanding by some supervening cause.

What is a sane or disposing memory a mind is for the common law to decide but whether such mind exist in a particular case is a mere question of fact for the jury.

With regard to coerced will it is in good support that his acts are done by the coercion of the husband, but this is not the sole ground of her disqualification. The rule is that found on their legal union and the policy of the law.

But it has been held in England that a local custom that a person covert may devise is void as being unreasonable.
In this state it was decided in the case of 
Adams v. Kellog that a femme covert might devise to ¼ of her real estate. But this was afterwards overruled 2 Dan. 163 but now by 25, femme covert are enabled to devise real estate but this is peculiar to this state. But here she cannot by her devise deprive the husband of his dower, where he is entitled to it. For the act of devising is merely placing another person in the place of the heir at law. And in a similar case the wife is therefore entitled to dower.

When a husband is bequeathed for life 21 and of the wife remaining in the kingdom may make the devise a valid devise.

And even in England these two modes in which a femme covert may procure the same power over her estate as of the wife sole. In such cases however her act is in the nature of a declaration of trust or appointment. She acts in legal theory in such case as an agent operating an authority, her act is in neither case in law a disposing act.

1. By way of trust  
2. By way of power over a use

1st. Thus if a woman while sole convey her 2½ acres estate to trustees in trust for herself for her son E. 162 150 separate or during coverture or the trust after 2000 dhs. by such persons as she shall by her 30th July will appoint. She may during coverture make 29 to 151 an appointment will give the estate to the 753 appointees. The same thing may be done by a power a settlement made during coverture by wife 55.
Who may devise?

But it must be kept continually in mind that the person to trustees is the disposing act of the owing the person is merely executing a naked authority, with no court, may always do of it full age, but the execution of this power must be according to the statute of

3d. 897. A few courts while an infant cannot have 1797 98 execute such a power. For the execution of such power, a power vests discretion, and an infant cannot execute such power. But a few courts may exercise a power which involves the

710: 14: 15 use of discretion

Page 334. M. 3. 1790. 17. 1436. And in deed by any person as any devise. This is the common law rule. It is said by all I had, that this rule is implied from the words in the at his

Page 107. And it is been held that when a sick

Page 47. 46. That he might obtain relief to make a conveyance that such will was void. But this

Page 246. 1713. 1715. If either of these disabilities exist at the inception of the devise, it is at the
courts execution of public notice, nor the disabling

Page 238. 238. It was removed before his death is no reason for considering the devise good.
Who may devise?

If there a free covert devise, the estate after
waits her husband dies + then she dies the
will will not be good. For the consummation is
founded on the inception.

A joint tenant cannot devise land held
in joint tenancy the right of the survivor is
paramount.

This was the rule in Eng. Where the custom of
1 Eq 172 1st 1977
the custum was in evidence before the Stat Henry 8th
+ the Stat of wills excludes joint tenants.

There cannot be a joint devise made by two persons copartners
whether they own jointly or severally. No

a joint tenant makes a devise of his
joint + survives his companion + then dies the
devise being void at instances can never be considered good for from the moment the joint tenant died
he became seized in severalty.

I do not know in this state that there is
any objection to a joint devise on principle
where those who make the joint devise are joint
tenants. They can make a joint devise they can't
in Eng. make a joint devise on acct of
the survivorship but this is no objection
in this state where the title descendes does not
exist.

It is a sound principle that a man cannot devise real property while he has
not at the time of exequistion + publica dellivery of the devise. If therefore a testator Holt 246
devises to day all his land + tomorrow
purchase other land the latter will not pass. Po. 159. 195
so if the words had been all the land of which I shall devise.
Who may devise?

It is to enable a person to devise he must either have a present interest or a present possibility coupled with an interest. It is a good rule that one cannot give by devise what he could not dispose of by deed. "Even less of reason is dispensed with only from necessity."

"But this rule does not hold as to chattel out at least for years it holds only as to real property. If there is a man who devise this I give all my years for years of 14th 17. If I shall die possessed, that will carry a lease purchased after the will. For a man is continually changing his personal property as I have followed the rule concerning personal property."

"It is also necessary to a devise of real property that the devisee be desirous of it. The reason is that the devise of it is consumed at the testator's death. If then the owner of land desire it it is then devised and continues for until his death the devise is void. For at the time of his death his right to the land is a chose in action. Vide 9. 11. 151."

But it seems that when a man is devises by fraud or purpose to defeat the devisee the devise will in equity will be enforced under the jurisdiction of that to enforce as fraud. Of therefore the heir devises the ancestor just before the death of the ancestor for the purpose of defeating the devisee the devise will be adjudged good the devisee notwithstanding."
But if the owner is deceased after the entry, and enters + dies seized, the devise is good. Talk 236. for by the law of relation the owner is. 311. 746. deemed to have been seized during the whole period. time + it is upon this same principle that 116. 85. 748. As a person cannot, may recover for the same. true 285. 8. profits from the devise during the devisees. + There is indeed in this case no necessity. for applying this doctrine for the case is. not within the rule that he must be seized at the making. or death. If the owner is deceased at the time of talk 285. making the devise but afterwards enters + enters + dies seized, the devise is good. The devise is? He derived. He said wise it not for the fiction of 285. 6. relation for he is supposed to have deceased. been seized (on his account) at the time of the. devise.

If one makes a devise of land specifically. 285. 3. all he does not at the time own but afterwards. purchase the same land, the devise as to that 285. land is not good. For however clear the intention 285. it may be it cannot be carried into effect in 285. 3. 435. consistency with the rules of law, for it is a talking. common law principle that a person cannot 3. 3. 144. devise what he has no interest in at the time 7. 25. 8. either in fact or by fiction of law. The. principle in short is this: that at common. law real property cannot be transferred with. liveries of seizen. But in devises liveries of seizen. is dispensed with but still it dispenses with no. more than this and the rule is that a person. can not devise property while at the time of the. devise he could not have disposed of by deed. + liveries of seizen.
...Who may devise...

On the same principles of a mortgage devise, the estate mortgaged to him in fee-simple to another afterwards purchasing the equity of redemption, the equity of redemption does not pass. It seems however that in this state a person may devise land of which he is not seized at the time of the testator's death. For one of us has determined that a person deceased of real estate may transfer his real estate to his heir notwithstanding the devise, and a devise is here facting the same rule to probably govern in a devise as governs in the transmission of estate by inheritance.

The rule perhaps is founded on the construction of our law. The English statute is all persons having the right of property may devise. — Nearly as a right of possession is equivalent to actual possession in England.
Real Property (No. 21)

Devised: Who may devise?

A person having an equitable interest in lands is a claim to them only in equity may still devise them by will.

The lands themselves. Thus if I make a contract to pay for them, and then make a devise of all his lands, I may devise the lands for in equity from the time of the contract, the title of the land is in B. for that court considers as done what ought to be done. The principle is this that the vendor is considered as trustee for B. No is B devised by the vendor's remaining in possession for seven years, not predicable of a new equitable interest.

Besides the possession of the vendor is not inconsistent with the right of B.

But in such a case the land is not pay under a devise made before the operation of agreement was made. For before B had not even an equitable interest in the land.

It is indeed said that if the devise were for the payment of debts the rule is be different. But I think, that there is another principle in authority for the
decision.

Things devisable. In the English statute the words are 'all lands'. The term lands denote not the interest of the tenant but the subject matter. For all interests are not devisable, but all lands are devised by (8)

him who has a devisable interest therein.

But a tenant at will, is not devisable as personal, but rights of way and franchises are personal.
Things devisable. In what interest in them is necessary to
render them devisable? Do not any remnants devisable under our statute
for they are not real estate.

Let it be

But rents are devisable if the owner has a
revisable interest as a fee simple rent, for this
is a revisable interest. It being true it is an
incorporal hereditament.

Traditionally an annuity in fee simple is also devisable
the difference is that rent is charged on land an annuity is charged on the person
of the grantee.

What estates are devisable?

Under the English it is other than
in fee simple estate is devisable.

The words of our it appear to include
estate in fee simple vic. vic ante

And the it be to make them devisable in English?

The term fee simple in the English it
is used in the most comprehensive sense.

One may under that devise a fee simple
remainder or reversion. The fact:

A devisable fee simple not in possession
may be then either a fee simple in reversion
or a vested remainder in fee simple or a contingent
remainder in fee or an executory devise in fee
simple of each of these may be devisable.
What estates may be created by devise?

So also estates subject to a condition of unity. Device may be devised. Thus a convey to B an estate in S. Bul. 104. fea simple on condition that unless B or his heirs P. 232. 14.

shalt pay £100 to A or his heirs within 25 yrs. B may devise his interest. But A may not devise his interest. *de anto*.

And as estate may be transferred by devise. P. 231. 16.

So new estate may be created by devise. Thus if A tenant in fee devises to B an estate for life for 60. 111. year. or in trust. 4. Indeed any estate will may 1 Rev. 669.

be created by deed if one particular estate will 10. 60. 78.

cannot be created by deed viz an executory devise.

1) To a tenant in fee simple after having created by devise a less estate than his own 2 Rev. 629. 35.

may create a number of other estates out of his previous ad infinitum.

2) Again estates created by devise may be absolute or conditional.

3) An estate merely equitable may be created 2. 81. 375.

by devise. That is an owner of an estate may P. 25. 236. 875.

done lend to one for the use of another or to one we trust for another.
What may be devised? Authorizes,  

Devises  

Said land may be devised to one person to the use of another, but since the use of such estate, the use is executed & therefore the legal estate vested in the executory use. So that it may be no advantage in limiting an estate so for the use of one person.

But an estate devised in trust is a very

ceremonial estate. An executory estate may then most be devised to one thus the vesting of a trust as a devise to A & for his heir in trust for B & B's heir, or thus to A & his heir to pay over the profits to B & B's heir & those two forms produce precisely the same effect, for in the last case the equitable interest is in B & his heir, as well as in the first case.

Further, a person may devise not only a devisable interest, but a true authority over an interest, thus: one devises that B's heirs have the disposing authority (in trust) of A's estate. B has this authority, but B has no interest in the land. B has no authority to sell, for the word disposing means managing not disposing. B can make any leases but not sell.

If one devises that his executors shall sell his land a devise in his will that his land shall be held by them. They have authority to sell, but in the case above J. A. has not the power of selling, but merely of regulating.
Authority created by devise are of two kinds (Tr. 1044). 1st, bare authority. And authority coupled with an interest.

II. A bare naked authority is a mere power. And is connected with no man's person or estate. It is a mere power of attorney. The power ceases not like other powers of attorney revoked by the death of the person who gave the power.

And where one devise that his executors shall 1st sell his land, then the fee hold descends upon his death Sect. 583 immediately to the heir liable to be directed Sect. 292, s. when the executors shall sell. If the land is devised to 0 the power to 1 the estate descends to the devisee subject to

And a receipt of such an authority by the 2nd sect. 446 person empowered is utterly void. As in the case Sect. 293 above if the executor 1st release his authority to the heir. It is utterly void. For such an authority is personal and cannot be transferred. Therefore not released and after such a release the executor may still sell. On application Sect. 294, c. of chancery also compel him to sell.

And it is an universal rule that such a power must be strictly performed. Therefore the execution of the power must always be construed with reference to the power itself. Thus if a devise gives it a power to lease land for 20 years if it makes a lease for 21 yrs the lease is utterly void.

This power is strictly personal it cannot therefore be transferred unless there is duty to transfer or there the transfer is a part of the power it cannot be devised.
And if a power of this kind is given to two one of whom dies before its execution it never can be executed by the other in case of necessity indeed a lot of equity may appoint an other. And on the same principle he cannot devise it. In such a power is not divisible. If the devise were that either of them might sell or that the survivor might sell the rule would be otherwise.

But if a person devise that he empower his executors to sell his land that happen to be three if one dies, the other two may devise. But if these be in such case but two, the survivor may not sell for the authority is to executors not to an executor. The words of the power are in one case satisfied for the other nor. If a testator devise that his land shall be sold with naming the persons who shall sell, if the proceeds of the sale are to be distributed by the executors, they are the persons to sell. And in this case if there be two executors, if one of whom dies the other may sell for they take the power not as trustees but as executors.

But if it is devised that lands shall be sold if the proceeds of the sale are to go into the hands of others than the executors, the heir is the person to sell.
Powers confided with an interest

If the person thus empowered to sell land refuses to execute the power then who are to receive the proceeds of the sale may compel in chancery the person having the power to sell to make a sale according to the power if he does before a sale the court of chancery will supply a trustee. If the parties agree in the case after the court refuses to appoint another trustee there is something harsh in compelling a man to accept a power of this kind.

If one devises his estate to be sold the devisee is the devisee of an authority coupled with an interest. It is an immediate devisee of the land itself.

If one devises the profits of his land to another for the purpose of educating his son to be he shall attain the age of 21. This is a devise of an authority with an interest. For the devise of the profits of land is a devise of the land itself.

In the case of an authority coupled with an interest the interest is the principal and the authority the accessory.

In the case of an authority coupled with an interest the devisee and his representatives will hold the land till the expiration of 60 days. The time mentioned in the devise must in the case of a bare authority it ceases with the death of the devisee.
Authorities coupled with an interest.

In ejectment &c. &c. the question was to determine a description of the tenement to which the party in interest was entitled. The principle last advanced I thought explained a little the principle of the rule. Suppose A owns land to B, for the purpose of educating the son of C, until the son attains the age of 21. Now if B dies it is clear to B. that B's representatives take the estate. It must be clear the profits to the education is lost. This arises from an account to a devise of land to B, subject to a charge viz. the expense of education as son. The devise has an estate commoved.

And if in this case the son had died before attaining the age of 21, still the devisee holds the land until the son would have attained to the age of 21. The authority is assuring the interest the principal. If the power had been a naked authority when the object failed the authority failed with it.

In appointment by will or by execution of a power to appoint to appoint by will &c. for powers must be pursued strictly both as to the mode as well as in other respects.

Who may take by devise?

The persons not incapacitated by positive law may be devidees. But by 34 H. 8 void but by 43? Only some exceptions are made. But by 29 H. 8 3rd this exception is narrowed so that devises in corporations are void. Void this was made on ace of the influence of the clergy in obtaining land by devises.
Who may take by devise?

In this state corporations are not prohibited from taking land by devise by any general law, and therefore in general corporations will may purchase or hold real property may take land by devise, unless prohibited by their charters.

Persons taking by devise may be either and Don. 315 a natural persons. Natural persons capable of taking by devise may be either in or out of esse at the time of the testator's death. Those in esse may of course be devises, unless incapacitated by some civil inability.

Coveture is no disability to take by devise. The heir may, however, at law defeat Don. 315 a devise to a wife by his dissent, for a devisee don. 315 always supposes a mutual dissent of the devisee of the heir is the dissent of the wife, but a dissent of the wife will interfere to prevent the heir from any dissent will interfere to prevent the heir from any dissent.

And a woman may be devisee to her Don. 414 husband, at law as well as in equity; and, &c. 173 in law she cannot be grantees to her husband don. 1128. The legal union of husband and wife is the reason why the wife Don. 315 cannot be grantees. But in case of a devisee, the union is destroyed. In case of a devisee can take a devise, but he Don. 315 can hold only till 'office found' (as in the Don. 316-15 case of deeds). When the inquest finds him an 960, 314 alien this term, he cannot vest in the crown a state 313. The estate passes therefore from the heir as law ' Dick '4.
Who may be devised?

The illegitimate child cannot take by devise until he has acquired a name by reputation but, having acquired a name by reputation, he may take a devise then.

It is to be presumed that it is the intention of the devisee when he makes his devise to give the property to the legitimate children only.

But if a devise is made to the children of a testator, he having both legitimate and illegitimate children, the whole estate goes to the former and it seems that the rule is the same where the devise is made by the testator, for it is to be presumed that it is the intention of the devisee when he makes his devise to give the property to the legimate children only.

But natural persons, not in law may be devisees, they a posthumous child may take as well as one born before the testator's death.

The distinction was formerly taken between a devise in the present tense to an unborn child and a devise to an unborn child in the future.

And if a devise is made to them of a devise to them by way of remainder.

But in 1644, 1703. If an estate is limited one for one remainder to his unborn child, a posthumous child by future part of his land, born in the testator's lifetime, or is of the particular estate that part before the remainder, the remainder is still good; but, if born after, the words of the devise were not expanded to devise the land, being any marriage at the settlment, but in construction, it is extended to devise.
Who may be devisees?—

A devisee to such child as it shall have living at his death will rest as well as in a posthumous child a want of in one born at the testator's death. For here the devise is executory, the is for the purpose deemed living.

But in this case also it was held that if the words were future the child or take if the words were present the child could not take.

A devise to such child as it shall have living at his death will rest as well as in a posthumous child a want of in one born at the testator's death. For here the devise is executory, the is for the purpose deemed living.

The ground of this distinction must have been the intention of the testator. It could not have been the feudal doctrine of atayance (see next page).

While the devise is per se to prevent the devise in terms is not executory it this is urged as an objection to the devisee's taking, for if he take at all he must take by way of every devisee, this is said to be contrary to the testator's intention as manifested by using words deemed present.

But I think the weight of authority is decisive in favor of the devise in both of these cases. For answer to this objection vide post.
Who may take by devise

Devises. The objection stated to an infant, taking who was unborn at the time of the testatrix's death by present words, is that the devisee would be in abeyance, but this reason is unsatisfactory. For until the child is born, the devisee descends to the heir at law of the testatrix until the child is born. And in such a case the heir at law holds till the child is born. It is not accountable to the devisee for the profits of the estate derived to the unborn child. For in truth the devisee does not take until he is born until that event the heir at law owns the estate. Besides, this objection applies if true with equal force to every devisee.

At any rate when the devise is in the present tense to a person to be born in future time and there are words in the devise which show that the testatrix knew that the devisee was unborn at the time, the unborn child will take as well as if the words were in the future tense. So the rule is the same of the devisee's intent to take all. An inference that the testatrix knew that the child was unborn at the time of the devise.

Thus, if I give to be born to A, devise to him on how my estate, the child will take the born after the testatrix death, for the testatrix takes notice that the child is not born. And they make the devisee executory.
Who may be devises?

I take the rule now to be, that every devise to an unborn child as such does afford the inference mentioned in the last rule; and therefore tho' the devise is in the present name of the unborn child when born will take, for the intent is clear that the limitation shall not take effect in the future death. Mod. 419.

Each devise so that the disposition is intended by it, is invalid.

When the devise is described as unbend the disposition in so far only intended as executor of the child of unborn at the time of the testator's death.

So also civil persons may be devisees that Pro. 336. 7, is persons may take under a description of executors civil capacity. As a devise to the executor of the executor of $31. is good, if the intention is clear indeed it is a good rule that civil persons not in these may be devisees as in the above speak the case of the case of $31.

The members of a town are not such 1309. 614.

If they are devisees to the persons of the parish of a is void. So a devise to the parish of a may be good. A devise to the inhabitants of the town of a is void. A devise to the town of a may be good.

For no one w. support that a devise w. intend that all the inhabitants of a take as tenants in common as tenants. But as they are not described in the devise as tenants in this cannot take as such tenants.
Device, how described?

And a devise to a church or to the church of the Baptist church of Greenwich. For the church could not take as a capitation under the devise, for the church was not a capitation, but it was not the intention of the testator to give the estate to the individuals of the church. The church could not take at all — to a devise to the yearly meeting of people called Quakers was held to be void. (Conn. 1826)

Every devise must be properly designated or he cannot take, but this designation may be either by naming him or by describing him or by both. And the description must be such that the devise will apply to no other than the devisee. But this will receive some qualification (such as the reservation of rights in devisee to explain devise).

For example, a devise to the governor, treasurer, or executor of such a state is good. A devise to the son of I D is good if I D has but one son —

and the description this not perfectly applicable may be made good by reputation as in the case of an illegitimate child. So a devise to the wife of A will give an estate to the reputed wife of A who not his legal wife.
Device how described.

But this rule now holds in favour of all Devices illegitimate child born after the device made by 509.10 if he takes at all he must take by 6.665 being reputed the son of 70 at the time of the testament device made till reputation be said to not acquire until born.

And besides Lord says the law will not expect that such should be born. Nor will it give liberty to provide for such before they are in effect which is a more satisfactory reason in case the child is described as the first illegitimate child of A B (a woman) in all case the description is certain. Hence also a devise to all the natural children of A will not issue to the child in ventre matris at the time of making the devise for that child could not have gained by reputation the name of being the child of A besides the possibility is too remote that one will have a natural child in future and the policy of the law operates here as strongly as in the case above.

A woman may take by devise under the testament description of being the wife of 70 if she is reputed to be his wife the she is not his lawful wife. So all that is necessary is to ascertain the intention of the testator.
Devised, how described?

Devised may be constituted by an
inaccurate or equivocal designation of a
under a devise, to various heirs of the devisee
a daughter may take if such appears to have
been the intent. The burden from the words
devise a son, a son in? does under the
description to the exclusion of an elder deputy

Devised may take under the description
provisions bearing on the devisee. This designative
is inapplicable as if to a son for the adjective
as applied to a female is only a verbal
inaccurate. So the elder daughter in the last
can exclude the younger.

The word child, a children is a deft description
of one "to a for life " afterwards to his children"
his children take a life estate in remainder
descriptive of personal, the word child being
descriptive, person singular, (as deceased) (also estate)
Devised.

The word deviser is generally used as a word of description in wills, and the person so described is called a devisee. If the devisee be a husband and his children, he then having children, he and they create a joint estate as purchasers.

Note: In law, this word is distinguished from words of limitation or inheritance.

A deed is a device used to show whether there were or were not children at the time the devise was made.

But if a devisee has no children at the time of making the devise, the devise is in the words of limitation, the quantity of the deviseor's estate is the children taking at special heirs.

This cannot take in remainder as purchasers, and therefore takes an estate that is, of course, an issue in said per stirpes.

But note as a general rule that the testator's intention is to be collected from the state of things existing at the time of making the devise.

To a wife means the wife who was his wife at the time of making the devise, and not a subsequent wife who might have been his wife at the time of his death. This rule does not apply where the devise is to the heir or heir male of a person living at the time of the devise.
The description of a devise may be either general or special. In a general description is meant any one designation of any person who may happen to assume the description of one of any one individual identifiable at the time of devising.

Such devise to be void, as if no devisee, unless the devisee is a male of the deviseor in the case of a devise to the next heir male of the deviseor in the case of a devise to the next heir male is constituted the devisee in remainder; the same rule is to be put upon remainder to the next heir of the deviseor.

To a devise may be constituted by a devise to such a "stock" family or house if it will issue to the heir principal of the "house" family.

If a devise is made to "the postente of a" his collateral heir if he has any shall take; if he has not his collateral heir if the whole blood will take.

If a devise is made to "the next of the name of the testator" the next relation of his name whether male or female will take.
Go a device may be described by the words "next of kin to the testator in whom case the person answering that description by the rules for computing the degrees of kinhood will take, in this case those of those only will take who answer the description under the 21st of distributions. And the legal computation of these degrees always relates to the time of the testator's death. Such being the rule under the 21st of distributions 29 bar 3th.

And if a particular estate to another is interposed still the words next of kin are construed to include those and those only who answer the description at the time of the testator's death. These words are construed as they are in the Act.

So the words "nearest of relation of my name" is a good description but in this case the word relation is nearest collective and includes all the testator's nearest relations in the degree specified. E.g. All his brothers and sisters of the same name if he has no nearer relations (his sisters if married to different names will be excluded in this case).
Device how described. Full Description.

There may be a question how far a daughter who has been a\_wed woman has changed her name can take. According to some, this is the distinction of the legal right of the devise and also at the testator's death the devise may take the devise at the time when the question arises. So if married at the time of the devise or at the testator's death,

But Mr. Holdsworth seems to think that if the devise is immediate or by way of vested remainder, it is that she is unmarried at the time when the devise was made. If limited on a contingency, that her name at the time the contingency happens decides her right, this opinion seems reasonable and conformable to the general rule.

If the testator explains who he means by nearest of kin or nearest relations person not falling under the description "nearest to" may take. If you to my nearest relations the estate & goods held the latter to they be not so near as the former shall take with them.
If one bequeaths personal property thus to his nearest relations, then relations who are not as such under the Act of Limitations distributions are the legatees so it seems if the words were "my relations" as if the words were "my nearest relations" according to the Act of Distributions. Then under it we exclude the wife.

But if noble evidence may limit the words (past) but if devises of lands are thus described, be whether the above rule is held or whether the devise is not be void by reason of its uncertainty.

In some of the other states the Act is uncertain the devisey in the last case as well as in the first for the Act it regulates the succession as well to the real as to the personal estate of the intestate.
Devised

It is a general rule of construction founded on feudal principles that if an estate of freehold is devised to one with an immediate or intermittent remainder to his heirs, or heirs of his body, or his issue, he takes an inheritance in the first case a fee simple; and in the latter case an inheritance in fee tail. If then land is devised to A for life remainder to the heirs of A. A takes a fee simple. If an estate is limited to A for life remainder to B for life remainder to the heir of the body of A. A takes an estate tail liable to be interrupted by the intermediate heir of B.

The reason of this rule is that the words heirs are considered as words of limitation, not of description.

In this estate this rule is abrogated by express statute.

In England, however, this rule is qualified by statute decisions, for it must be confessed that it is the intention of the testator to give to only a life estate that use the words heir as words of description and where from the face of the devise it appears that this was the intention of the testator it will be carried into effect.
Thus an estate to a for life remainder to Devices, his heir for life, here the word heir is plainly used as a word of description, it takes an estate for life, to where there is a devise to a for life remainder to his eldest issue male it takes only an estate for life.

So where the devise is to a for life remainder to Devices to his issue and his issue forever, here since no limit is added to the word issue it is clear that the word issue is used as a word of purchase, and therefore it takes only a life estate.

And indeed the word issue in its proper sense is a word of description, that it is in general in devise construed as a word of limitation by reason of the supposed intention of the testator, but still where the intention is clear to use it as a word of description it will be so construed.

So "to A for life remainder to his eldest issue male" it takes an estate for life, the testator is a case of some doubt. And the word been used in 'issue eldest issue male' A is have taken a fee.

Special description

By will is meant the description of some one person in particular, just as in Eq. 524. And the for cases, a description of any person who might be added may happen to assure the description. 2 Do 311.

Thus a devise to the eldest son of A, if A dies, B shall die is a general description, but if A dies, devise to the eldest son, A the heir male. 2 Do 660. of the body of A now living, is a special. 305. As to description meaning him who is now heir apparent of A.
Special description of Devices.

It is laid down as a general rule that the devise must answer in all respects the description given of it. But this is by no means universal. If a devise is made to "the heir of B" or B is the heir of felony. B can have no heir and therefore no one can take under the devise but if the devise was to be the heir of B. in this case it is not so.

If a devise is made to "the heir of B" + the testator dies in life of B the heir of B at the death of the testator the will must take effect on the death of the testator or not at all, but on the death of the testator it cannot be ascertained who will be the heir of B. There is no such person existing as answering the description.

Where one is described as a particular heir if it appears that a person not heir, or a person not intended to take under the devise such a person may take on or where a man devised this to my heir who is my brother A B A B took the he was not heir to the testator. It is apparent then that if a special description is added to this and the person specially described will take this not heir.
And where the intention is clear from the devises will one may take under the description of heir in the life time of the ancestor. Thus to 10:12, 229 the heir, male or the body of it, + by the same 10:12, 229 instrument given to A a legacy the former 13:13, 26.49 answering the description of heirs of the body of A will take. For here it is clear that the A is living at the time of the testator's death yet that the testator intended heir apparent since he has given a legacy to the father of the heir. By which he showed that he knew the father to be living.

In the intention of the testator shall 39:34, 31 verse precedes that intention is not repugnant to the principles of law if the rule is present ante 4, to all others. But the intention of the testator cannot create limitations estates where the law does not admit.

And a person in no desire answering the description of heir may take under words enjoining to constitute heir or heir as where one devises thus I will that my wife shall be my sole heir: the wife took the whole estate. So I will that I shall be sole heir to all my property I take the whole estate. I am only to have for members.

Heb 87:31
Noy 41:
Pon 395:8
Peter 308.
White 133
Special description of device

It is after all a general rule that if the description is so far certain that the person intended to take as device can be ascertained that the device shall not be void for uncertainty. Or in other words, a device is never to be construed void from uncertainty, but from necessity.

Therefore a device to a Margaret, the eldest daughter of Jo. the Jo's eldest daughter's illegitimate, illegitimate, the eldest daughter will take. But if Jo had had a younger daughter named Margaret Davis (see part)

And if one devise to the wife of Jo. if Jo dies, if the wife marries another person, she then the last to die, all will take under the description of wife of Jo. for the rule is that if a devise is to be construed with reference to the state of things at the time of making the will.

And when a man in his last illness devised to a posthumous child will by a RECEIPT
How a Device may fail of taking effect?

If in the other hand the description gives Devices to a devisee is not only inaccurate but invalid., the devise can not take. Thus if an devisee gives here to the heir of John, and John is an alien the devise will be void, for as his alien can leave an heir this is not an imperfect description but a falsity.

But if the devisee make the devisee be proved to be the rightful heir, the devise will be valid. i.e.

1st from inherent defects. 2nd from some extrinsic cause of from matter idiosyncratic here.

If there is an uncertainty a repugnancy will cannot be cleared up in the words used or to things devised or the quality of what intended etc. The devise must be void. These are called patent ambiguity. Under the same head fall limitations contrary to the law or policy of the law, as if one leases an estate in perpetuity.

Extrinsic causes are those that arise from facts not appearing on the face of instrument. Here the uncertainty is called a latent ambiguity, as where the doubt is as to who of several persons is a part of several things is intended by the description.

As to patent defects if there is on the face of a devise an uncertainty will cannot be explained or a repugnancy will cannot be reconciled the devise is void at least as to that part. And an uncertainty a repugnancy may exist in both particular. as with respect to the subject matter, the unit, the person of the devisee etc.
Antiquity.

This if one devises a house with the appurtenance
the construction will be that only the house with
that will is absolutely necessary to the enjoyment
of the part paid for the real appurtenance is too
uncertain to pay any more than that.

1 PI. 31 M. 305. 27. 54. 49.

And where the ambiguity thus arises on
the face of the instrument the general rule is that
it cannot be aided or explained by parole evidence
for the law requires that a devise shall be
written. If parole evidence shall be admitted the
statute will be violated. Besides it is a general rule
of the common law that patent ambiguities in
an instrument shall never be explained by parole
evidence.

3 East 172. If the person described by the devise of devise
Sec. 415. is on the face of the instrument uncertain, that
the devise cannot be uncertain with certainty the devise.
2 Vern. 1445. Thus to one of the sons of D. he having several
Ray. 282. sons. Thus also, twenty of the poorest of
1 Roll 609. my relations, for those persons are unknown.
657. 260. therefore no certain intention can be collected
1 Roll 61. from the hands of the devisee or to the devisees.
115. 335. But a devise is never to be construed void from
10. 6 to 57. 16 uncertainty only if from receptus.
486. 32. 66 & 106, 2. LTE Ray. 1312.
665. 65. As to latent ambiguities if from extrinsic
40. 244. facts the person of the devisee is rendered absolutely
that
657. 671. uncertain the devise is void. Thus all my real
2 Leit 3. 3745. estate to my son. When he has several sons
it is prima facie void. Thus also a devise
to A & B. When there are two persons of that name
the devise is prima facie void. The meaning
of the rule is that the devise must be void
if there is no proof adequate to prove which
son A or B is intended.
Thus, parole evidence is admitted to place patent defect in a contract under an ambiguous clause. The uncertainty is created by parole evidence, and therefore may be explained by parole. There is no ambiguity on the face of the instrument.

If also there be from extrinsic circumstances, it is an Ambiguity in what subject matter is intended, as here the uncertainty is from parole evidence, it may be explained. Thus a devise to Ys of my manor of Z when I have two manors of Z. parole evidence is admitted.

It is said however that if the devise is Pro 24:15, then I give to Z one of my manors. Z where Domencka, so the testator has two manors of A. the devise may be, if of the two manors he will take.

But where the devises are in alternation as to one of the days of J or, here the will is void for uncertainty. Quips parole evidence is added to the other, there can be no election, for who shall elect?

And devise may fail because the testator's intention is contrary to the rule of law, however Pro 24:19, clear, the intention may be. as when the testator limits a remainder on a contingent Bult 264.

Or where he limits a remainder in a contingency, or remote in point of time. They to A in fee if he dies without heirs to B.

In these cases, the ambiguity is patent. For the construction of the words is clear, matter of law, and if the construction makes the limitation contrary to law, this arises entirely from the face of the instrument.
How a devise may fail of taking effect?

If in the draft of the instrument the devisee's instructions are not followed (or this is a fact which can be proved by parole) the devise will be void. For the devise is not his act in law. This supposes that the testator did not know that his instructions were departed from. But the last rule is to be taken with the qualification viz if that part of the instrument which was contrary to the intention of the testator can be separated from the part which is agreeable to it. the former is void and the latter is good. Thus where a testator directs an absolute devise to his wife and the condition of his own motion inserted a condition this condition if unknown to the testator will be void and the devise absolute.

The cause a devise may fail of taking effect because it operates in the testator's estate when the law is to effect what it. Thus if one devises to his heir at law the same estate while he is to have taken under such devise the heir takes not as devise but as heir by descent. by estate here is not meant land but "quantity of interest."

This rule stand on two reasons first that the land may not be defeasible of the fair to due in the event of any descent. Second that the devisee's creditors may not be defeasable of their debts for before the it is fraudulent.

It was held that the devisee may not liable for the debts of the devisee.
Now a devise may fail of taking effect. (93)

Now then reasons have caused. The rule, however, is of much consequence. If it be heir at law, take a heir the rule of descent is very different from what it would have been the rule had he taken by devise or by purchase.

In this if the rule is to most purposes not important, for it was always held here that the land in the hands of the devisee is liable for the debts of the devisee. The rule of descent is the same whether the heir at law took as devisee or heir. There is one consequence even here of this distinction or not of all the rule ought to be continued. I refer to the case of a posthumous child. For if IS has children living at his death, & the devisee & a posthumous child is born the posthumous son takes with the others. But if a devise to the other children, no good heir be excluded.

Again if one devises to his heir by way of remainder, what the heir or heirs have taken as a remainder, has the devisee died intestate. The heir shall take the remainder as heir and not as devisee. (93)

For the estate is the same in both cases - a fee simple.

And if an ancestor devises an estate for life, to his heir at law, & makes no further disposition of the fee simple. The devise is void. For the estate in the quantity of land with he w't take by devise & by heir ship is the same & therefore according to the general rule he shall be in by descent.
Now a devise may fail of taking effect.

But if an estate for life had been devised to the heir at law & remainder to a stranger, here the heir takes the estate by purchase for this is a different estate from that which he would have had by descent.

But when a testator devises a fee simple to his heir at law charged with the payment of debts or legacies the rule is the same that is, the heir does not take by devise for the quantity of interest is the same as he would take by descent—charged with burdens indeed but this makes no difference.

And if a testator devise his fee simple to his heir at law by way of condition still the prevailing opinion is that the heir takes by descent.

Thus I devise my real estate to my eldest son & his heirs forever on condition however that unless he pays 1 l. 100 the estate shall go over.

This effect results from keeping up the distinction that if a devise is made to the heir at law who comes within any of these rules making the heir take by descent viz that in case a daughter is the heir at law and a posthumous child is born. that child is a son as the devise is void the daughter takes by descent & therefore on the birth of the son takes the estate from the daughter & rests it in the son & if the posthumous child is a daughter half the estate of the elder daughter is taken from her & rests in the posthumous daughter.
How a devise may fail of taking effect. (96)

Again an alteration in the devise of the devisees time at which the heir shall receive the estate (the quantity of estate being the same) does not enable the heir to take as devisee. Thus if the benevolist testator devises a life estate to J & remainder to take 23th yd by his heir at law, this devisee to the heir at law's yd & the heir shall take the estate after the life estate of J as a reversion by descent.

But where a limitation to the devisee's devise produces an alteration in the course of heir 17th descents, as when the devisee makes a different limitation of the devisee 11th estate from that which takes place by descent, the heir takes by peculiarity. (97)

Thus if the testator devises land to his two daughters who are his heirs, they take as devisees, because the devisee makes them joint tenants whereas if they took by descent they were coparceners. & the case is if there had been the same land the daughters been devised to take as tenants in common. Indeed in these cases the estate is different from that which they w' take by descent.

So also if one leaving two daughters who are his heir at law devises the whole of his real estate to one of them she takes the 23th whole by devise & not one half by devise & one half by descent. for if she took one half by descent her sister w' be entitled to a moiety of the half which is evidently contrary to the intention of the testator.
Lapsed Device

A devise may upon the general principle now under consideration be in part good and in part void. Thus if a devise in fee simple deverts one half to his heir at law in fee simple and one half to his heir in fee tail the devise is good as to the latter but void as to the former.

Finally a devise may fail of taking effect by the death of the devisee in the testator’s lifetime even if it devolves to a future heir and the devisee dies before the testator’s death, the heir of a devisee can claim nothing for the devise is void of limitation.

Further if in this case the devisee republished his will after it’s death Rec. 12497 still the heir could take nothing for the effect of republication is only to give the devisee use in the original will the same effect as they would have had if first written at the time of republication.

But if a charge has been created on the estate in the case now supposed that charge will remain and attach upon the estate for the charge does not depend upon A’s having lived it. It is a charge when it was created in the hands of the heir. for this incumbrance does not depend on the taking effect of the devise.
There are all of the cases in which a devise may be defeated by

But still the devise may be defeated by a conveyance or other means as if the devise were the devise of a man to his wife, or to the husband the benefit of it, and the devise may be either expressly or implied.

And implied waive is some act from which it is inferred that the devisee does not accept the benefit intended him under the will.

It is a general rule in equity that if a devisee has a right to part of the estate, as a matter of right, he is entitled only under the devise. Thus a man devise to another real estate to his wife instead of a life estate in blackacre remainder to his second son B. A devise to B. and blackacre in fee to J. B. was not permitted to claim blackacre unless he renounced the right to blackacre under the devise for where a man devise what he has no power or on the supposition that his will will be acquired in the fee of blackacre will compel the devisee if he will take advantage of the will to take entirely and not partially under it.

Now this doctrine of waive is founded on a last condition that the devisee shall not disturb the disposition with which the testator has made.
And it is not necessary to give effect to this rule that the thing claimed under the will and that of the will sh. be of the same nature.
Real Property (N. 22)

Devised.

In such cases [see last number] 6. 18, 21, 14 will offer the devise to make his election on a true bill filed for that purpose.

We have in this State a law prescribing the mode in which a widow shall make her election when she claims property under a will in opposition to the will.

But the rules concerning election hold only where the devise is made a voluntary claim to the will as matter of bounty. In 45, 4, 110 the will as matter of bounty to be left open. See 43, 4, 8.

Thus if the devise is a creditor, he may claim 46, 3, 5 his right in opposition to the will and still claim under the will his debt. For the equity will not allow a creditor to assert a right in opposition to the will and still claim a bounty under it yet that 7 will allow a man to assert a right in opposition to the will and still claim a debt of justice under it.

If land to which it has a lesser claim than the estate is devised to J. 8 by an instrument not executed as the statute requires a legacy is given to A. A may assert his claim to the land intended to be devised to J, and still claim the legacy. For the devise to J, is no devise, it will not be taken notice of by A to
Devise. How it may fail of taking effect?

But if there is an express clause in the devise that a legatee who disobeys the devise shall forfeit his legacy, if the legatee disputes any disposition in the will he cannot claim the legacy, for this is a legacy on condition, even the devise be as in the last case void for want of necessity.

32ch. 430
2 Vinn 365
2 Dech 458
2 Eaq. 301
112v. 130.

And in all cases in order to oblige the devise to elect it must be clearly proved that the devisee was willing to accept it.

15ch. 95.
Pro. 470:1

A devise may also fail of taking effect in consequence of the testator performing in his lifetime what it was the intention of the devise to accomplish. Thus where a testator devised two for the purpose of completing a building for the devisee but during his life the testator expended more than that sums on the house, the devise failed of taking effect.

2 3l. 378.
3 2ch. 424.
2 De. 125.
1 92m. 19
P. Ch. 473:4.
2 Dec. 27.

And finally, a devise may fail of taking effect in virtue of the devise from descent devises 344:1 Mary. By this the devisees are void as to such creditors of the devisee as have taken the land in the hands of the heir, the effect of the devise there is to entitle the creditors to satisfaction out of the land devised when the devise fails.
Before the devisee derived the land, the devisee alienated the land before an action brought against him for the land on 26th July, discharged from the debt.

When a creditor is wont to lands derived from 26th July, his debt he must sue the heir at law for the devisee jointly, as he is not determined in whom the devisee title is, the Statute expressly makes this provision.

We have no particular estate like that of fine at law, but our general statute law gives the creditor of the devisee a preference to the devisee.

This English Statute however affects only the relative statutory rights of devisees and devisees; it does not relate to the relative rights of heirs and devisees. That is, by subjecting the lands of the devisee does not relieve the lands in the hands of the heir at law — indeed the lands in the hands of the heir are first liable.
How far parole evidence may be admitted to controvert a devise? (1)

Parol evidence has sometimes been allowed to vary a prima facie intent of words. (2)
...he devised real estate to his daughter. 56.21b.6.7

The question where a testator had previously named 56.21b.6.7 in his will two females, after a war and a devise to his two
children to pay to the wife of his two sons, the devise intended. The ambiguity here
rose on the face of the instrument.

But as to what we called matter of fact or...
Dear Edele,

So where one devised the manor of A, having two manors of A, parole evidence was admitted to show which of the manors was intended.

3 R26.310
1 Sm 107
Ps 490.

3 R26.310
1 Sm 107
Ps 490.

3 R26.310
1 Sm 107
Ps 490.

To parole evidence has been admitted to show whether a given instrument was intended as a will or a deed.

Now this was admitted on the principle that it went to the execution of a given instrument as much as to the execution as the fact of signature. But if on the face of the instrument there appears of present grant such evidence is inadmissible.

Is when a devise was made to A B and there was a devise of the same name parole evidence was admitted to show that the testator did not mean the devisee who was admitting circumstantial evidence to explain a latent ambiguity.

Is when a devise is wrongly named sufficiently described parole evidence was admitted to show that the person intended. Will say Ps 37:340, that the rule as to deeds but 40:7, 49:8, 16 says the rule is the same both as to deeds and devices.
To prove one device to the four children of AJ Bovis, when in fact she had six sons by one husband, 2/3:2/3 by another. Legal evidence was admitted to show Prov. 49:15:1, 32:1 that the four by the first husband intended. Here the impropriety is latent.

But a device to one of the sons of AJ Bovis having several cannot be explained by persons to Bovis. The impropriety is on the face of 2 Rev. 6:44. 69:6. 68:90.

If the person described as Bovis apply to AET. 489, one of the name applies exclusively to another. 676 by legal evidence it seems is admitted to show Rev. 489:9, whether the name of the person shall govern until 67:73. As to the eldest son of Thomas D. there being 67:4, next eldest son of Thomas D.

And where a testator gave a legacy to a farm estate by a wrong name. Legal evidence was admitted to show that the testator used to call her by 67:14:16 the name mentioned in the devise. Here it might be alleged that the legacy was known to, called by the wrong name to,
Carrol Evidence

Still if the person wrongly named or devise
is not discribed at all except by the wrong
name. It is said that no evidence can
be admitted to show who was intende but
the case comes very near the last.

Here the evidence is not consistent with
the terms of the devise.

If it could be shown that the mere
Fellow evidence would
be admissible no

But notwithstanding the genl rule
respecting patent ambiguities yet it is said
that if the term used is in itself equivocal
parole evidence may be admitted to show
what was intende by the term used.

This rule may perhaps be reconciled to
principle by analogy to the case where
a foreign word is used in whch case parole
evidence must show to the court the
meaning of the word.

In these cases however parole evidence is
not admitted to give words in the instrume
from the fear of introducing
a meaning whch they can not bear tht the
word don has been sometimes construced to
mean a grandson where he had no son
but a grandson. But where the designation
in my son & it is evident from the instrume
that the word son was intended to apply
to a son of not a grandson parole evidence
was not admitted to show that grandson was inte
Thus, where a man devised land to his son for a
legacy in the same instrument was given to a
grandson, parole evidence was rejected, where it was offered to show that son meant grandson.
For as the testator had once used the word son, and grandson, the court thought it inconsistent with the devise to show that the testator used son and grandson as synonymous.

Parole evidence is never allowed to supply what the will omits, for to allow this would be to allow a will to be made by parole. Besides 2 Ep. 2:14. 15.

The uncertainty is patent.

Where the testator gave directions that all by 2 Ep. 2:14
estate should go to his executors but the 32:23.
cause was omitted by the reviewer parole
evidence was rejected, still was offered to show that the testator gave directions that the
cause should be inserted, "robust and just digit." If such evidence could be admitted, a will might be made by parole.
Panel evidence

Deeds. To be of land or estate some panel evidence to explain the true meaning of the expression to the quantity of interests, provided this proof stands with the devise. This part of the testator's circumstances has been admitted when a term of equivalent import was used—thus the devise was all my estate to be for paying my debts—panel evidence was admitted to show the deficiency of terminal estate that of course a fee was intended to pass.

1. T.C. 442
2. T.C. 442
3. T.R. 517
4. T.C. 93
5. T.R. 562
6. T.R. 34
7. T.R. 67, 7628, 11849, 559, 1; T.C. 3441.
8. T.R. 343
9. It has been sometimes contended that the
10. T.R. 6254
11. T.R. 356
12. T.R. 558
13. T.C. 175
14. T.C. 447

[167]

15. T.C. 1747. It must be uncertain if real estate, and to ascertain the quantity of land intended proof was formerly admitted as to the value of the
16. T.C. 695
17. Frankly, and devised as if one devised all his land to a
18. Paul. 50: 7, 13. he paying to $800 per annum, proof was admitted to show that the sum always exceeded the annual
19. Value of the property given.
But it seems now well settled that a devise of Devices

land with any words of limitation charged with 6.0.10

the part within of a great farm of annual sum 6,000

carry a fee of consist that there is now no need of parole

evidence concerning the value of the lands.


The principle is that if the devise 6.0.10, a life estate he might be a lesser but the devise is always presumed to be the object of the testator's bounty.

The value of the land then appears not in such to be at all material.

In this case too, if the devise accepts the 6.0.10 gift he binds himself personally for the party of the charge created by the devise.

But still there is a distinction between cases in which the charge affects the fees and Devices in which the charge affects only the lands for in this last case since the devise 6.0.10 cannot be a lesser by taking a life estate he 5.20 12:6:8 only takes an estate for life.

Under a devise of "land to the paying proceeds on my debts from the profits thereof 6.0.10 it takes only an estate for life. For here are no words of interference. If the devise 6.0.10 only a life estate he cannot be a lesser for he is bound only to the extent of the profits..."
Where the devise was that I give my land to B. my debts at legacies being paid the rest this was formerly held to carry a fee.

This does not appear to be consistent with the last rule. for the word "residuary" was probably used by the last to a in the same sense as "out of the profits of B." But the distinction is this in the last case, it is a residuary legacy, i.e., equivalent to this I charge my land with the pay of my debts. The legacy of the land will not be necessary for this purpose I desire to do, the latter for because he is the person to sell the land, the cannot sell without having a sufficient-

In a late case a devise of land to B.

But when the devise was of "all the rest of my lands tenement to B. after pay of debts" it held to take only an estate for life for here B was not to sell the land at the falling of B had nothing to pay. If he take post the devise to whom land at all. It is not a devise to I subject to the pay of debts, but it is a devise of the land: after the debts have sold enough to pay the debts.
And evidence has been admitted as to the state of the testator's family for the same purpose, i.e., to ascertain the meaning of words not strictly equivalent in themselves but all coming with reference to the testator's property will bear a meaning different from prima facie import.

Thus in the case of the Bell tavern will, may Bell 231, this J. desired to do a t. house called the bell tavern. The fact was that the devise was Bell tavern tenant in lieu of the house, if he had only 262.9 a provision, the t. held that the t. device, took a fee, so it could not have been the intention of J. to give a life estate for that he already had

Thus the case of Fenemore v. Points in 139.151 evidence was admitted as to the state of the testator's funds to ascertain the meaning of the word "sum" used by the testator.
In all these cases however the evidence must stand with the words. If the words cannot bear the meaning intended to be put upon them, such evidence will not be admitted to put that meaning upon them.

But in rescuing the only parole evidence is admitted of the testator's words to rebut an equity, or meet an implication, is an equitable implication.

This is a good rule in equity, applying to all cases as well as those of devising, in which a person by a will in Equity claims an equity, and is liable to the disposition of the law to make.
To pursue the subject further.

When from the face of the instrument an inference is raised in equity in favour of any person, parole evidence may be admitted to rebut this equity. So as to leave the instrument as it stands at law.

This land was devised to an e'd'n for part of debts, but there was a large purify at law this purify belongs to the e'd'n but in this case equity considers the e'd'n as to the purify only as trustee to the heir.

But on a bill brought by the heir parole evidence was admitted that it was the intention of the testator to give the purify to the e'd'n.

To illustrate. A entered into articles to sell property to B for a given sum. But A afterwards made several qualifications respecting the price. A then brought a bill to enforce the sale. B was allowed to produce parole evidence of the qualifications. In this evidence instructed the conscience of the Chancellor whether he ought to proceed or to leave the parties to their remedy at law. The evidence is not admitted to control the instrument.
Deeds. Again a testament devised considerable prep.

2. Verm. 677 to his ef. & the question was whether parcel evidence

Falk. 79. 2d be admitted to show that it was the intention of

2d. 527. the testator to give the residue to the ef. & it was decided

in the ob. to that because the ef. had charities in

the will that it did not. But in the house of lords it

was decided that it did. & use in favour of the ef. No title

2d. 527. On the same principle evidence not satistifikasi

2d. 529. the will was admitted to show that a decum

This was a new one made as the execution of an agreement

with an exchange made by the testator to the devisee. Thus A B

agreed to settle £100 per annum on his wife

and in the agreement the wife always in his will she gave £100 per annum. parcel evidence

on duty and might possibly be admitted on a bill brought by the wife for the

had this been executed this performance of the agreement that the wife was intended

indeed partly as an execution of the agreement. This evidence is

9th. 105. not admitted to affect the will but to prevent double

2d. 520. parcel evidence is always admitted to

contract fraud. Where a person devised his real

estate to his ef. and omitted to charge £200 on the

land in favour of A. because the ef. promised to pay it. evidence was admitted to prove this

promise by the ef. on the purpose of counteracting

the fraud of the ef. It will be useful to say that

the fraud shall invalidate an instrument that at the

same time refuse to admit parcel evidence

of the fraud; the fraud will then appear on the face of the instrument.
Revocation of Wills.

A will is revocable at all testamentary dispositions of property and commutation until the death of the testator, the death of the testator consummates. On 530, every will.

Revocation at the place where it совершало it as they stood before it of words, and of two hands together. Sir 530.

In the express revocation in one of the in terms of before it of words it might be either in writing or by word. This a will might have been revoked by a codicil or by a subtlety will expressly wording.

By word as if the testator says 'I revoke my will', this before the it was a such revocation even of as of

The cases how can of partial revocation the above verses 'must clearly appear, as if one says in haste 587 or in passion I revoke my will this will not be such. 416 581 solemn deliberate intention to revoke was necessary.

Also, importing an intention to revoke in future 534. 477 it not even at conquest, law revoke a will. as my 530 will shall not stand for I will alter it. If the will is not altered altered it will stand. The works do not import a revocation.

If a will make a declaration in writing after the 535 478 it revoke the will.
Implied Revocation,

An implied revocation may be by some indication not expressly revoking a be done not from all it is inferred that the indication of the testator is changed. Thus if one having devised to a stranger his entire revocandi say for shall substitute this is an implied revocation before the by others wold it said in was been snafu to revoke the first devise.

Ex. (35:03) The act manifesting an intention to revoke in presenti or furnishing an instance that the indication of the testator is changed may be either by words or by matter in hear. Matter in pres. here mean words as contradistinguished from an instrument in writing.

Ex. (51:32) Thus if one make a devise inconsistent with a letter. The testator expressly revoking the former will revoke the former as far as they are inconsistent. As if one devises all his estate two at first two of them the latter devise revokes the former.

Ex. (30:44) It is held however that if one devises his estate to A & B in a subjekt part of the same 2nd Sec. 51:45 instrument devises the same estate to another 19th Sec. 20: then two take as joint tenants. But this seems to be a doubtful point.

Ex. (50:52) 3 Arh. 495 (to lett 112 b. c. 22:2 374) 3 Arh. 493. In lett 112 (in notes) 113 a in notes.
Implied Revocation.

Still in the case of a specific legacy to C in the same instrument to B afterwards B the residuary legatee will take the whole.

But if there is one thing in the will by all the intention can be discovered the intention will govern notwithstanding this rule.

The rule ought to be the same as to real and personal property. It is a question of intention.

But a subsequent devise not containing any words figures 374 of revocation will not revoke a former one unless sold 203 the latter is inconsistent with the former i.e. 32 bomb 90

further than it is inconsistent with it.

The mere fact that a subsequent will is made is not suff. to revoke a former will.

And where in such an case the jury found that a subsequent devise was different from the former figures 3 East 258 but in what respects they knew not the latter held that they could not pronounce the former to be revoked.

The heir has the once probandi.

Well, Paule says that if the jury found that the devise was inconsistent with the former that the devise first made was not bad but the inconsistency is a matter of law if there be no such inconsistency in the will then the jury might find that there was a total inconsistency this might alter the case the I think it w? not. If the jury did find that there was a total inconsistency then the jury might conclude two devises inconsistent with a prior devise might be valid.
But there is a distinction taken between the
revoke effect of a codicil and the revoking
effect of a trust in will. Not that a codicil
being part of the will is not in its own.
for the a revoking instrument will not revoke
only in the degree expressed. Whereas as I say,
a trust, devise, varying a previous disposition
is a total revocation.

Thus land was devised to their trustees to a
176, 178, 166, desirable any, by a cod; the same lands are
174, 144, 41, 41, devised on the same trusts to the same trustees
of two others. But the rule is that the trust
is not revoked, the only effect is to modify
the authority originally given to them by giving
it to fire. Whereas it is said that if instead
of being a cod: this had been a partial devise;
then in fact, the devise instrument the first would have
had no effect and the trusts would have been
executed according to the latter. The practical
difficulties in the mode of pleading. In
the first case, the trustees must plead under
the will & cod. in the latter, they must plead
under the latter will alone.
Real Property, 1824

Devises

If one makes a second devise inconsistent with the former one, under a false impression, Prov. 5:24, as to a matter of fact which furnished the motive to the second devise, if this motive is expressed in the subsequent devise, and after the death of the testator it is found that the fact supposed to exist by the testator did not furnish the motive to the said devise, the said devise will be revoked.

Thus a man devised land to A and in a subsequent instrument recites that A was dead, he devise the same land to B. - after the death of the testator it is found A was still alive; it was held that of lost under the first devise. This differs from the case (ante) of a devise to a younger son on the supposition that the elder was dead; because the death of the elder was not then recited. Hele.. 4, 254, in this case, a revocation is demanded, not because founded on a mistake, but because founded on a mistake.

If the second devise is to B whom the testator and his wife, but it is found after his death that she had a former husband living when the devise was made, that he was ignorant of that fact, a former devise of the same property will not be revoked. - In such a case, the devisee to render the devise void devise from any defective practice on the testator. Prov. 5:46.

If clearly not.

When a former devise is revoked by a second devise, or on the ground of its being inconsistent with the former, the second devise is absolute. Sun. 3479, until the death of the testator. - If the second devise is palpable and destroyed the first will be good.
[29]

Devises. But it seems that if the second devise be
exp. 53. expressly revoked the first a revocation of the
Devises. 50. second will not establish the first. For here
Pac. 551, 44. the revoking effect does not depend on the
2 shall not be. inconsistency of this with the former. 4 by this
3, exp. 55, 6. expressly revocation the former is immediately
revoked the the disposition in the second be
revoked afterwards.

But this point is not however expressly decided.
Cost. 42. But the reason seems to be that the revocation
the reason seems to be that the revocation
when expressly is a substantive act fact and
189, 65. present. In the implied revocation the revocation
arises from an inconsistency which is destroyed when
the inconsistency is destroyed by some collateral extrinsic fact.

First by an actuation in the domestic
189, 65. relations of the testator.

Secondly, by an attempt to make an actuation
in the estate devise or by an actuation in the
act.

176. First, if a man while unmarried make a
2162. will afterwards marries and has a child by
1Wb. 34, 4. the marriage the prior will is revoked.
1S. 41, 42. but there must be both marriage and
1Wb. 34, 42. birth of a child. If then a married man
1Wb. 243. makes a devise and afterwards has a child
1Wb. 243. the will is not revoked. If of an unmarried
1Wb. 191 a man marries after having revoked a devise, it has
1Wb. 191, 41. in law the devise is not revoked.

2, 23, 6, 7.
This rule holds however where the child is a posthumous child. The marriage of the husband, the birth of a posthumous child are an implied revocation.

In this state by it the birth of a child alone is a revocation of a former devise unless the will provides for such a contingency.

The reason of the former law rule is said to be that from such a change of domestic circumstances a change of intention can be presumed. 

But it seems to be admitted that any evidence will admit of proof that the devise shall stand. For where evidence is admitted long since to prove a deviation from extrinsic facts every presumption arising therefrom extrinsic facts may be rebutted by parcel evidence. 

This rule has been doubted 5 rep 448, 664. It has been doubted where the devisors of the testator are admissible.

The reason given however for the rule that a change of domestic circumstances is not broad enough, so in the case of a posthumous child, if at the death of the testator such a child was expected by him and it, that happen to be an intestation, the devise is not revoked yet in expectation of this child the intention of the testator may be presumed to have been carried. Besides an intention is not sufficiency rebutted non factum.
Implied Revocation

What then is the true ground of this rule? The reason is, that there is a tacit condition attached in contemplation of the testator to devise that he does not intend that the devise shall not take effect unless if there is such a change in his circumstances.

Thus has been no case decided in which the two subsequent events of marriage and the birth of a child have been held sufficient to revoke a former devise unless the whole estate is devised by the former will.

And it seems to be that if the wife and child

day 35 be not provided for either by the devisee itself,

or by his leaving some part of his property to the

testator that there is no consequence of marriage or will not

result to a revocation. The presumption of a

tacit condition is not answered.

And clearly, subsequent marriage and the birth of a child are not events if the devisee is made

in contemplation of these events, and making

provision for them. So it will be about to

hold that a devise is revoked by the

happening of the very circumstances on

which it was intended to take effect.
Thus if a man make a devise to such wife as he shall afterwards marry and marry her, and leave by her a child or a legacy, it is given to his brother. Prov. 556.

The legacy was not revoked, for provision was made for the family, and the whole estate was not disposed of to a stranger.

But if a wife sole makes a devise and marries her marriage alone is legally a suspension of the devise during coverture. So that if she dies before the 29th of June, the death of her issue, the will is clearly revoked. 25 R. 692 arg. Heng. 296.

It is an essential requisite of every devise, that it be on the testator's power to continue a revoke it, but a wife covert while married can so revoke, and thus the law revokes it for her—or at least suspends it.

But if the wife in this case survives the devise, 25 R. 253.

If some become capable of making a confin, say, viz. if she dies neither is the will valid? 25 R. 692 arg. Heng. 296. Say it is. 25 R. 692 arg.

Now that it is said. But if I think that the true opinion is that the devise is good for she is capable of making a devise at the time of making it and at the consummation.

In this it the last question cannot arise by our 25th law she may make a devise during coverture.
2. A devise may be revoked by an act of a attempted alteration in the property devised after the devise made.

2. 1574. Where the revocation is an actual alteration of the estate after the devise made, the revocation is not founded on any supposed alteration of intention in the testator but where it is the consequence of an attempted alteration the revocation is founded on the testator's intention to revoke.

3. 1574. The former rule is that an actual alteration revokes the devise is on the principle that the devise must be seized at the time of the devise made and must continue seized either in fact or in contemplation of law until his death.

4. Now the alteration of the estate breaks this seizure of any alteration in the proceeds will put the estate in a different plight from what it was at the time of the devise made; revokes the devise.
Such an alteration may be effected either by Devices

1. By the devisee. If he receives the land devised —

1. tolkens

If he makes an alteration in the legal estate only retaining the beneficial interest after the devise is made. Thus tenant in se makes a fee simple after devise to the use of himself, and from this fee simple he holds the land by a new limitation, therefore the devise is revoked. For it is precisely like a devise made of lands before they were

purchased.

(Shown q. 3)

(140) So if the devisee land 4 then alieens the land 4 after a reconveyance the devise is revoked. He now holds the land as a new purchase.

1. tolkens 7

And when one having devised the land afterwards made a marriage settlement limiting the estate to himself it was held that this 3 tolkens revoked a devise of the same land. For under 2 tolkens the recovery he takes as a new purchase.

7 pr. 2,177

(141) And the same rule applies as well to equitable as to legal estates. If therefore mortgager shall after having devised his eq. of redemption demand it is revoked. For it is held by fine and recovery the devise is revoked.
Deeds

And on the 9th alteration upon an estate before devise even the the alteration itself.

2d. 106
3d. 163 is necessary to make the estate derisive.
4th. 406. Thus whole tenant in tail derived his estate 2d. 168 after a convey the estate to 50. 2
2d. 1401 the use of persons. the devise was not strictly made
3d. 558. but it was held to be so.

3d. 558.

And if a man covenants to lease a farm
4th. 558. to the use of such person as he shall name in
5th. 558. his will of them, make his devise or afterwards
6th. 558. leaves a farm the devise is revoked by the law.

2d. 168. This is object in the rule that where the devise
2d. 168. alteration is expressly desired to be for the
3d. 168. purpose of giving effect to the devise the devise
4th. 168. is still revoked for the subcontract has nothing
to do with the rule. The rule of course supposes the alteration such that the tail
5th. 168. holds as by a new purchase.

3d. 558. And when a man actually leased a farm but
3d. 168. acknowledging himself tenant in tail, suffered a
4th. 558. recovery to confirm his devise this was held a consideration.

2d. 558. And the same is the same as to a specific
3d. 558. devise by lease for a lease for year which is revocable
4th. 558. to the year. If a man makes a lease for 50. 500.
5th. 558. irrevocable leases of the same that a lease for
6th. 558. 50. 500. of them leant the lease the devise
7th. 168. revoked, but how the reason is not the same as before
8th. 168. for how the tenants rents do not include the reserved sums.
But if a man devises all the lease of a land which he shall die possessed of, and his devisee shall die possessed of all the lease, the devisee will have it, therefore if in the last case the word 'had been' were used, all the leases of which the devisee possessed the renewed lease would have failed.

Still, when the perseveration of a prior devise depends on the simple fact of a subsequent alteration, there must be a substantial alteration, or there is no perseveration. In this principle it was formerly held that if one having land in fee devised the same to a servant to convey the land. The servant then conveyed the land, and the covenant is no perseveration and this is now the rule at law, but in equity, if the covenant is such as to vest title in the servant, the covenant is a covenant for in equity, the covenantor has a lease to the land.

But a devise of an equitable interest in a trust estate is not worked in equity by a change of trustees. Thus A leaves land in trust for B and B lies. But having devised the land, causes his trustee to enter of other trustees, to the same uses, the change of trustees does not in equity revoke the devise. For this change of trustees affects only the legal estate, and B only devised the equitable estate.
Implied Revocation

Devises

If in one having restraints for the future

Suba. 5761 purchase of land 4 then devises his estate to the

1 Meb. 311 compleats the purchase the devise is not revoked

for the equitable intent remains precisely as it was before. At law the devise is be

at initio void but in Equity when the devise

was made the instanter had title & now he has only

later the estate home.

Then it is from a general rule in equity that if

or 110 a person having an equitable and in fee devise

Rex. 597.9 if & then take a conveyance of the legal inst

1 Meb. 311. the devise is not revoked.

3 B. N. 179. Thus, if a claret gives devise his equity

2 N. 679 of redemption & afterwards has the debt to

7 & 24 roll takes home the legal estate the devise is not

reverted.

And where several successive instruments taken

together constitute but one conveyance in law

also devise made between the time of the first

of the first instrument & the completion

of the last is not revoked. For the consideration

shall relation to the inception of the devise is therefore

made in law after the conveyance

1 B. N. 251 Thus the devise made a conveyance to 61

7041 6. 600. In the instance of suffering a recovery to the devise

2. Sur. 576a. a devise & then suffer a recovery to his own use

4. Sur. 1962. the devise is not revoked by the subsequent recovery

Rex. 600. In the subsequent recovery takes effect by relation

at the time of making the deed to bar the use

therefore no alteration in the estate is made after
device made
Implied Revocations

A new partition between tenants in common does not revoke a devise made before the partition. For the partition makes no alteration of property or merely ascertains what belong to each. See § 240. But if the deed of partition also alters the estate, then the devise would revoke the devise. The rule 1 Edg. 479 supposes that the partition is confined to that one object. If the deed of partition 3 Edc. 742, extends further than this, it makes a disposal of the property; see § 240.

Here one has made an actual alteration in an estate before devise, no parol evidence is admitted to show that the testator did not intend to revoke the devise. For if the intention was clearly expressed on the face of the devise, it is of no effect. These rules are not founded on the intention of the testator.

A devise may also be revoked by an unsuccessful attempt to alter the estate devised. This is if the devisee, having devised his estate, attempts by deed to convey away the estate, but the deed fails for want of requisites or for want of capacity of the testator or grantees to take the deed. The devise is ineffectual, the devisee revokes. This rule is founded on a supposed alteration of intention. The devise is prima facie revoked.

But a subsequent ineffectual devise of the same estate will not revoke a prior one because the subsequent devise does not attempt an alteration in the estate until the testator's death; the testator which is presumed to take away the estate from his heirs only on condition that the second shall take.
Impressed Revocations

Devises. If one makes a device of seisinment after devise of the same estate but without livery of seisin, unless the seisinment is ineffectual yet as it manifestly was not, an intention to revoke the devise, it will be revoked.

But as such revocations are founded on the presumed intention of the testator, the inferred revocation may be rebutted by proof. Thus if the testator declares that it was not his intention to revoke, positive evidence of such declaration is admitted.

Devises. Where an attempted alteration is ineffectual through the incapacity of the devisee to take the prior interest is revoked. The last devise in the case takes the property as such, unless an intention to revoke the last devise is here supposed to be executed properly, according to the wording of clause. If one having made a devise makes a grant of the same estate to the wife, the grant is void at common law if he yet revoke the devise.

If the grant to the wife was of a reasonable part of the land estate, a bill of complaint would support the grant if, therefore, the devise only in part worked.

(i.e. in equity) (100)
Implied Revocations

Devises

If a stranger dispossesses the testator and continues the disposses until the death of the testator, the devise made before the disposses will be void. If a stranger this devise is void.

But a stranger cannot revoke a devise by leaving or cancelling of it if it remains legible.

And I think that if the devise was destroyed by the wrongful act of a stranger, still it is good if its contents are discovered by a duplicate or by proof. This has been determined in a still stronger case in which the devise being insane took his will. The contents of the will being proved by proof it was held that the devise in the ten will took. (Smedley v. Chalford.)

A devise may be revoked absolutely or conditionally or in whole or in part. Revocations have heretofore been considered as absolute.

Thus if the devisee devised his estate mortgage. In fact, it even in fee, this devise mortgage is in Equity. If the mortgage is in Equity, 11 Vat. 318 wet, only a conditional percession. If the mortgage is discharged, the devise takes 32 Vat. 740. 105. 20 Br. 318.

As to when a devisee may have the land or paying the debt.

This is to be at law or absolute. If the mortgage is absolute, or revocation for at law there is a total alteration in the estate but in equity there is no alteration of the feoffor. If the mortgage is not discharged it is a revocation for land. If the devisee may have the land or paying the debt.

A mortgage is no sale it is a mere pledge. The mortgagee's interest is personal.
Implicit Revocations

Devises
1. 15th April, 772
2. 16th May, 772
3. 17th May, 772

Ongoing

When one having devised his real estate in such a manner that he may sell it for the purpose of satisfying the debt & account for the surplus to the testator if the testator dies before the sale, the devise is revoked only by lento in equity. For this conveyance was absolute in terms to yet in fact conditional & the transaction is nothing more than the testator giving a homestead to sell of the devise by paying the debt may take the estate.

If indeed in this case the land has been sold by the devisee during the testator's life time, the sale & have been a revocation quoad the land at least whether the devisee in any that can entitle to the conveying is doubtless.

But a mortgage for years is even at common law only a revocation of a prior devise in fee, only for the term of the reversion is in the devisee. In equity it is only a conditional revocation pro tanto of in equity the devisee by paying the mortgage debt will take the estate in fee simple from the incumbrance of the terms immediately on the death of the testator, the at law he could not take the estate until the expiration of the term.

The mortgage whether in fee or for years is made to the prior devisee is a total revocation litig in law & in equity. On the principle that a devisee mortgage are inconsistent.

This doctrine has been since penned in toto & thinks very properly denied.
Revocations

A partial revocation may operate either by diminution of the quantity of land devised or by subject-matter devise. Bin. 23. Hence if one devise in fee after a year leaves to life for life and a year, the devise is reached only for the estate for life and is only partially inconsistent with the devise in fee.

And if one having devised an estate on condition afterwards revokes the condition, the devise becomes absolute.

If one devise to be in fee simple by a subsisting instrument devise to A in tail the latter is a reversion. 1 P. 624. No alteration in the form of the instrument implications in the former rule for here the lease for life is only partially inconsistent with the devise in fee.

A subsisting lease to a stranger for years to a stranger is a revocation of a prior devise in fee only pro tanto.

But if a subsisting absolute lease is made to a prior devisee it is a complete revocation. On the principle of Bin. 23. that the two estates are incongruous. This rule also probably went to the law in all the lease was to take effect on the tenant-at-deed.

But this rule is now denied to a lease to a prior devisee is now no revocation. 5 Vic. 265.
Revolutions under the Statute of Frauds

When having devised his estate in a will, he afterwards makes a lease to A. The lessee, whether lessee or creditor, cannot take the lease tho' the
...
Revocations

It has been held that this statute not only devolves to devise of land, but also to legacies and sums of money charged on land.

This statute does not affect implied revocations for it leaves all implied revocations as they stand at common law. In 51 R. 1976, it is said that if the statute 72,523 were to integrate the determination might be left. Wise, 1877.

So also it does not affect revocations by a subsequent alteration or an attempted alteration. They are indeed implied revocations.

This statute introduces a new rule only of to express revocations. And if there are any doubt on this subject it may be cleared by the words in the statute "declaring the same."

3. Clause no devise shall be revoked otherwise by some other will or codicil or other writing declaring the same. In this part the statute seems to be only declaratory 532, 1877. Dealing of what the law before was except that the words will or codicil and the first branch are construed to mean a will or codicil made as the statute requires, which a will or codicil to be made will that the devise or codicil to revoke it be attested by three codiciles signing in the presence of the testator.
Revocation

That the instrument contemplated in the 3d clause of the revoking part is construed to be an instrument not required by the devising clause in the first of deeds. But this clause of it's terms requires something different from what is required in the devising clause, viz. that it shall be signed by the testator in the presence of the testator, witnesses, instead of being signed by the witnesses in the presence of the testator.

This case involves therefore two different rules.

Wisd. 17:7

ant. 91, 151

1 Pet. 1:7

of debts according to the revoking clause, this is itself a revocation of a former will. This is an exception to the next rule because it does not come within the reason of the rule. In the heir can take the he must take by descent.

Thus a devise disposing of revoking instrument need not comply with the first and last branch of the revoking clause. If such an instrument complies with the first branch of the revoking clause, it will be effectual to revote within the first branch, and effectual as a devise being executed according to the devising clause for the first branch of the revoking clause in such cases. 1 Pet. 1:7. To be the same. But such instrument will not be effectual to revote unless it complies with the clause. Pet. 1:7.

An instrument intended merely to revoke, will be good of executed either according to the first or third clause. The words of the devise make it effectual in either case. 1 Pet. 1:7. 1 Pet. 1:7. Pet. 1:7.
42° clause: leaving burning obliteration of devices cancelling, these are not affected by the act but stand precisely as they did at common law.

Revocations affected in this manner are implied by proof of renunciation of the testator and therefore these acts done by the testator are not per se revocations but they do not furnish evidence of a revoked intent by Mib. 557. any such acts as revocation or not as they H. B. 2578. and or are not done unless revoked.

Thus where a testator cancelled a will by mistake

It is not necessary however to revocations 2 3 4 5 6. of this kind that the instrument be totally destroyed or annihilates the slightest leaving or obliteration if done by the testator with the intent or of destroying or revoking it is suffic.

And when there are duplicates of a devise done 6 57. if the testator destroys one of them annuls it is suffic to destroy both if they 2 1 7 47. are both but one instrument.
Revocation

1. Revocation of this part of the devise.
2. Revocation of the intention of the testator may arise only to conditional revocations. Thus when 3. Revocation a testator supposing that a new will was completed began to destroy the first but being informed that the latter was not complete desired the person to whom he had obliterated the first. He died before the second was completed and it was held that the former was not revoked.
4. The same problem was presented under the circumstances arising from an extrinsic act.

And a will obliterated in part by the testator may still be good as to the residue. Where a testator devised all his estate to be except blackacre and obliterated the exception the devise was held good.
From what I have said concerning the draft between the 2d & 3d branch of the wording clause there arises a distinction between an instrument of revocation only and an instrument intended both to revoke a former devise and to make a new disposition of the same property.

Now as to an instrument of revocation only. In 4th. 5th, 6th. it will be good if it complies with either the 1st branch or the last branch of the wording clause for the act expressly makes a devise in making revocable by either of those draft ways.

But in the other hand it is a good rule that if the whole instrument is intended both as a nullifying disposition of wording instrument it will not revoke the former instrument unless it is sufficiently bad to the first branch of the wording clause and 4th. 5th. is the same in construction as the wording clause. The reason is that when the instant wording is intended both to revoke & dispose the intention of the testator is supposed to be to take only from the devise in the former instrument what he gives by the latter instrument to the latter devisee.
Revolutions.
The want then of this distinction is this—

If a devisee intends in the second instrument to revoke all vestiges from he may make it effectual for that purpose either by complying with the 1st or 3rd branch of the revoking clause. But if his object is both to revest himself in the latter instrument he cannot make the instrument effectual to settle of their property without complying with the 1st branch of the revoking clause.

In brief there is no statute on the subject of revocations. Probably the common law rules would apply as to revocations. It did not appear proper for us to adopt will subject to devisee the maxim to distinguish qualification peculiar to the English. We now have a statute similar to this English—St 11 Geo 1.
Replication

A devise the revoked if not destroyed to Devises
may be revived by replication. The being before
in part only it may as well be confirmed
as a subsequent act, as revoked by a subsequent act.
The revocation may itself be revoked, then the

And before it of great or great declarations
are suffer for the purpose of replication. It would
at least be the slightest note, might be cast off, to be
into a replication. A slight act, had the same effect.
Any thing which amounted, however, to an acknowledgment of the will as an
existing valid will, was a replication,

While a man said that his after purchase buoy
ought the go to whom his other devise went, this was held by itself
a replication of a will, which contained the expression, the
"above land." And when a man had made his will, of leaving
that my will is in a box in my chamber the Peers,
was considered as a replication.

Any act subject to a devise made

showing an intent that the devise of remain. Nothing
in force was contrary into a replication.

If a man having devised his estate made a subsequent testament to the use of his will, it was held that the testament was a revocation and
of a replication of the will.
Replication at CT.

But the subsequent appointment of a testator or the giving of a legacy or both did not amount to a republication of a devise, for these acts relate to the personally only.

And it was held that the devise

 annotation

 was not a codicil taking no notice

677. 678. of an original devise was a republication

680. that the codicil relates to the personally only.

1. 777. 778. The codicil is a recognition of the will

2. 779. as an existing will,

547. 548. This opinion is however contradicted by it

1. 551. 552. it is held that if the codicil annexed to a

2. 553. 554. prior devise relates only to personal property

3. 555. 556. this codicil does not republish the prior

1. 557. 558. devise, but the former opinion appears to

be better supported than the latter.

4 codicil whether annexed a part of it

4. 561. 562. expressly republishes the prior devise, it will

5. 441. be a true republication, and if it clearly relates

6. 443. to the subject matter of the will, showing that the devise

7. 155. contemplated that as his will at the time of making the codicil

8. 658. 659. And it seems that any words in a codicil

1. 458. 459. showing an intent to confirm a prior

4. 472. devise will republish the devise. Then an

5. 413. 414. rule of the CT is supposes a codicil to

not executed according to the state of

friends.
But since the 1st of March the question of devising re-publication stands on a different footing. As it appears, the English law or our own on the subject of re-publication, it is held that the re-publication must be executed precisely like a devise, viz. be signed by the testator & attested in his presence.

Particulars are therefore now at an end both in Eng. & here.

All I now say is that no advice can count to a re-publication unless it is signed by the testator in the presence of three witnesses. If he means that follows, the re-publication must be in the presence of three witnesses; he is correct. But there is no authority, Con. 160 that the signing of the testator must be in the presence of the testator. The authorities indeed say that the signing was in the presence of the testator, but the re-publication is undoubtedly have been good had the witnesses signed in the testator's presence the testator had not signed in the presence of the witnesses.

We have no in this state no law on re-publication, but once by have determined that a panel. To lay this re-publication was not sufficient on the ground. Also that it has been so determined in Eng. viz. that a re-publication filed 1821 is in effect making a new devise that it ought to be executed as the 1st of January, requires the devise itself to be executed.
(174)

The precise effect of a republication is virtually to give the devise a new date, so that after republication the devise will comprehend all such property + all such persons as it w. have comprehended had the devise been made at the time of republication.

hence if I make a devise to the to day Purchases new lands + day after to morrow re-publishes this devise the lands newly purchased will take up of the one of the devise are suf[ sufficient]

and would that will die to be construed accord- to state of thing. and the testator's intention at the time of making the republication is a new making
And hence if one devise all his lands & afterwards purchase other lands & republishes the devise will carry the after purchased lands. If the same if the devise was of all the lands which own in A & the testator afterwards purchase other lands in A & then republishes.

On the same principal if one devises to his son or if one devise to another son to whom he gives the name of A & then republishes the devise or second son of the name of A will take, but if in the devise had not been republished the second son in 1764. A could not have taken.

But the republication of a devise can extend no further than to give the name of the devise the same operation that they would have had if they had been written at the time of republication. Thus a devise of black ace, then purchaser B & then republisher, the form B can not hold.

Hence also made void in the original devise. How 345. as was of limitation cannot by a repub. be made to operate as were of purchase. Hence if one devise to A & is heirs of his body & if A dies before the testator & after 25 days to the devise is republished, the heirs of the body of A cannot take under the devise that republished 1764. & if the devise had been originally made at the time of the repub. to A & the heirs of his body the devise is void as being to a dead man.
The devise renue estate to her son + gives a leg. to her grandson of the same manner after the 1st + 2d. 3d & 4th. death of the son the testator republishes his devise to the grandson cannot take the grandson alive + likewise take under the denomination if son get heir the testator by giving the legacy to his grandson has shown that he intended to use the who son in its proper sense.

An in gross a codicil cannot give to a devise any inherent validity & if it did, not before prove, the effect of a codicil in republishing a devise is to set up the original devise in the same plight in which it stood at its inception. If therefore an original devise is not executed according to the that the codicil the perfectly executed cannot make the residual devise good. For a codicil is relative & only affects the residual complete instrument.

This rule however is stiff when an entire original devise is executed at different times. If the latter is only executed the whole devise is good.

And Hardinge held that if a person devise then & after to all the heir only to son held + the second republishes the will after having received a devise. That the renewed devise is not passing good.

A devise may be republished by new recogn. & such a repunctuation may supply a want of capacity & if existed at the time of the first execution as well as a want of subject matter whereas the devise might operate.

A recutation consists in the testator design the name anew & a rein attestation of is heirs.
Jurisdiction of Courts

The ecclesiastical, viz. in England, have no jurisdiction
over devises of real property. But they have the whole jurisdiction of wills of personal property, and where a testator will it only of real estate if they attempt to prove the devise a lot of Chancery will interfere and prevent them. 2 East 557, 3d 1188.

So we have nothing to do with Ecclesiastical law here, but one lot of probate are precisely what the ecclesiastical lots are in England.

If the will contains a devise of real East 557.3.
and personal property, the ecc. to may prove the will. It is conclusive only as to the personal property 3d 207.513.

In that it however devises a will as well as wills are proved in a lot of probate, the probate is conclusive both in relation to the realty and personally if not appealed from.

There is universally an appeal from the probate lot to the King's Bench in the county where the testator is holding.

But the probate when finally settled is perfectly conclusive in all questions concerning the execution of the devise.

Now in English both of the can never be set aside for will on acct of fraud or will, but this question is equivocal only on acct of law or a due deviser to which East 2d 244.

So if obtained by fraud it is no devise 2d 244.

2d 244.

2d 244.

P. 207.

2d 244.

2d 244.
Jurisdiction

In this rule it is precisely the reason of the case that a person may fraudulently procure a trust, and it is a rule in equity to be true in fact. The reason is that a trust is not obtained by any sort of fraud, but a deed fraudulently procured on a trust is not a deed unless the fraud is in the execution, or if it is true, it is as a deed at law.

Again, whether the testator is competent to be true at law, being a question of fact for a jury. If this is not the case, the testator cannot set aside a deed for fraud yet equity can take from a devise the benefit of a devise fraudulently procured on a trust, but this is giving effect to the devise for the benefit of the devisee or a devisee in trust for another. Equity in this proceeding acts in virtue of its jurisdiction over trusts.

Suppose, A agreed with B the testator, to give B $1,000, provided A would devise to a certain land a paid $1,000 but the note was forged. B devised the land to A, and the trust declared that A was entitled to the heir at law of B.

In a regular principle of one being able to prove fraud in the deed for younger children is disputed by the law provisions to make the same provision a t of Equity awards the heir as trustee to the younger children.

The evidence was here admitted to relieve
In point questions occurring upon the words of a devise or to be determined at law

But where there are controllable circumstances requiring the intendment of the 6th section that it will construe the will as but aid and such circumstances exist, then it has no original jurisdiction over the construction.

The best proof of a devise is the original contract. If for itself, all the best evidence is regularly required in all cases, therefore where one claiming under a devise instead of producing the original instrument, upon it produces his bill of the devise, it was held that the bill was not evidence.

And the exemplification of the devise under the great seal is not evidence in an action of ejectment by the devisee or the heir, i.e. it is not regularly good evidence.

The probate of a will in ecclesiastical cases is by the great seal, no evidence in a 6th of justice as regards real property.

And even if the will is lost such probate is not evidence as regards the real property. The copy of it from the ecc. 6th sworn to may be evidence, but the probate is not.

Mr. Powel indeed says that when the will is lost the probate accompanies with such circumstances may be sufficient evidence, etc.
But when neither party to a suit has a right to the possession of the deed, a copy is suf. evidence of receipt or release. On this principle, a part of an act of Legislature will not be proved by copy. (Fairfield County.)

And it seems to be that, if a deed remains in chancery by order of court, a copy will be admitted as evidence, but this rule has no application in this State. It is however the constant practice in the State to receive a copy in evidence when the deed is retained in a box of records until the execution is denied.

If proof of the attestation is required, it must be proved by one or more of the subscribing witnesses, if living; but if they are dead, the handwriting of the witnesses must be proved by the original device.

In a suit at law, however, one of the subscribing witnesses is sufficient if he testifies all that the law requires to be proved, but he must be able to testify that the testator signed that all the witnesses subscribed in the presence of the testator.

But the meaning of this rule is that the testimony of one is sufficient to let in the will to be read to the jury, but the jury may believe or not believe this witness as circumstances require.

And when all the witnesses are present in court it is not necessary in law that all shall testify to the signing, or any act of the testator. They must all subscribe indeed but they need not all testify to every necessary fact. And indeed if all shall testify to the facts the will may still be established by other witnesses.
There precedent in England a practice of proving devises in Chancery. It is therefore frequent in England to obtain as probate of the will in a case of Chancery, as a will of personal property is proved in the ecclesiastical case.

This probate is conclusive upon all persons having it, it excludes the possibility of disputing the execution. Wil. 246, 247 of the devise in due to what are, what interests, Wil. 248. The deviser takes whether the devise is said as being contrary to law to all indeed every thing arising from the face of the instrument may be contested in law.

This proceeding is wholly unknown to this state. Chancery has nothing to do with the proof of a will here. Here both of probate, prove wills, an appeal lies to a suit G.

But in England, Chancery will more grant probate 24th 116 of a devise unless the heir is full coming. Wil. 244. Of all law can try the devise in an action between A,B. wherever the heir may be, but this trial of the devise is not conclusive.

The formal probate by a 6 of Chancery is mere necessity, the devise may bring ejectment 3 P.M. 142 of the heir from the executors of the will of executors, this proof of a will is conclusive only between the partis themselves or their representatives, quad that particular subject matter in dispute.
If a bill is brought in equity to grant probate of a will of the heir being in the country or not appearing, probate is not granted upon confes. but the device must still be regularly proved.

In the probate of a will in chancery it is an invariable practice in that to require grant probate of a devise unless all the subscribing witnesses are present.

This rule however presupposes it trusts that all the witnesses are alive. This indeed is a fair inference from the reason of the next rule. see. per. 719.

And the one of the subscribing witnesses die, but he testator must be dead or the will not grant probate. for the 8 presumes it just impossible to obtain his testimony.

The practice of our lots of private to devise a devise proceeds on the testimony of one of the subscribing witnesses, if their testimony is satisfactory.

And it is provided in this state by stat. that the subscribing witnesses may give in their testimony by deposition taken before a justice of the peace. and if one of the witnesses reside abroad a commission issues from the court here to the court there to take the deposition of the witness but in such case the device must travel into the country where the witnesses.
Waste is any destruction or spoiling committed upon land, buildings, trees, or other corporeal hereditaments by detinue to the disherison of him who has the remainder, fee-simple, or reversion, in fee simple or fee tail.

The law takes no notice of waste except when committed by a particular tenant. The same acts, if committed by a stranger and trespassing, are not called waste, as distinction was formerly taken between waste and destruction, but this distinction is now abolished.

Waste is either voluntary or permissive.

Voluntary waste is a misfeasance and implies an act of a positive sort. A wrong of commission.

Permissive is a non-feasance and is a wrong of omission.

A covenant by lessee not to do waste is broken by 281 by permissive waste as well as by voluntary waste. 4447

Hence if the lessee covenants that if he does waste, waste, the lessee may rescind if the lessee permite, himself to rescind, or the lessor may rescind if he had rescinded

held in the deed.

The rule is: undoubtedly be the same if the covenant was not to commit waste.
Whatsoever occasion a lasting injury to
the inheritance is waste when committed
by a lessee or particular tenant—And
indeed a stranger cannot commit waste.
He may commit the same acts that is in
particular tenant and to waste but in a
stranger it is the keep if not waste.

Waste in buildings.
The demolition or burning of a house is
waste. Removing from a building any thing
 annexed to it as doors to is waste. Removal
of any thing will may be called a fixture.

And a removal by the lessee of things
annexed to the feoffed by himself is waste.
If the thing removed is a fixture—The
lessee has made them the property of the
feoffor by offering them to the feoffold
Modern cases have relaxed this rule.
In such nothing is waste except that which occurs a permanent injury to the structure of the building or its use. If the leaseholder changes the structure or the use of the building, it is waste until done by virtue of the permission of the reversioner. Even the leaseholder cannot make better by the change. 

The reason given is that such change is likely to impair the leaseholder's evidence of title. It is also said that he cannot have the right to make such changes if the lease is presumed to wish to have the building remain as before.

If a leaseholder allows a house to decay, for want of necessary repairs is waste until the leaseholder undertakes to repair the buildings or until he is expressly exempted. And the leaseholder is liable for the rents in this case even though there is no timber on the premises, for it is his own folly to take a lease of land on which there is no timber.

But if the leaseholder himself has cut all the timber himself after the demise and the lease is not liable for not repairing.
Waste in Buildings

The erection of a new building on the land
leased by the leper is not here to waste, but
Bac 466 if he takes the timber of the
leased land for
building the house or for repairing it is waste
2 Rob 115. from the leasehold.
(Codett 173) [comment]

But if leper having erected such a building
be lett out, it to decay he is guilty of waste for
long as he has made it part of the leasehold.

If the leper erects a new building on the
land leased, he is liable if he suffers
it to decay for it is not parcel of the
lease. The leper cannot by his own act
impose a new building on the leper.
If land is leased with a building upon it, and the building is uncovered at the time of the lease, the lessee is not bound to prevent the decay by covering it, for he is not bound to put the house in better condition than it was at the time of the demise, while he must do if he covers it.

At common law the burning of a house by accident was waste in the lessee but now by statute he is excused for an accidental waste. Burning if the lessee is at no fault. Mark 6:65. We have no such act but one 6:65 and probably adopt the reason of the English act.

And the lessee is never liable for any injury which is inevitable as by the act of waste of public enemies, or by the act of God itself. This is neither voluntary nor punishable — 1 Peter 4:16.
Waste in
Lands.

But if a house thus injured is left standing
in C. 1692
and is capable of repair the lessee must
repair it in reasonable time or he is
Winst 2 5.

guilty of permissive waste as if the house is struck
by lightning & partly consumed.

5 Dec. 1684

To suppose the lessee in such case covenant to
repair with an express exception of casualty by
fire Would he then be bound to repair?

If a tenant commits a suffer waste but
repairs the building before action brought
the action cannot be maintained but
in this case in case of committing a
permitting waste the lessee may not take
timber from the land for the purpose of repairing
for he has the right to take timber & repair for the
purpose of preventing waste but not for repairing
injury already committed or permitted. 3.

Then the repair in whole or in part are
necessary by default of lessee.

Longy Dry
Matt. 25 14
1 Pet. 4 16

Digging & carrying away soil is waste. taking
made a dam of wall will was intended to
protect the land from over flowing & the
land is over flowed in consequence the tenant
is guilty of waste. same of permitting the
wall to decay. And if the wall is carried
away by tempest to the lessee must repair it
in reasonable time or he will be liable for any
injury will arises from its decay.

Dra husbandry is not of course waste, the 5th 12.

Trees.

It may and to waste for the guilt is an injury 5th 12.
to the lake & not to the remainder made - 5th 12.

But the conversion of one species of land into 5th 12.
anther is waste as if arable is changed into 5th 12.
meadow or pasture, & a conveyer, this is called 5th 12.
meat because it changes the course of husbandry. 5th 12.

Besides in English it changes the identity of the 5th 12.

Land. This rule probably does not hold 5th 12.
in the states in this country. Any change 5th 12.
however will not be a permanent injury to 5th 12.
The interest must be waste here.

If tenant open a new mine upon the land 5th 12.
he is guilty of waste unless the mine was 5th 12.

expressly desired for he is presumed to take 5th 12.
the land for husbandry. But if the lease 5th 12.
land on which a mine is opened the lease of 5th 12.

convey may not the mine unless expressly 5th 12.

restrained by the lease, so when a mine is 5th 12.
open it is presumed to be a part of the consideration 5th 12.
who induced the lease to take the lands.

Trees.

If tenant cuts down timber trees except 5th 12.
is guilty of waste for timber is a part of the 5th 12.
enheritance. And if he does and eat in consequence of 5th 12.
of all the timber decay he is guilty waste as if 5th 12.

Complying he is guilty of neglect by all the timber is 5th 12.
suffered to decay. He is guilty of permissive 5th 12.
waste as if he suffers the fences to be out of repair 5th 12.
so that cattle escape the Lease.
Timber trees are such as are fit to be used in building.

But trees not timber may be the subject of what is called as ornamental trees, or trees used for shade. This I daub or calls destruction. These commonly are important parts of the inheritance.

I trust that there is a material difference between law with respect to cutting timber in England and the law here, especially in wild lands in the case of donors and counties. Indeed it was even decided in browser that in such a case the widow might cut timber. It is a great object in England to preserve the timber but in Canada and in general in the US it is not so.

As to what particular kinds of trees are to be considered as timber? Oak ash and elm of the age of 20 and timber throughout the realm but the usage makes other trees timber. But in our country what common big trees are to be regarded as timber must depend upon usage and the trees will the country produce.

Oak fir chestnut cedar locust &c. are in common timber so perhaps hemlock.
Underwood does not come within the demesne prices. Invention of timber, &c. It is said the tenant 28/12 may cut at his pleasure if he does it at a prefer reason. (unless restrained by the terms of rent.) 28/17
28/17

The tent for life or years is entitled of common 28/35 right to such wood growing on the land as is 28/12 necessary for fuel. Repairing horses shoes, tents &c. 26/04. But then the called Storery. Is for making a for repairing instruments of husbandry.

But after tent has suffered a building to become 26/04 ruinous for want of repairs he cannot afterwards 26/46 take timber off from the estate designed to repair 26/64 this building. From &c. &c. he has already been guilty of waste & may not take lepos timber to repair his own wrong.

Erection of a new building by lepos is not 26/64 empty of itself waste but if he takes lepos timber for that purpose he is liable for waste. unless 26/04 or if he takes lepos timber to repair it. &c.

&c. if he make a fence where there was none before with lepos timber.
If tenant cuts timber for repairs which are not necessary or which are necessary due to his neglect he is guilty of waste.

If tenant cuts timber & sells it that he may apply the proceeds to making repairs he is guilty of waste. The law requires him to apply the timber to the repairs otherwise the tenant might speculate.

Law: When the lessor covenant to make all necessary repairs, he is still entitled to timber from the estate for the right of cutting timber to make repairs is so closely incident to his estate that it cannot be taken away except by express words.

In addition, and the tenant may in many cases cut timber for repairs, the law is not obliging these repairs, thus if lease covenant that he will make repairs the lessor is still at liberty to cut timber to make the repairs himself if it becomes necessary. For the policy of the law favours the repair of buildings.
And where the words are 'with impeach
for waste' still the past bound to repair he
may take timber from the land & repair.

So if a building be ruined,
the tenant is not obliged to repair may
take the timber of the estate & make the
repair.

The destruction of fruit trees in the garden or
orchard is waste but not so if the fruit trees
be destroyed
or in a garden or orchard, as in the woods
or in the open fields.

Miscellaneous Waste.

The destruction of a common fence is not prone to waste but in its consequence, it may be waste. West 4.

as if tenant destroys a fence & in consequence
cause cattle & injure trees. In the breaking down
of a stone wall is waste, per se. But
the breaking down of a common wood fence
is not to be a permanent injury.

But destruction of a park fence is waste, so suffering it to decay.

But any thing which might want to waste is not waste unless it want to 40 pence. 11

de minimis non curatur
Waste in general

No person can be quit of waste where the
6th Ed. land on which the injury was done is not part of
Corpus Dig. the demise. Precipit in here the only remedy.
Waste of the action waste arises out of the priority of
estate between lessor and lessee.

Come Dig. Where a lease is made with impeachment of
Waste 23. waste the tenant is not liable for any waste
Cor. 216. however extravagant, but in such case a "by
21st 283. equity" will interfere and prevent wanton waste
by injunction.

Come Dig. But this exemption from liability to waste
Waste 23. can only be created by deed to constitute a
1 Roll 113. bar to the action of waste the clause must
be in the deed. So if in a separate deed
the lease covenant not to waste the lessee for
waste he may sue and recover of the lessor, may
have his remedy by a suit on the covenant
not covenant broken.

Come Dig. If tenant in tail makes a lease with impeachment
Waste 23. for waste, the clause does not bind the lessor
1 Roll 1180 in tail even if the lessor in tail confine
the lease by accepting rent. & even by
accepting rent after waste committed for
the next issue have an interest.
The lessee is not liable for any waste occasioned
either directly or indirectly by the lessor as if
comprehended in the timber or the lessor suffers
building material to decay, he is not guilty of waste. [Cantor] 28446228
so if lessor destroys a fence by this his
trees are injured.

When the injury is occasioned by the act of
lessor or of public enemies. [Cantor] 1666139188

Who may maintain this action
By the ancient common law there was a suit 1599105.
growing from a & of law to restrain waste but 121
this suit is now taken away by statute.

The action must be brought by him who has 690315
the immediate reversion or remainder in fee 3885
simple or fee tail. If there must be no 358387
intervening freehold between the estate of the owner
lessor in possession & the P, & in the action bring up
Hence to be for life remainder to B for life rent. W, to C in fee. C cannot maintain this action for
waste agt. A. if B. is alive. In such case the
remainderman has no remedy, except in 356677
Chancery. See 519. not a simple act on the
case for damages lie.
Who can maintain this action? -- Waste.

If the intermedium estate is only for a year, the remainder man may recover for this term for years does not need to be supported by the fee simple before it.

Same if the first estate was for term of years. And in case of the intermedium estate being term for years, the heir of the term will enjoy the estate notwithstanding the forfeiture by the first tenant, & the entry be by the remainder man in fee.

Comp. Dig.
Waste, 22
Allen.

If an intermediate estate for life is limited on a condition precedent, & the first tenant commits waste before the intermediate estate has vested in interest, the remainder may sue the first tenant for waste, but if the estate was already vested this could not be done for the law will allow a contingent interest to be defeated yet not a vested interest.

So it appeared. And it is sufficient to this that the Def had the intermediate estate of inheritance at the Compropoy time of action brought that he did not have Waste or it at the time of the waste committed. So it cannot now be objected that any one will be injured by the remainder man's recovery.
The action lies between landlord and tenant in virtue of the
\textit{Statute of Mule} 29, vide 29. 23 E. 2.

And at \\textit{e} 2, if one tenant in common lease to his companion & the latter commits waste, the former may maintain waste & recover a moiety.

He who has the immediate inheritance may bring an action to join in this action with him, who has a sequestered interest. Thus, limitation of a life remainder & the remainder to the heir of B. C. may join with D this action. 

2. If he has not any estate larger than a life estate, & D is D.

For if D could sue alone, he would have a sole usage & thus defeat C's estate.

If lease for years, commits waste & his term expires before the action brought the lease may still maintain an action for damages. But if he cannot recover the place wasted even the 26 of D.

The lease holds over; in this case his remedy is ejectment.
At common law the grantee of the land could not maintain
a suit for the condition not to
beget a rent. Commute a waste is personal, and there is no
priority of estates between the grantor of the possession of the
land and the grantee after having given
notice to the particular tenant may main-
tain the action by 32 Hans 3rd.

sed lu is not waste a tenant if it not as much
an injury to the grantee as before the transfer
it was to the first receiver. If the
action was founded on contract there might
be some reason.

But in this case if the heir assigns his
reversion the grantee of the heir may
maintain waste as the assignee of the
tenant in default.
Waste (No. 2).

Against whom this action lies.

Yet it comes only apt guardian in chivalry 2 Bl. 283. tenant in dower & tenant by courtesy.

Yet does not the lie at common law a tenant for life or years.

Yet doth contradict. 4th, 6th, 90.

The reason was that the estate of the former was created by the law itself. The law furnished this remedy. But as the estate of the latter was created by contract. Waste ought to have been provided for in the contract.

But by 52 Hen. 3. 4 Ed. 1. the action is of new start 35. apt all tenants for life or years. The action comes by.

The action lies only apt, such when 2 Bl. 282. who committed the waste — or by whose fault the waste happened.

But it seems that if tenant by dower or copyine by dower, apign & the apigns commits waste the waste is.

The action lies apt. the original tenants not apt. to still hold the apigns. for they were liable at common law. that common law the apigns were not liable. therefor from necessity. the original tenants were liable, & these stipulations made no alteration.
Against whom waste lies?

But the action lies by construction of the
Common Law under two heads, viz.
ancient statutes and the occupant either.

Section 34. The occupant may recover for waste
waste and 

The action lies also at the suit of an administrator
who takes a term for years, as agent for waste
done by themselves, for they are assignees, but
not for waste done by their subtenants or sub-
tenants. This action will also lie at the
suit of a tenant. — (Note post.)

Common Law of lease to commit waste & then apportion this
waste. If he elect, the lessee may maintain this action
235. If he elect, the lessee, he recover not only for damage
but for the term itself. because the right of
action was complete immediately after the waste,
he cannot by his own act devest a
right of action existing in another.

2d 345. If a stranger commits what is to be waste in
Common Law, the lessee & to the lessee is liable for the

This holds also 3d 345 as to title by conveyance in the lessee,
if by the 2d section of negligence in not preventing it
by the 3d 345. It is 8 to 9, that the lessee may maintain trespass on
the land by the 3d 345, the case of the wrongdoer. see 2d 345. This rule is
founded on the supposition that the
lessee is remediless.
And the rule is the same of the stranger, 21st. 6th. 21

The ten is liable for the waste, if committed.

26

Of ten for life he having committed waste by
the use of it cannot be sued in waste, actio
personalis, must in own person, it this hold
of land, by courtesy he. Indeed all ten
as such die with the person,

This action does not lie a for ten in tail after commonly
popularity of issue extinct, for his estate is in waste.
is creation of inheritance, no condition is
annulled by law. He is not within these
ancient statutes for he is not strictly ten
for life, but this equality will restrain him from
such waste. This in this case he is not
liable to an action,
This action does not lie at will, but at will only. Blackstone says because the construction of
common waste into facts determines the estate, but
Watts, confessibly he is not liable at common law, as
ordering to the statutes of Marlbridge & Gloucester each
1777, 1774.

The remedy for the lessee at will is an action of trespass.

But at this day what are usually called terms
at will may be liable in waste, for it will
lie at term from year to year.

273. The action will not lie at will for life or
2 lives or year "with the imprisonment of waste." But as
commonly of Co., will be injunction present such term.
Watts. from being settling equitable waste.

Contra Dig. No does this action lies at will, liable of such a term.
Watts. for the imprisonment is annexed to the estate, but
not to the person — so it will not lie at
the assignee or the same reason.
The perhaps util the common law + the 2d of elthbridge gives to the lata is only single damages, but by the 2d of waspomunby
Gloucest yr. the test forfeit & other damages
and the place wasted.

These statutes are prima facie binding here.
and yet in this state no claim has been made for more than single damages.

This action therefore is now a mixed action
in which land 4 damages are recoverable & at 17.8.
it was a personal action.

Only the particular parts of the subject in
which the waste committed is recoverable if
the different parts are easily separable, but if
waste is committed purely over a whole
farm the whole will be recoverable — a vagueness.

If waste is committed over a whole house
the whole is recoverable but it is said that
if waste is committed in one room of a house
only that room merely can be recovered.
The Court of last in down siffy buildings
fence to go to decay the County it has
the power to provide a summary remedy.
Ejectment (21)

Under this title I shall treat of the English actions of ejectment, of our action of depreesion for real actions, vide 3 Bl.Com. 167-195.

Ejectment is brought to recover lands or tenements by 3 Bl.Com. 199, and the Defendant has been ousted, so also is our depreesion.

Ouster is a generic term, and includes both depreesion 3 Bl.Com. 199, and depreesion; depreesion denotes ouster of a freehold, and depreesion denotes ouster of an estate less than a freehold.

In the action of depreesion, therefore, the Plaintiff is to allege that he is depreesed in ejectment that he has been depreessed.

Ejectment is in form an action in which a term 3 Bl.199 for years is recovered with damages by the Lrecq Expédits. 427, when ousted from his possession

Deprision is an action by which one who has been ousted of a freehold recovers it together with damages. the form of our ejectment and depreesion are precisely the same, the only difference between them is that the one is brought for recovering a term for years, the other for recovering a freehold.
Ejectment. An action of
As the action of ejectment is strictly a mixed
damage. If ejectment is not either here or in England, it is
action, it is usually so called.

Anciently, this action was brought as it purports to be by leesee for years as an actual ejector.
If leesee was ejected by a stranger, he was entitled
in this action to nothing but damages. If the
leesee was to bring a real action against the
ejector, then prosecute the leesee. If the leesee did not do
this, the leesee was entitled to

for the recovery of the leesee when ejected by the ejector or by a stranger claiming under a tittle superior to the
leesee, vide 3 El. 200. Nor the term e? be recovered at least in the first of these cases, but not by ejectment but by action of covenant.
And even now the declaration in ejectment demands in England only damages for the old form still

lots of equity afterwards interposed and compelled
2 El. 200. The ejector to make specific restitution of the
2 El. 200. And finally lots of law adopted the same
method of doing justice and introduced a judge to
recon the term and a way of perpetuation thereof.
In this state the declaration demands restitution of the lands & our bet have held this to be unjust.

From Ed 4, bet of law have given judgment for the recovery of all damages & costs of the tenant & since then they give no relief. So if 2s. 4d. is not due, only and a distinct action must be brought for the rents & profits, which action is two-thirds

In Court, the plaintiff has his election to recover the damages in ejectment or to bring a distinct action.

Since Henry 7th this action has been almost the only method of trying the proprietary title to the freehold. See Bacon, Abr. 369 A.

And the declaration in ejectment is now a tenor of legal fictions which have been devised for the purpose of trying in fact the not in form the proprietary title to the freehold. For the fictions to be used see 3 Eliz. 2. 3.

In this state these fictions are not used. If the plaintiff is tenant for years he or his declaration is not one.
Gejwtnt. In real actions except that of assize no damages are recovered but the pecuniary recovered. 6 & 6 7 & only for the declaration is merely that the 3 & 4 157. If he is better right than the Def. 6 & 4 257.

For what things?

3 & 2 106. E 492. 2 & 3 4 166. Ext 4. Nulla 49. 5 & 4. 2 & 4 29 47. 7 & 7 78 9.

But the action will lie for land laid out for highway in favour of the owner of the soil but the owner recovers possession subject to the easement.

Kay 18 112. In Stiles v. Watts one C. determined that this action would not lie to recover pop of highway.
Rejection will lie in favour of the owner of the herbage of land unless the ander owns the soil. For the possession is in him pro temp.

But the action will not lie for a water course 1604.

so nomine but it will lie for such a tract of Pop. 167

land covered with water.

And this action will lie for a certain part 1695.

of any undivided entire thing. or the half of Exp. 1428.

a house held in common.

Who may maintain it?

It is a well rule that no one can maintain Bld. 225:6

emption unless he has at the time of being Exp. 125:480

his own a right of entry. as what is the 5147:8

does the supposed entry of the lessee of the

Plf aid him. was it an actual entry aid

min if he had no right of entry.
Who may maintain an action of ejectment.

The possession title is the only one which is formally tried in this action. If one has a right of property, but not the right of possession, he cannot maintain ejectment; but he must (in England) resort to his real action. Thus, tenant in tail of aliento, the issue in tail cannot maintain ejectment as the aliento, but they must resort to their real action, for they have not the right of entry.

And since 31 Jac. I., the lessee of the Rwp or those under whom he claims must have been in possession, or there is no right of entry. Thus, the right was not brought in the same action, for the tenant in tail cannot resort to his real action.

In this state an action of 15 yrs has the same effect, and after a disposition of 15 yrs in this state, the whole statute right of the person ousted is gone, for in this state when the possession title is gone, the whole title is gone. (vide post)

Both these statutes have the same savings as infant, insane, idiot, lunatic, (4 persons beyond sea) and in this state, if any person is an infant, insane, idiot, no compo, a tenant once at the time of the making of their title, they have not been allowed five years after the removal of their several disabilities to bring their action for a right of entry occurred at the time of eviction.
Who may maintain a suit of Trespass?  

But when the suit has begun to run no ejectment, supervision, disability will save the title it will not prevent the suit from barirng at 472800  

Thus a testator dies leaving an heir at 26 years of age a woman of full age and another person  is entitled to take possession she soon after the death.  

Thus if the testator marries if she does not bring her action within 20 years after the testator's death she cannot maintain  

Successive disabilities cannot be joined with each other the purging clause of the statute does or to 472800  

Thus a man dies leaving a female in infant of 20 years of age and another person takes possession if she marries before 21 she must bring her action 5 years after the woman of age or her title is lost  

Our rule is once held contrary to divided as at 472800  

Thus was given one way the decision another  

Our rule now probably be the same as the English 472800  

Date: New York
The possession of the lessee of the Pfr or of those under whom he claims must be an actual possession within 20 yrs.

But suppose that in this country as may frequently, the case in new lands, the lessee of the Pfr be never on the lands until just before the action brought; & he brought the lands 50 yrs. ago but no other person was in possession until 5 yrs. before action brought; can the Pfr their recompense? I think that he can, in analogy to the case of vacant possession.

In this state witht. doubt the right of pfr. if no other person has been in actual poss. Supp. pfr. is equivalent to actual possession & has therefore in the above case the Pfr could unquestionably recover.

1 Supp. 317: If the owner of land brings ejectment within 20 yrs. after ouster & is proven actual this action does not prevent the Stat. from running to prevent the Stat. but there must have been actual poss.
And an undisturbed possession for 10 yr in Engl. 15 yr in Scot. is not only a good defence to ejectment, but is a good ground on which to support the action of ejectment. In this possession gives a reposeful title.

And it has been resolved in N.Y. that a be a calledunkt possession of 3 yrs entitled him to an action of ejectment as a mere stranger. For, as between those parties, the one who has been longest in possession has the better right. If he was first in possession.

But this rule can hold only as between one who has been in possession and a mere stranger and not as between him and the real owner.

The soil in a highway cannot in this state by express statute be acquired by possession (after 1813). Where there is no statute the opposite rule must hold.
The English possession of 20 yrs only gives till 1795, so the possession title & does not affect the ultimate 190 yrs right of property. But mere possession in England is necessary (Sec 147) to acquire right of property in lands tenements.

But in this state possession for 15 yrs confers the 68, 151, 4112 ultimate right of property.

Art 102. Acquisitive couters in continuity for 15 yrs will have after the decease of his title, that he is deceased.

4 Binn 2473 by a who continues in possession 5 yrs & it is deposed of & who continues in possession 16 yrs & it. Still, loses his property.

But in this case does it acquire a title so that he can maintain the action of title. I think that it is the true owner for he has lost his possession title & it must be in somebody in whom then is it? in C. as between C & I it must have the land.

5 Binn 2504 But in all these cases possession after 195, under the statute must be adverse. So the 3 sets 297 & it goes on the grounds that the deposer has in 1795 abandoned his possession title.
Since one joint tenant to who has been in sole possession 20 yrs cannot hold as his joint tenant for the possession of one joint tenant is the possession of both share of tenants in common + expenses.

If mortgagor continues in possession for 20 yrs the mortgagee is not barred for the possession of the mortgagee is not at all adverse.

But an adverse possession by one of two joint tenants to which the other joint tenant title. If then one joint tenant claims the whole estate in virtue of 20 yrs possession Jure aliud he must prove the possession to have been adverse to which the question is to be deemed adverse subj. Epp. 4244 is a question of fact for the jury & from great length of sole possession the jury will presume that the lessor by possession was adverse in that there was an overt & to tenants in common + expenses.

If then a party in possession claims under a party Ballin 4243 out of possession no length of time will bar the Epp. 4243 possession of him out of possession this below Burt 51. for 201 or 50 yrs. they tenant at will. In this state it has been held that a tenant in possession by permission may gain title by 35 years possession Atwater but this decision is unsupported by any principle.
The remainder man therefore is not barred
by the possession of particular tenant, because
during the possession of the particular tenant the
reversioner has no right of entry; the statute
never bars one who has no right of possession.
besides, the reason given for the general rule on last page 115
that the possession of the particular tenant is not adverse
to the remainder man, a reversioner.

Bill of D. 1007. Where adverse possession is relied on by tenant at
115. 111, there must be some proof of an ousted of
the landlord, but if tenant at will being in
possession openly claims under 115, this is presumptive
evidence of an ousted of the landlord.

(69)

3 East 297. Possession by a stranger under claim of title is
always adverse to the owner. By a stranger is
here meant he who has no right at all from
the owner.

Dowl 460. Where the action is brought by the lessor founded on
3. San 1697, a claim in the lease giving a right of entry on
Esp. Dig. 461, breach of certain conditions, the lessor had no
115. 111. actual entry before action, brought because the
Bill 103. confession of lease entry 4 ouster is suffic under
\under 115. 111. the common rule.

115. 111. Dig. 115.
Wells 315, 313, Contra but not law.
Salk 24 6.
Esp. Dig. 461.
And this last rule is good where an entry is required to complete thePictures title, but where the 1st derived from another actual entry is necessary, f. 492 if a limitation is made to a for life remainder to B in fee in co forfeits by alienating in fee here actual entry is necessary for entry by 3 is here required to relit the title of A to

The reason is in the former case the very breach of the condition revests the lessee's possessory title & the entry required is merely for form. But in the other case 3's right to take possession does not accrue until the entry of B. so B must show that he intends to treat the act as a forfeiture.

The only person who can maintain this action is he who has the legal right of possession. thus if A mortgages having the legal right of possession may maintain. this action either before or after forfeiture. But if lands first leased to A are afterwards mortgaged to B, I cannot have ejectment at the lessee, but it was once held that the mortgagee might maintain ejectment: in such case provided his object was merely to compel the lessee to pay rent to him. provided he give notice that this is the only object. Provided contra. the rule is now well settled still otherwise.

Doug 1667. 217. 16. 15th 474. 486. 3 Bar 1847. Bell 490. 2 Litt 156.
This is mortgage debt has been fully paid back in 14th of June 1807. Mortgage may maintain ejectment. 1 H. 6. 30. 187. law the legal title is in the mortgage or the debt is not paid on the day.


It is a general rule that he who has the legal title to possession may recover in ejectment at the title to possession may recover in ejectment at the person who has the equitable interest, their trustee.


A. R. 19.

If a covenant to sell land to B., but neglects to execute conveyance, and B. goes into possession, it may recover the land in ejectment at B., even tho' he has a good title, the purchase money.

A. R. 19.


Yet where the person having the equitable title has been long in possession the 5. may instruct the jury that they may presume an extinguishment of the 5's right, as in case of satisfied mortgage.


In several modern cases the laws of law have relaxed the general rule of have taken notice of deeds in the action of ejectment. but these cases have been of late disapproved and in 14th.


The Sf in ejectment must succeed by the strength of his own title and not on the weakness of that of the Def, hence as a general rule the Def may assert the Sf is in a stranger.

The case in 2. Day as reported contradicts this rule, but it is said that the objection in that case was to the 1st D. 509, deed referred to evidence by Def. If not to the proof of title under the Sf cannot hold where the Sf holds under 7. 17760 a title from the Def nor where the Def holds 17760 title under the Sf, for in both cases the Def is estopped from proving title in a stranger. 2d. D. 1874 this mortgage brings ejectment as mortgage. This mortgage makes a lease & does the lessee in ejectment. Rule the same if the lease was verbal.

The devisee of a term for years cannot at com. 70. law maintain this action till the devisee has 1st D. 1874. 1901. 1st D. 1881. 1901. 24th. 24th 70. this rule does not hold in this state.
But in default of the same or not specified
the heirs cannot sue until after distribution.

...but the devisee of a freehold may maintain a
2d B. 37 ejectment immediately on devisee's death.

2d B. 37 (The assigns of a bankrupt may maintain the
2d B. 76 action for lands belonging to the bankrupt.
for the that transfer the legal estate.

46 B. 315. If an action is to be brought in favour of
46 B. 130. one non compos it must be brought in the name
of the non compos by his conservator or committee.

46 B. 37 a & 47 a or administrator may maintain the
46 B. 210 action for an estate of a chattel real belonging
37 B. 13 to the deceased, whether the estate was of the
dec. 2d B. 43 q deceased while alive or of the &; a after the death of the dec.?
By the common law in most an alien cannot
maintain ejectment, because he cannot hold land but 47. £ 300
as he may hold a house he may take 4, therefore he may 2. £ 11. 4 sh.
maintain ejectment for a house.

This is in most the law in these states, but not in some. In New
of them, the rule has been relaxed by dictum. How ever.
and proper? An alien alien.

But when an alien becomes naturalized he may
maintain ejectment for land.

Challenger.

The declaration must show a subsisting title at
the time of action brought; if the lease has not expired the
possessor title at the time of action brought.

He can't recover. It is said that he must state title in
his title as it is. But he need not state the precise
length of his term if he alleges for 251. The 550
yes he may recover for 50. If he proves title to
3 mil. 27 how.
term for that time.
In the English action the declaration must state a day or two before the deponent was present and afterwards entered for under the common rule the day is not traversable.

The great object of the common rule is that the title may come fairly into court. The or will therefore have swept the face of all unnecessary queries.

In this state the declaration allege that on a certain day he was present a day or two before the deponent was present and afterwards on a certain day the deponent entered the suit.

But it should always be added to have happened after the decease of the nominal

If however the deponent declare that on 1st of Jan. 1825 his title accrued of that afterwards to wit on the 1st of Jan. 1824 the deponent do this is good except on special demand in the deponent will consider the words "to wit on the 1st of Jan. 1824" as uncertain.
It is said that no particular day need be alleged for the suit, it is said that if it appears to have been after the PSS's notice had expired, it is enough, but it thinks that if no particular day is alleged in the declaration, it is not to be good on special demurrer but under the general rule the day perhaps is not very material. Still it thinks that a careful lawyer will allege the particular day.

The land to lie for may be described in detail and the declaration words all convenient certainty. The rule was formerly much more strict. 1 Star v. 341 it was formerly held that the description must be so accurate as to enable the sheriff to know the land. 1 Bun. 299, 30.

3 Nils 231 East 441 5 Bun 2673. 17th 11.
The levies of the PSS must point out the land to the sheriff at his peril and if the levies show, to the sheriff describe from that for all he recovered in exequat. He is liable in trespass. 1003.

In this state we describe the land as lying 3 miles 23. in such a town & to describe it by its altitude 770. 539. it is not usual to mention the particular object. Now state of land as meadow or field, we 1019, 1219. gently state the estimated quantity, the precise & specific quantity must be stated in English.
If there be a mistake in the parish in the 39th. Eng. or town held the mistake is fatal. 1 Esdras 4:58. for the parish or town enters into the description. 1:31. 1:71. 2 Esdras 4:7, 19, 50, 1:42.

3d. 534. But the P. is not bound to declare for the 600 acres or quantity which he can recover he may declare for 100 acres or record 5 acres. This rule 2:14. 4:44. applies to chattels in ships of a town or to land 1:32:6. in ships of a town. But P. can recover as much then he declared for.

If he declares for a longer time than he has, he may recover for such months as he has, provided it be less than there.

Esders 106. P. declared for.

Excerpt 47:8
Ejectment (Sec. 20)

The defendant deny that he was in possession when the action was brought, and he may, if he can, have committed an actual outrage upon the land, but he cannot recover unless the defendant is in possession at the time of action brought, and if the defendant must always prove the possession of the land, and it is admitted in hand.

In ejectment, the general issue is not guilty, in S. 8. 9. 5.

In the English practice, special pleas in bar are very uncommon for the common rule requires that the plea of issue is the general issue.

In ejectment, special pleas in bar are as common as in any other action, so we have no exceptions to that rule no common rule.

Evidence:

The defendant may recover by proving title in a Bill, etc. if the title must be a valid publishing title, and the defendant must prove possession in the stranger within 20 yrs.
The statute of limitations shall be pleaded under the general issue. The common rule is the only reason for it. Some law the statute of limitations must always be specially pleaded.

If the defendant declares for several subjects he may recover one with recovering the rest.

If the declaration shall be ill as to some he may recover other things if the declaration is good as to them.

When the plaintiff declares for land on which buildings are standing, the buildings need not be mentioned for the buildings will go with the lands and are comprised under the term "land."

If the plaintiff recovers, whether he is entitled to a unit of the habere potestas, under this the clerk is required to put the plaintiff in possession as to land out all other persons not not only the defendant but third persons.
This is the only deed record on file the Def may of course break the outer doors & windows &c. of the mansion house of Deft side 2ff 6d. 2 Dec 1779

In this state if the Def acquire possession &c. pending the fact he is entitled still to damages & full damages, the law usual practice is to bring treble for the damages & to recover only general damages in addition & the Def in this case of course recovers his costs.

In England if the Def repairs possession later &c. the Def may plead this in bar but after issue &c. it is discretionary with the court to admit or not to admit the plea.

If the term is expiring per se & the Def may not still have damages & costs for the original trespass after the term still remains, this the term is expiring.
If after the Pif has been put in possession
the Deb again rests him the Pif may have
a new writ of fi: facias & the may proceed
against him as for contempt of court if he
then by the latter one or the Deb may be fined impris.

For new trials make "new trials" & 14 Bac 224
5 Bac 253 tri triat.

Exp. 494
The verdict when in the Pif's favour proofed
that from the certe the Deb has been
a trespasser for when the Deb is put in
possession by fiction he is deemed to have
been in possession from the certe & hence
is derived the right of the Pif to bring
an action for the mesne profits and this
action is called trespass for mesne profits.
After ejectment the Plf may have the action of trespass quare facias for meane profits. This rule of damnum is in giv' that valuable 638 of the use of the land during the Def's use, $362.05. but if extraordinary damnum has been done, then damnum must follow.

The declaration in this case may lay the 2 Sec 11, therewith a continuing do from the time of 16th 1777 the owner to the time of the Def's being put in possession. this is declaring according to the legal form of effect for by section the Plf was in possession from the time of the owner. 3 Sec 12. Or the Plf may state the facts precisely as they are that on such a day the deft ousted the Plf and continued in possession so long.

This action is inseparably incident to the 8 Sec 12, action of ejectment. It is said indeed that 1 Nov 165 the Plf may bring a bill in Chancery for an 8 Sec 12. account; in this bill the deft must be treated [sic] as a bailiff, but this is out of use.
bene profits.

3 Bl 2058, for the necessity of this action of trespass... is indeed said that the Pce can
bene profits in ejectment.
2 Bac 291. But the rule & practice is otherwise. In

"Ejectm."

"Nolo."

 extortion or principle damages, it can be recov.
only for the first day's trespass. In the other
damages occur while the deft is out of poss.
In this state the Ppe may recover the whole
 damages in the action of ejectment, where
our practice is the same as in Eng. Is this
the established rule in this state?

6 Med 272. In the action of a mesne profits the Ppe need not
prove by witnesses the entry of the deft for the
record in ejectment is conclusive evidence of
the entry by deft. — But the Ppe is not
in proof confined to the time of entry be
stated in the ejectment. He may recover for
preceding profits if he can prove title to benefice,
this record however proves the ouster only from
the time of the entry. If the ouster is laid in the declaration
Ex Parte Digby. If the Ppe claims for any other trespass, he must
prove it by other witnesses. That may be put
into the same declaration. — The trespass,
comprehended in the declaration in ejectment
is conclusive only of the Ppe's title for the time
comprehended in the declaration, and as to the
the deft cannot controvert it. If the record
in ejectment proves the Ppe's title at the time of
the ouster laid but not before that time.
This action for mesne profits is in the privy of Sall. 1791. The act of limitations as to lands must stop by 1792, 3 mo. 26th. 1793. Can recover only for 6 yrs. profits before action, 2 mo. 26th. 1794. Brought it only for 3 yrs. in Count. — —

In Count, full damages may be recov. in ejectment. Do can the Pf. in ejectment recov. for more than 3 yrs. profits. — No.

This action for mesne profits may in England be brought by the real Pf. or by the fictitious Pf. when the Deft., has thought in the name of the nominal Pf. if he has acted in violation of the real Pf.'s right (he is guilty of Sall. 1859, 3 mo. 26th.) makes a release to the Deft. this talk 26th. rule of course supposes the nominal Pf. to be a real person as he frequently is. And the Deft. no doubt in this case is not allowed the release to be pleaded. This has been done in similar cases.
This action may be brought after recovery in
Wills 1178 
for tenant in common
Pitt 5223, & co-partnership, by their factors. This is an
example of the general rule that trespass cannot be
maintained by one tenant of another to drive
it tenants off. Because this action is
incident to ejectment, and
section 1, 322, Gordon's Real Property.
This action lies for injuries done to real property. The injuries done are those in trespass, nuisance, and encroachment.

When an injury is done to a house, the injury is called 

trespass quae domum proficit.

3 Bl. 209, 367, 368.

The trespass remedied by this action consists in one or more persons entering upon another land and doing some corporeal damage, with lawful authority.

And where there is an unlawful entry upon another

land, the law always implies some damage. Actual damage need never be proved except to enhance the nature.

Every unwarrantable entry upon another land, then, 3 Bl. 209, 368, is a trespass and is called trespass by breaking his close. 3 Bl. 209, 367, 368.

In certain cases, entry upon land of another with the actual permission of the owner is warrantable. 3 Bl. 212.

Thus a sheriff to execute in legal manner lawful bonds may enter on land or peaceably into a dwelling house.

Thus one may enter to demand or pay money payable at that place.

Thus, one may enter to distress for rent.

Thus a possessor or remainder may enter to see that no damage is done.

Thus, all travelers may enter an inn to eat or sleep.
Thus also if an owner land excepting certain trees
the owner with the permission of the owner may enter to
set down the pasture.

Sec. 59.

Exp. Dij. 334. "Secy. S54." Thus also one person may enter upon another land
for the purpose of destroying noxious animals, 
for the public good.

3 Sbl. 32. But the hunter in such case may not dig the soil.

Corps. Dij. 390. a. center.

Salk. 556. Animals not noxious may not be pursued on
another land. This rule is strictly enforced in Eng.

2 Salk. 61. not so in this country.

Salk. 556. It is indeed stated that if a star's hare
upon his own land that he may pursue it upon
the land of B. 20 years.

Salk. 556. By common law if an animal from nature is both
planted & killed on my land it is my property.
This is not practically the law hitherto in all cases
but the property belongs to the hunter.

1. 4 Bc. 531-56. It was formerly held that a poor person might
after harvest glean upon the land of another
but this has lately been held not to be law.

5 Bc. 146. Where the law gives one a license to enter upon
another's land a subsequent abuse of that license
makes that party a trespasser at common law.
Exp. Dij. 380. Proof of the abuse will support the allegation
of having originally trespassed, for in such case
the hunter is presumed to have entered under
license of law, and besides, in such case the law
contains a condition to such such license that it shall not
be abused.
But it is not every instance of improper conduct which will thus make him a trespasser at invitio. The mere non-fasces does not make him a trespasser by relation.

And the act which will make him thus a trespasser must itself be a trespass, or comprehend a trespass it must sound in force and

3. If a party having lawfully distrained refuses to deliver the distrain to the tender of surety,遵守 to him, this trespass does not make the party refusing a trespasser at invitio. But if he kills or beats the cattle distrained he becomes a trespasser at invitio.

It is true, however that if a sheriff having made bail, 409, 59, an arrest on means procures neglect to return his 409, 60, and he is a trespasser at invitio. But this 409, 60, has no connection with the doctrine of trespass 11 Wil 17, by relation. The reason of this rule is that 11 Wil 17, the sheriff cannot give in his own writ for evidence, he therefore has nothing whereby to justify his entry. A process not returned is no evidence in favor of the party omitting to make the return. When a person enters upon another land or into another house under an actual license from the owner, no subsequent act will make him a trespasser at invitio: he must indeed answer for his subsequent acts, but he is not to answer for his original entry. For here the law annexes no tacit condition for this is an express contract between the parties.
(3) *Trespass* upon clausem - act need not be voluntary

It is laid down that to constitute a *trespass* the act complained of must be voluntary and that if the act be involuntary it will be fault no action lies.

Now this rule is precisely the reverse of the general rule so far as by a forcible accident injury to person or property of another is liable in a civil action of *trespass* this it was done by the most excusable accident.

The rule first stated is never true where the accident was by the person of *def.* the fact whether the *trespass* was wilful or by accident will indeed make a material difference in damages but if forcible and done by the person of the *def.* the action will lie.

He who does an act from which he or a third person must suffer ought certainly to bear the *cost.*

Nor will mistake or any accident not inevitable excuse him who has done a forcible injury to another in his own person, but the fact of the mistake to will mitigate damage.

This rule applies only to those cases in which the act complained of was committed by some agent for whom a forcible the *def.* is responsible. In such case the act must be voluntary on the part of the *def.* or he cannot be subjected in this action. Thus if my servant commits an injury with my consent or merely, I am not liable in an action of *trespass*.
Presumably clause: who may maintain?

Who can maintain this action?

Who persons except heir who has the actual possession at the time of the injury done can maintain this action;

for this action is adapted mainly to

in cases where one's possession—trespass means an

in the case of personal chattel, constructive possession

are left but the law knows of no such thing

a constructive possession of real property.

In this state right of possession of real estate is "Acct. 65"

is to any other person of in the actual possession

where an heir inherits property and has not

taken actual possession so may maintain this action

unless some other person has taken actual possession—

It is said in the old books that to entitle one

to this action the possession must be rightful.

and that an intruder cannot maintain this action.
Who may maintain trespass quasi clausulae.

But this as a general rule holds only between a wrong done in possession to him who has the right of possession: thus far undoubtedly it does hold. that is the wrong done in possession cannot maintain this action as the owner of the right of possession. In the owner by the supposition has a right of entry.

1 East 224 b. But any actual possession is suft to support the action as a mere stranger. formerly not so.

2 Carr 1563. If A is deceased, B—D may maintain an action of trespass agt. C. or agt. any stranger who commits

4 Mils 221. a trespass during A's actual possession. If C

Epp 1790. commits a trespass on B while in actual peace, the law will not enquire concerning B's title.

But this rule does not obtain here for the right of possession is here equal to actual possession. If no other person has the actual possession.
A person deferred of land cannot maintain this action for an injury done during the defective
period he has entered before he commences the action. By 418 it is however he enters after the injury he may bring the
action in the name of the person for injuries committed by the defensor during the defect; on condition that he
proves the injury and the time. The same principle was adopted during the whole of the 15th century; for by fiction he
is deemed to have been seized during the whole of his
period. The same principle was adopted during the whole of the 15th century; for by fiction he
is deemed to have been seized during the whole of his
period.

But if the estate of a defensor determined during the defensor, it seems that he may maintain the
this action for an injury committed during the defensor.
the defensor's

And in the case of the action of the defensor he may lay his action with a continuance or
he may state the facts as they actually occurred; but if he was on

The modern practice is now to lay the

The modern practice is now to lay the

The modern practice is now to lay the

The modern practice is now to lay the

The modern practice is now to lay the

The modern practice is now to lay the

The modern practice is now to lay the

The modern practice is now to lay the
Who may maintain trespass upon claimants.

An trespass cannot be after security against the

But the rightful owner before security may have this

The action of trespass is for the act of deprecating itself

That is for the trepass of the first day, for that
Is a party deposed may maintain this action during the deposition for a trespass committed before the deposition, either of the deposition or of any other cause. The law requiring only that a person be in poss. at the time of the injury done, not at the time of the action brought.

This action may be maintained by a person in poss. of a freehold, term for year, estate at will of the landlord at difference of bound to the land trespasser upon whether he has any property in the land or not.

But a tenant at will or by sufferance or by deposition may maintain this action only as a stranger not as the landlord or rightful owner.

But if it seems that now tenant at will may maintain this action at law and as tenants at will are bid for seven years tenants from year to year a tenant from year to year may maintain this action at law.

In As. to tenant by sufferance 6 H.1 2847.

Tenant for many during his term may maintain this action at law during the term he has a complete right to the property. And it is agreed in the old books that if the tenant injures the landlord the tenant at will may have this action at law. A trespass to the land may be the trespass of the tenant at will.
Who may maintain trespass quare clamans

3.6.3.4.7 cannot maintain the action against a stranger who has no colour of right. But this is not law for by the 3.6.1. colour of right clearly cannot be meant.

Benth. 2d. a groundless claim of right—this is no
be 3.244.6. a reproach to the law—any stranger might do a claim in this way—

Com. Dig. 3.6.2. It is said that leper at will may maintain the action of a stranger who takes away the land while the land was in hope of life at his, but since tenants if will be stripped the rule is now not a law; or rather the rule has no application

3.6.2.6. If the leper for years reserves the trees he may, 3.6.246.5. maintain the action of trespass quere clamans during the term as any one who cuts down the trees to, for the land on with the trees grows are lepers, they were implicitly reserved with the trees.

3.6.2.4.4 A person entitled to the reversion or herbage of brown may claim merely may have this action of trespass 3.6.2.1. quere to any one who injures the herbage.

Com. Dig. 3.6.2.1. for the пользу of the herbage is necessarily for the 3.6.3.24.3. time being the reversion of the land.

3.6.2.1.2

3.6.12.3

3.6.12.0. The rule supposes of course that the leper of the 6.3.6.12.2. nature is in possession either actual or constructive
And the owner of the herbage has the action, as the person enters by permission of the owner of the land. And therefore if the owner of the land himself. The owner of the land is not owner of the herbage.

The owner of the land need not in any case be in company with the lessee of the land at the time of bringing the action; for the injury is complete if the owner was in possession at the time of the injury done. (Stat. 246.)

The right of action accrued and has complete during his possession, and this right cannot be diverted by a sale to of the land.

And the action of trespass upon the owner as well if there is an injury to land uninclosed as to land inclosed. (Stat. 247.)

For a more clear or clearable way in being created. (Stat. 184.)

Any necessary means cause to cause or make a miscarriage. (Stat. 185.)

And any land or house of land in general. (Stat. 184.)

The owner of the soil of a highway may have this action for an injury done to the soil. It is thrown open to the use of the public as an easement but while the land belongs to the original owner as also its minerals or fossils under the surface of it. The public have a right to any high way the owner shall the owner a right to look at the sun or moon, but they have no right to the surface of the one more than the other.
Where a new land is let to B to be tilled by B on agreement that they are to divide the crop if a boundary is committed on the land, according to some B must bring this action alone, but of the same opinions & A may join in bringing done to the crop. But I think that the party raising the crop ought alone to bring the action quare clausum frиг it that B can neither maintain the action alone a join for B is in possession of the land, and in law B is owner of the whole of the crop but B owes to pay rent to it. to the owner of the land to rent. And this is in accordance with a later opinion.
For what injuries the action lies.

Every man is answerable not only for his own trespass but for those of his cattle. As if by negligent keeping they stray upon the land of another, the owner is liable. Much more if he permits them to trespass or drive them on to the land of another. But if they enter their own fault or fault of the owner of the land, the owner of the animals is not liable as this shows the insufficiency of the fence and it is the duty of the true owner of the land to make.

But the cattle may also be taken damage present and held in custody until satisfaction.

We have many statute provisions on this subject, vide Title "Point"
This page appears to be a handwritten notebook page. The handwriting is dense and legible, but contains no visible mathematical expressions or diagrams. The content seems to be a record or notes possibly related to a specific topic, but without clearer context, it's challenging to determine the exact subject. The page number mentioned at the bottom suggests it may be part of a larger series of notes, likely from a scientific or academic context.
If a timber floats upon B's land and does injury it is liable on an action of trespass or 24 H. 257.8 there is a. I think that this rule applies only to cases where A is guilty of neglect.

If a horse is stolen & put into an enclosure of B, A may go onto the land of B & take the horse. Here again A's property is within his fault on another land. He does not lose the property he is not in pra. pas. 16.

If the fruit of a falls onto B's land & is just caught in going after it. This rule applies to deciding 719 corn. the question to whom the fruit of a tree belongs. 32 Bac. 17. 1922 22 91.
It is said that if the roots of a tree standing
in A's land extend into B's land A & B are tenant
in common of the tree & fruit. But if the roots
do not extend into B's land let the branches,
which are in B's land yet the tree & fruit belong to
A. Yet multum quod. the case leads to
controversy & confusion. It is inconsistent with
the rule last mentioned - if they are
tenant in common they are so in proportion
to the quantity of roots in each. How
can this quantity be determined.

(3) S. - 1 M 116. The property in the tree is in the
owner of that land in which the tree no. first set planted.)
Trespass upon another's property (p. 22)

Of being bound to repair a bridge cannot
be it not the going upon the land of B. A is
justified in going upon B's land, and the same rule to be
undoubtedly holds when a corporation as a town is obliged
to build and repair a bridge— it is indeed the privilege
of the public but this does not justify the trespass.

The same rule

If on a navigable river A has a ferry it necessary, 10 Del. 725,
proprietor to go onto the land of the adjoining land to tow, 6 Min. 163
up his boat— but now this rule is denied, such a privilege can be warranted only by special act of 253,
custom & such does not exist in England or America
in this country at present. The necessity is not here as great as in the next case
which seems to make the difference.

But it seems to be agreed that if a public
highway is so out of repair that travelers cannot go, 1107
may it travelers may pass over the land of the
joining proprietor for the necessity of the King, 2 Del. 26 Delow 383,
but if the land of the adjoining proprietor is
completely enclosed it is doubtful whether he may take down a
fence probably he may. Such is the practice, 1 Del. 272.
This rule does not hold of a private way. 2 Del. 716.
the public are not concerned there. It is the duty of the grantor to repair.
Trespass quasi clamsum - in what injuries it lies

But one who has only a right of common
cannot maintain this action as one who
injures the heirship. If however he is disturbed
in the enjoyment of his common he may have
a special action on the case. This right is
incapable. trespass therefore cannot be
with trespass on the land it privileges for remedy
in case of disturbance.

The entering of another house with permission
or lawful authority is strictly a trespass even
the door be open, but if one has been
in the habit of entering with permission the
acquiescence of the owner of the same of the house
is construed into a license.

But if the owner of a house has unlawfully taken
the goods of another into his house, the owner of
the goods may the door being open enter for
the purpose of taking the goods with permission
and if the goods were stolen he may break the house,
to enable him to enter. The owner is the aggressor.
This is analogous to the cases in page 1677 ante.

Now for one may enter another's land or house
to suppress an affray &c. vide false imprisonment &c.

And for the purpose of executing process vide
sherrifs &c. for such purpose, the sheriff or the
state delivering it shall, if the owner be not
present, open the door.
The entering of another house for the purpose of executing a valid search warrant is not justifiable for such a warrant is utterly void with false imprisonment.

Note 31.

A. Diff may not in any case to execute a search civil process break open a house. This is according to going the person castle.

against whom this action lies.

This action will not lie except for levy a writ 711 years for wrongfully cutting & carrying away timber because the levy is not in feudum Sept. 1401 nor has a right of proceeding. The is honest the levy remedy. This supposes the cutting & carrying away to be one continued action.

But if after the timber is cut it is permitted to remove for a time & then taken away the timber brought in Sept. or there will lie for carrying away the timber as a chattel but not brought your chronic period for how the timber become a chattel & the levy has constructive possession of the timber but there is no constructive possession of real estate.

It is Repass de bonus exportatis.
A. How trepasser's quarrel clausum & lies.

Def. One leases land excepting the trees, the lessee

(Continued) ma may maintain trespass quarrel clausum &get left the

Exp & forfeit. Eff. in cutting the trees. Code sect. 11.

Art. 57. Formerly this action was lie by the lessee, to be

Exp & forfeit. at will for cutting timber, but now tenants at

Art. 57. will are tenants from year to year.

860. But the action was not lie a tenant at suf-ferance.

Exp & forfeit. until the lessee has reentered. This wrongful act
does not determine the estate of the tenant.
at sufferance until entry.

Art. 70. But if (at inhere) the lessee are preserved the treas

Exp & forfeit. are injured by the cattle of the lessee, the lessee

is not liable in any action. For the lessee
has the right to put his cattle on the
land & the damage is at the risk of

the lessee unless there are special covenants.

Art. 59. The action was lie of a tenant under a subject

Art. 59. of any age. This is true of all actions

of trespass. The tenant in has nothing to
do with acts committed with force or any
Every person concerned in the commission of a
trespass are liable in this action. aiding or
abetting will make one a principal while the
same act to make one an accessory in ease of
jury. In either there are no accessories.

If a servant to a trespass committed for his benefit
by or is liable like he or the rente required 5 Bac. 158.
it or aided orabetted. (agree here means about)
Thus if a master is present while his servant
is committing a trespass for its benefit & does not
prohibit the servant, trespass will lie of it for qui
not prohibit servit prohibere possit juven.

If several join in a trespass the party injured may sue them all in one action or any number 5 Bac. 159.
of them in one action, or one of them alone or 5 Bac. 165.
each of them in separate actions.

It is said by Bacon that if the action is lost at
one of several trespasses an action will not lie at
any of the other trespasses for the pendency of the first nor
are such trespasses a good plea in abatement to the
other but this is not law.
He can however receive only one assessment of the
damages only one satisfaction, yet he may sue each
one in a separate action at law.
Hence a recovery as one of several joint trespassers is a bar to an action at law of all the others. If several entries are depending. Exp. Esq. Sc. at the same time as several joint trespassers. 
So if judgment is recovered against one, the proceedings against the others will be stayed.

This rule has been denied in B. & C. 3 C. 313. 27.

It has been said that an acquittal of one of several joint trespassers is a bar to an action brought against one of the others. This never was law. The acquittal cannot be read in evidence.

If A's cattle being kept as bailiff by B, it is clearly liable if the cattle break into B's enclosure; according to some opinions it is so liable, but of this latter part of the rule I doubt.
When the trespass consists in the abuse of authority, given by law, when the deft is made trespasser by, Salk. 221, relation, it is suff. to state the trespass generally, Salk. 9. 31. And if the deft justify by pleading the license, Salk. 9. 32, law, then the deft sets forth in his replication the use of the license, and subsequent facts which make him trespasser by relation; Salk. 9. 34. 35. 66.

The deft for the purpose of aggravating damage, State the 60 in his declaration wrongs for all, alone he has no Exp. Dig. 407. Salk. 9. 42. 2 Barr. 1114. 608 1624. 1660. 1810. 1060. 1350.

App. Contra. 10 Co. 130.

It has been made a question whether the deft can, &c. 489. 490. declare in the same action & count for breaking his lady's house, & for beating his servant for quondam sometime built 113. unvisited. It is true that when the whole injury complained of is one continued wrong both may be joined in one count. But if he broke the house on one day, & on the next day beat his servant, both these trespasses cannot be declared in one count. For principle 66 R. 133. they cannot be joined in one declaration, because when the beating of the servant with a club of service 52. R. 133. is a distinct offence, it sounds only in 52. R. 133, but by 17. R. 166, precedent these offenses may be joined in a single count 17. R. 166, in the same declaration.
Declaration in trespass seems clear.

But when the declaration complains of breaking

Salt. 1741, and entering the H's house of beating his servant

16th 1806. with 1 per gs 3 far 2 the 21 cannot give in evidence

FDR 156. the loss of service for it is not alleged in the decl.

Coll. 113. ration. In this case the beating is laid

1746 much for aggravation, a distinct action

(2d note) may afterwards be maintained for the injury

2 East 1544 done to the servant.

Cold. 151. The day laid in the declaration is not material

6o. El 39.

Es. 127907.

The day laid in the declaration is not material.

C this is the case in most instances of pleading a
day, if one declares for a tort or fraud contract:

the day is never material. Indeed the party

is never material except when the day enters

into the description of the fact pleaded.

1. El 141. Where a trespass is committed by several the

5. Bae. 1725. of may declare where one alone is sued that

5o. El 12. the D's or alone committed or he may declare

that it was committed with another alone

who is unknown.

Hir. 164744. But it is said that if in an action of a

5. Bae. 1725. the declaration states a trespass committed

1.column 5. by A & B that the declaration is ill for

1. column 6. joining B, but I think this clearly wrong.

Ask. 25. for clearly one of several joint trespassers may

6. 76. 36. be sued alone. If in an action of one

it appears in evidence that another was engaged

1. column 7. in the trespass the Hf may recover.
The wrong must be alleged to have been committed with force & arms & af the peace & by com law this defect was one which could not be cured by verdict. they were at C & matter Pless b. Rait 390. 66. Bae i. 1.

By 16 & 17 Bae 2. If these words are omitted after 16 & 63 verdict, they may be amended & inserted still on you denom the declaration is ill.

The reason is that by the com law when one was convicted of forcible wrong or judgement was rendered as for a fine but if the force & breach of peace did not appear on the face of the declaration such judge could not be rendered to: i 216.

St. s 39 1st Benn has taken away this judgment still it is necessary to keep up this distinction between treachery at arms & cases for the protection of letting in the provisions of this statute.

In some there was such a diversity of judgments in case & in faces so that these words are now necessary here for the reason will render these useless at com law. & it was once decided (96) that the words at arms might be considered good omitted & still the declaration be good, but the form of actions ought to be preserved & one to have determined that treason at arms & case cannot be joined in one declaration. & I think that the English rule as now be adopted in cases by every prudent judge.
Declarations in behalf of your demand.

The injury for which the action is brought must be specifically alleged and therefore if the plaintiff declares that the defendant broke and entered the house of another tenant feet, he cannot prove that the defendant broke his furniture, because the breaking of furniture is a substantive ground of action. And under alia enuncia the defendant may prove circumstances which are not substantive grounds of action as threatening to

But the rule is dispensed with where the action arises ex turpi causa, for the sake of decency.

The plaintiff must state the value of the injury and in such he ought to state quantities, that are sufficient to state what may be recovered less than he states can more recover more. This rule is intended to furnish a prima facie rule of damages, where it is apparent from the nature of the wrong that the quantities cannot be ascertained with

But the omission of the allegation of value is aided by verdict (it seems), for if the jury find a given sum for damages, the verdict implies the supply of necessary intention that the pleadings have omitted.
Where trespasses are of a permanent nature that is when they are such as may be continued from day to day & are they continued all the trespasses from day to day renewed from day to day may be laid at the declaration continuando from the first day of the trespass to the last or the may trespass declare for each trespass separately in different actions or in different counties in the same declaration. 11 V. 296. or 296.

The principle is that it is impossible to distinguish each day's trespass, or at least very difficult to trace for the law allows the elf to state with a continuando. Each trespass for entering with cattle & injuring herbage, the injury of each day cannot easily be pointed out. But where trespasses repeat on day after day terminate the day 229 each in itself & being once done cannot be continued 627 such trespass cannot be laid continuando. But they may be laid as having been committed during dieing & vice versa from such a day to such a day. Thus if one cuts down a timber-tree to day 1st 238.9 & another tomorrow. This act terminates in itself & cannot be laid continuando.

And where trespasses are such as might be laid continuando it may be laid as having been committed divers diebing & viceversa & the latter is the prevailing practice in England for this is always safe. The reason is that whereas only a trespass within continuando is really permanent.
Declaration by trespasser or claimant.

If the Ptf declares for several trespasses, 240. In one day only is laid in the declaration he 1767 can prove only one day's trespass, then he may tack 639. select all day he pleases.

Ex'p 4708.

There are two modes of laying a continuando. Either may be adopted for all see 5 Dec 477, Cony & Digbres 621. old day 240.

Ex'p 1162. Where the Ptf has been ousted + removed + 240. ousted again + reentered to as infinitum he 635. may lay these ousted continuando even divers Ex'p 4078. laying + vicibus. a he may allege that 998. the Deft entered or a day certain + continued in hope until 1c

Ex'p 4078. If a trespass will according to the above distinct 639. cannot be laid with a continuando are so laid 449. the declaration is ill, but if one of the trespass 219. ill are laid with a continuando are properly 474. is laid + others not. the declaration is good 239. at least after verdict + so think good upon 475. demurrer. it is good after verdict if the jury give entire damages. so are the authorities but 231. in a declaration with a continuando 235.475 which is improperly so laid is good except on 474. old day 240 special demurrer.
Defence of the right of...

Said to be a good defence the present law

is to the effect that every person or at least every person

in the district in which a public meeting is held...
Defence to trespass quare clausum

If an action is brought at the suit of several trespassers, a release to one is a release to all.

No. 66. Trespassers are guilty of the wrong, for each is liable for the whole & a discharge of any

No. 67. one is a discharge of what that one is

No. 68. liable for which is the whole.

The rule is now altered, & a not pro

bono in no case discharge the other trespassers.

1 Wil. 9 c. 29

Sec. 30.

But the defence is good, & if the deft. may plead in

Stratford, 540.

for a disclaimer alleging a tender of a sum

ibid. 586.
certain as dative & that the trespass was involuntary

cap. 440.
towy. This extends only to involuntary trespass, & the not pro must prove that the tender was made, but

at common law this is not so. Such a plea

at law is am' to nothing.

We have no such plea in Eq. Law.

The 2d of limitation is a good defence, &

1 Vent. 411.
in England it must be specially pleaded. (I think)

of limitation is three years to this action, but it may be given in evidence under the general

issue, that is the deft. objects to testimony of a trespass committed before it.

2 Vent. 411.
But title in this action cannot be specially pleaded until by giving colour to the def to the plaintiffs plea, 5000 to the general issue and a special plea amounting 10000 to the general issue is inadmissible. If their def they plead title specially without giving colour his plea is bad (I will be set aside on motion at law in a ch. for demurr.)

Is this statute title is specially plenteable by Stat. 3 the Stat provides that when title is pleaded before a single magistrate he must record the plea & recognize the deft. to carry up the record to the county, & he must use the same plea in the county court. If the deft. does not this carry up the record he forfeits his recognition, & if he does & fails in his plea he is liable for triple damages & costs. A single magistrate may try the question of title when it comes up under the general issue.

The evidence in this as in other actions follows. 2 B.C.C. 455. the issue any evidence. There going to the merits but not embraced by the plea is inadmissible.

But under the allegation also ensuing to the deft. in operation may give in evidence upon the general issue any thing which will not in itself sustain an action. I did 225. in his favour, but not of any fact which will itself sustain an action of trespass in his favour.
Evidence in trespass to quare clausum,

Where the Defendant puts in the abatement of the
defendant close he must prove the lands to be
substantially.

Section 18.

1. Where the Defendant puts in the abatement within the period laid
for where the trespass is thus laid the time is
sufficient to enter into the description in the
ordinary case the day is mere matter of form.

2. But he may waive the continuance & confine himself
in evidence to a trespass committed on some one
day & then he may take any day either before or
after the time laid in the declaration. (ante 35.9)

3. If the defendant pleads a trespass from one day to another together
with an answer he must then prove a recovery before
action brought or he can recover only for one days
trespass.

4. If the Defendant justifies & proves enough to entitle him to
Section 43's justification it is sufficient that he does not prove all that
he alleges.

For the subject of injuring damages vide "assault & battery"
and also Section 720.
Fraudulent Conveyances (3d. 1.)

If it is to be conveyed under such guise as to be

a conveyance or contract intended to defraud the

grantor or any of those may who are intended to be

benefited or their representatives, void.

One that in Count is similar,

There is a proviso in the statute that it shall not

extend to any conveyance made to a bona fide

purchaser, having no notice of the fraud. If the

fraudulent intention of the debtor will not make a

covenant to an honest purchaser void.

And this proviso extends to a conveyance from

a fraudulent purchaser to a bona fide purchaser

for value from the fraudulent purchaser. (foot)

We have a similar statute but no such proviso does not

in the statute. It was made out of a general caution

The § 27 Leg. enact that all conveyance to make known to defraud a bona fide purchaser shall be void as to all

purchasers of such bond. The § contains such a

proviso. If it sells his land secretly to B. § that a

week afterwards conveys the land to C. for the

purpose of deceiving C. who knows nothing of the

former purchase by B. the conveyance to B is void

as to C.

We have no such statute as the § 27. Leg. 4 do

not need such a one as will appear hereafter.
Fraudulent: The rules applying to one of these 25 apply in part to Conveyance, both.

[Text continues with legal arguments and citations, discussing the application of common law to conveyance and fraudulent conveyance.]
And in equity a subsequent purchaser for value under fraudulent
a voluntary agreement, having notice of a prior conveyance,
with value cannot hold the if the subsequent purchaser had an actual conveyance prior in equity, he will not hold. But in the first case he has clearly no equity and therefore will be left to his remedy on the story agreement at law.

Fraudulent conveyances are in fact almost always voluntary, but they are not necessarily so, for e.g. if A transfers a debt in a conveyance of land for its full value but both privity to the fraudulent intent to that will hold in preference to the fraudulent A/B. The same rule holds if a judge, R. 649, suffered by collusion where actual value is given.

In some cases arising under these to the fraud is actual, i.e. there is a fraudulent intent.

In other cases, the fraud is constructive, that a voluntary conveyance the no fraud is intended is frequently deemed in law to be fraudulent — i.e. it is constructively fraudulent.

And even where the fraud is actual it need not be proved that the to a purchaser will be actually deceived. It is sufficient that the conveyance was with fraudulent intent — such at least is the rule established in the book.
Fraudulent Conveyance,

This intent to deceive may be inferred from various facts which are called badges of fraud.

One of the most common facts from all the intent of fraud is rendered probable is that the conveyance was voluntary, and the fact that the first conveyance was without value and that there was a second conveyance with value is sufficient evidence that the first conveyance was fraudulent.

It was formerly thought that if a conveyance was made to defraud a particular creditor, that that creditor only could take advantage of the fraud.

But the rule is now exploded. No such conveyance defrauds one of the creditors. The act evidently means that the conveyance shall be void as to all standing in the situation of the creditor to be defrauded.

Under the 5th 13 Eliz. the fact that the grantor was indebted at the time of conveyance is a badge of fraud, but this is no badge of fraud under the 27th Eliz. If 4 then embarrassed with debt conveys his land to 13. & then to 1. 1 the fact of embarrassment is no evidence of fraud in favor of 1. 4.

It has been a great question whether the want of valuable consideration is only a badge of fraud or whether the want of such consideration will be made the conveyance void.

That the voluntary conveyance is for no void as of 13. 13 15 15. 66. 9 East 57. 65. Bree in 13. 2 Ves 10. 2 Vern 261. 2 Bl 109. 66. 595. 1 Eliz 234. Rob 194. 204. 626 128.
According to the first class of authorities it is held fraudulent conveyance that the fact that the conveyance is voluntary only evidence of fraud under both 37th & 40th Eliz.

But according to the latter class, the want of value consideration is undue to the 37th Eliz., conclusive evidence of fraud independently of any intention, & the pronouncement of the 38th as a matter of law, but was it then decided, go to the 39th Eliz. - The case of Doe & Bennet has settled this question, thus - if a makes a gift of his property & therein, it for value the subject purchase will hold as matter of law.

The question then arises whether a conveyance of property without value is fraudulent as to brothers is per se fraudulent as matter of law.

The better opinion is that a want of consideration is only presumptions of fraud & not in itself fraudulent, & as such it is only presumptions of fraud, & if it has been repeatedly decided that a reasonable & honest & honorable settlement by way of advancement is good & as such brothers if the grantor was not embarrassed with debt, & if they were no proof of actual fraud, the presumption mark of prospective contrivance.

This doctrine has been acknowledged in Court in daylight but denied in N.York.
The case of family settlement is the only one in which the conveyance with value is good. If a conveyance is to a strange with value such conveyance will never be good by creditors. — These family settlements are supported by good consideration.

What is meant by the word "indebted" in their rules? It clearly means "embarrassed with debt." It can be no evidence of fraud that a man owes a small debt if he is not debt. Moreover, marriage is always regarded as a valuable consideration and cannot be set aside by creditors.

A conveyance in consideration of marriage awarded to the benefit of the wife of a prior fraudulent conveyance — This conveyance is treated in almost every respect as a conveyance founded on pecuniary consideration.

But according to some opinions there is a difference in respect between marriage and other valuable consideration. If a conveyance is made to a B & C for a pecuniary consideration, C's from A only, B & C are entitled to the benefit of the consideration but if in consideration of marriage a conveyance is made to A this done remaining to collateral relations, then latter are not protected by the consideration.
To the contrary opinion there are many authors, viz., that the collaterals are protected by the consideration of money. 4 St. 3, note 711. — 2 Inst. 105.

The party making the settlement has not as in the other case rec'd an equivalent for the land — whi will be a fund for the payment of debts.

But a settlement made after marriage is in consid.'t to be part of a prior marriage & it is always considered as a voluntary conveyance & therefore will in gen'l be fraudulent under the 27 & 28 Eliz. & such settlements 22 & 23 Eliz. when the party making them was not involved in debt at the time of the settlement have been protected under the 27 & 28 Eliz.

40. It must be observed that bona fide purchasers are more favored than bona fide creditors in the construction of these statutes. 2 Inst. 317.

But if the party making the settlement was embarrassed at the time the settlement will be void when the 13 Eliz.

8. It may be remarked that bona fide purchasers are more favored than bona fide creditors in the construction of these statutes. 2 Inst. 317.

for bona fide purchasers who are entitled to the benefit of 27 Eliz advance their money for the specific thing itself which has been previously conveyed voluntarily a fraudulent, but the creditor advances his money on the personal responsibility of the debtor. The case is analagous to a mortgage or a gen'l creditor.
10th Edition Conveyance — Marriage Settlements

But a settlement made after marriage, if it be made in pursuance of an agreement made before marriage, is not considered as involuntary and is supported under both statutes. This_because 2052700 is a rule of Equity only. The original agreement 2052743 was in consider of a future marriage. Therefore if the consideration extends to the subject, settlement 2062835. If however the settlement made after marriage 2062846. may be supported from the agreement it will be 2062855. supported only as far as it conforms with the 2062845. original agreement made before marriage.

207243. And the settlement made after marriage will be supported under the statutes if made in pursuance of a part agreement made before marriage. For the part of statute extends only to the parties to a part agreement. It has no concern with the true and bona fide purchasers. The party to the contract may waive the benefit of it. The strangers cannot object.

208269. But if the settlement is not actually executed after marriage & if there is nothing more than an 208271. agreement made before marriage Equity will not enforce this agreement as a true bona fide purchaser without notice but will enforce it as the breach of the settlor. In this breach no lien on the land but the wife & issue have a specific lien. But between the wife & bona fide purchasers the equity is equal 208227. & the latter has the legal title.
Marriage Settlements. Indubitable Conveyances

Where a settlement made after marriage with an agreement made before marriage with valuable consideration will be supported a if subsequent to death of the settlement is reasonable or if there areجب 244
£100 6d of friends as being embarrassed with £17.47.227 debt to,

There are many cases falling within these general rules that are modified by particular circumstances.

(17) A settlement the made after marriage + set in pursuance of a previous agreement if found on any valuable consideration will be supported under the 47+15 Eliz.

Thus if a portion accrues to the wife by free in 5415 the husband in consideration of the portion made 2372.44.6 a settlement. This settlement will be good in 5415 64.

equity. For here is an actual valuable consideration. This is too precisely what 4714.77

equity w? in general compel him to do. 2414.24.77

2513.262-72

So if the portion is given by wife's friend 2193.18

So if the settlement is in consideration of an agent £16.21.21
to give a portion.
Marriage Settlement

When the hus. is obliged to apply to a bd. of equity to obtain the wife’s property, he is obliged to make a reasonable settlement by that court as a condition of that court decreeing in his favour the settlement will stand both under 13 & 17 Eliz. The settlement is the means by which he purc’hes the enjoyment of the wife’s property. It is done under sanction of a bd.

Who in his turn refuses to deliver the wife’s property until the husband will make a settlement on the wife at the husband makes such a settlement that it be reasonable the settlement will be good under both statutes. For 1st Equity how compelled the settlement to be made & 2dly he thus procures the enjoyment of the wife’s property.

And yet in this very case if the trustee had voluntarily delivered up the wife’s property 1 do say the husband the voluntary make a reasonable settlement this settlement will be void quad the c.p is at once born side purchasing but since c.p is raised & if the husb. is not involved in debt be.

But if the trustee the require a settlement exceeding what a bd. of eq. considers as reasonable it will be void quad the c.p is void quad the c.p is in fav. of creditors.

What is reasonable must be determined by the direct. in of the Chancellor.
These rules relating to trustees apply equally to an executor as such or to her father's executor. The rule is always a trustee. If the wife is entitled to a legacy under a will of the estate, it is not recoverable in a Court of Law.

If the wife has an equitable title to a chattel real, she may dispose of it free from any condition imposed upon her in law or in Equity, for she has the legal title to her chattel real.

Hence if a chattel real is held by a trustee and a settlement is made by the heir in possession of the condition, this settlement is voluntary and will not be supported in Equity. It is not very easy to see any reason for this rule. But it seems clear from the authority that Equity will never impose terms on a heir when he comes into that estate for a chattel real of the wife.

And there are some cases in which disposition of a chattel real will be fraudulent and void. As of her husband, in Equity, if in Equity, the wife is in equity, founded on principles fairly equitable not on the Statute.
17. If a woman before any treaty of marriage
reserves an exclusive dominion over her property
with a due view to a future marriage, if the
husband makes no settlement on the wife he
cannot set the conveyance aside even tho' the
husb. had no notice of the conveyance.

28. If the conveyance was made pending or
at the same time of marriage or in contemplation of a
marriage with a particular person after marriage.

37. If he has no notice of the conveyance
it will be void as at law even tho' he made
no settlement on the wife.

27. If the husband has made an adequate settlement
up to the death of the wife he may be received in the case
first support of the conveyance on the ground
of fraud inferable from his want of notice.
If a woman in contemplation of marriage, 
and pending a treaty make a conveyance for the 
support of children of a prior marriage, this 
conveyance will be good even tho' the husband had 
no notice.

And this rule holds tho' the husband has made a Rob's.

settlement on the wife, for it is a moral duty for her to

provide for her children.

And such a conveyance too has been held good if,
better or bono fide purchasers, but since Rob's.
the case in fact it may be questioned whether it would 650.
be good as of purchasers.

If a husband has made a settlement of land,
induced by an intentional concealment of the,
conveyance to the children, if by holding out false
appearances, the settlement on the children is void.

for here is a positive fraud

It thinks it is be more equitable in this case
to set aside the settlement made by the hus

to the wife.
To justify a loss of equity in setting aside 2.B.6258 any conveyance by the wife, there must, in 2B.6258.7 gen'l, be actual fraud.

1 Fore 257 n. 257. If a woman, on the eve of marriage, 2 Bar. 264. make a conveyance (voluntary) to a stranger, 26.334. the husband, if he has no notice, may clearly set the conveyance aside, whether there is any fraud or not.

3.4.4. And then are cases on the other hand in which a wife has been relieved of clandestine debts made by the husband in the appointment of her expectations. (vide "power of blamery"
1 Hor. 136,

She can take advantage of fraudulent conveyances.

3.6.81.
Conf. 705.12.
Tal. 589.
3 Wit. 356.
1 Sam. 396.
2 Lib. 369.381.5.
425.6.641.683. in voluntary.

If then A makes a fraudulent conveyance to B, B cannot avoid the former. - The rule would be the same even they only constructively fraudulent.
And a purchase under a family settlement, made in consideration of natural affection, to only convey to 3605.840. and a prior voluntary conveyance, thus made to a relative, 3415. stranger, for the latter are bona fide purchasers. 647.31. yet they are no greater values.

The same rule holds in case of a jointure settled 662.448. upon a married woman after marriage, if made before 637.1 marriage, the rule will be eff't.

But where one purchases for valuable consideration more 662.371. inadequacy of price will not prevent him from avoiding 664.7.38. by a prior voluntary conveyance.

But gross inadequateness of price amounting only to a 664.7.18. colourable consideration is an objection to taking 671.3.4. advantage of the statute.
And if a voluntary purchase for value and with an equal price appears to have overreached the grantor in the transaction, he cannot set aside a prior voluntary conveyance.

... the 17th section extends to a bona fide mortgage who is by the it enables to set aside a prior value.

... conveyance.

... and the same rule holds in favor of any incumbrance as the connex of a statute, stable and for they have a specific lien upon the land.

... that a mortgage is in equity a purchase only for security and only to the extent of his debt so that the prior conveyance is void only for title, i.e. the prior voluntary purchasers may have the lands by paying the amount of the mortgage debt. (in part 60)
Fraudulent Conveyance. No. 2.

The opinions are contradictory on the question whether a party be whom a lease is made as in equity may be a purchaser within 27 Eliz.

The weight of Authorities is in favor of the latter. 2 Nee. 99

26 Eliz. 6.
2 Dyer 205.
2 Co. 637.
3 Role 763.

In this state a conveyance must not hold under an absolute lease, for one of the lease has held that an absolute conveyance to a party whom in equity may have intended is itself void.

Where a valuable consideration is paid by the party claiming 2 Nee. 99, the protection of the statute seems to be immaterial. What species of right or interest is purchased in a lease? It be a positive interest in the extinguishment of an interest?

And it is not material how large a sum for value is. E.g. a lease for years may hold up a prior voluntary purchaser of the freehold. The prior voluntary purchaser is undoubtedly held to the freehold after the determination of the lease.
2 (26) A makes a fraudulent conveyance to B. Afterwards, A conveys to C. B sells to D for valuable consideration. D cannot avoid the prior fraudulent conveyance to C. For B conveys to D only his (C's) interest. Memorandum, but between B & C, D has no interest.

2 (27) A trustee under a voluntary settlement, cannot become a bona fide purchaser so as to defeat the voluntary settlement, for it is a breach of trust in the trustee to purchase.

2 (28) Nov 105. A person who makes a purchase in his own name with the money for the use of another is a purchaser within the Stat.

2 (29) P. 223 14. This it extends as well to personal as to real property. Day 258. But where there is a real conveyance of money or other personal chattel if it is conveyed or transferred to a third person before the 60 can take it in his remedy as to the particular person to whom formed of the same, rule holds for a purchaser.
In an action in Chancery in such case give any remedy

And the consequence is, to be the same if the judge
just be found.

However one remedy is still left for him he may sue
for the penalty under the statute.

According to some Chancery a voluntary gift of
money is just within the 37th Eliz.

On the ground that money cannot be taken in
Ep. 5 (see tit. 6th 5)
But money of this kind can be taken in Ep. 4 20th
also Ep. 1 Administration.

If a bond be given for separation for Induction, it
is paid in equity as he the obligor binds as the
good or between the parties (see 14th 87) (post 59)

And it seems that a conveyance of free for such cause
would also be void as of some six pounds.

(31)
It is a frequent practice for debtors to convey their property to trustees for the payment of debts.

Now it has been decided that such a conveyance where no creditor is party to the deed, is void on its depositing, because it is as if the debt were fraudulent in consideration for the trustees are strangers to the valuable consideration.

The rule is directly the reverse in this state in this state the br is presumed to part until the contrary is shown.

But in each if any one br is party to such conveyance the conveyance is supported by valuable consideration and is good as to all the creditors. That is the br can not take the property conveyed on the other hand the conveyance is to trustees one of the creditors being one of the trustees in trust for the payment of one half of his creditors, is good the omitted brs can not set aside the conveyance.

1. 176. 426
2. 26. 530
3. 176. 426
4. 176. 426, 530
5. 176. 426
6. 176. 530
7. 176. 426
8. 176. 530
A conveyance or assignment of property to trustees made in a neighboring state according to the law there of that state is good in this state leg loci de Huntington 1811.

If however some of the effects of the 6th term of the bond in this state or if the assignment were by a positive law forbidden then the conveyance in the neighboring state no no tis treat be valid.

And such a conveyance for the payment of debts 26452. 2 5 Burr 1999.

And it seems that a conveyance to pay debts barred by the statute of limitations is not remove the statute bar.
Donations to charitable uses are in general void as to beneficiaries if the donor is indebted at the time.

It is not settled that such donations are void if the donor was not indebted at the time the donations became void.

If the donor be not indebted at the time the donation is void, so also it is void if the donor is afterwards rendered insolvent.

Consequently, where a cause must be void as above stated, it is not void because it is testamentary, but because the conveyance is void as to the representatives of the donee.

Note: 111.
In the event a conveyance to trustees for the benefit of debts is not void as against a self-claiming creditor, unless the conveyance was made to prevent the self of the debt from out of the hands of the self; for the self is within a box, or a bone from a purchased. But this rule is not very satisfactory.

But if the conveyance has been made after judgment, received it to be said, the self had not been issued, for after judgment the self becomes a perfect creditor.

The voluntary settlement made between the date first in 1637 and the breach of a covenant where the covenant保障 a right of damages only, the settlement is not void until there is actual fraud, i.e., if there is a need of conveniences, no debt exists at the time of covenant. But this applies only to a covenant which gives a right to damages only, but if the covenant was for the payment of a sum certain at a given time, then it will be different for here is an existing debt.
with his own money.

Conveyances not to be conveyed to
brothers, the original, as it is for the conveyance is
not to go to the brothers of the father only.
Rob. 480. It appears to have been purchased in trust.
Rob. 480 for the father. and the father helps his son
under the guardianship of the law, for he takes
possession of the land as guardian for the
son. But if the son had been an adult, the
possession would have been evidence of a trust.

But under the English Bankrupt laws in such a case
Rob. 491, the brothers may take the land.

Rob. 491, to wit if one has a more power on property in
Rob. 491, and they ought a conveyance to be by the former

cannot be found, as in his brothers.

Rob. 507. But if one having no power on another property
Rob. 507, one convey it in trust for himself his brothers, Rob. 507,
Rob. 507 aside the conveyance (it may be set aside the
Rob. 507 conveyance made after it in pursuance of the
Aug. 507, interest for the has? has the equitable and
Aug. 507, by the conveyance in trust for himself—
And whenever a new bond of payment is given, or bond, makes a voluntary assignment of his property, as he pleases, now if a conveye to B, B as voluntary to B. The latter cannot hold this; but the very property of A. A has a right to make it.

The validity of voluntary bonds is generally tried 

But after the obligor's death the question is frequently referred to the court. If the creditor pleads this bond, outstanding in

The fact of a bond remaining in the hands of the obligor is a strong badge of fraud; or at least raises a strong presumption that it is voluntary.
But such voluntary bonds are in good as mortises or reuniters as if allegator & the reclaiming under the 81 of distractors of the obligor's estate. If pais cannot set aside a voluntary or fraudulent bond unless for the purpose of paying the debts for bonds, etc. Ereditas. If then an action is such bond the he must plead not only that the bond is fraudulent but that there are outstanding debts etc.

As to sins probandi, if a will is claimed to be fraud is obtained on confession the onus probandi lies on the party in the judge, but when a party has been obtained on trial the onus probandi lies on the party impeaching the judge.

The more preference of one to another was not a jury but a judge or indeed any contract void under the 13th Eliz.

The English Bankrupt law indeed modified this rule. But by the 14th man may give preference to creditors. 9 John Eliz.

But the 15th can give one such preference to creditors. 12 Edw. 2

A conveyance void in its creation may become good in favour of a bona fide purchaser by statute or fact. But this rule is not well established.

Viz. if conveyance fraudulently to A, and afterwards conveying to B, a bona fide purchaser without notice, and then conveying to C, B will hold the same as a bona fide purchaser, as well as B, for he shall make the bona fide conveyance to C, for value to B, and then conveying to C, B would have held the same as B, and as the conveyance from A to B a as between themselves, the party is good A has the same right to sell which B had, as if indeed A stood in the place of A.

The rule is the same under the 13th Eliz.

If then A a debtor makes a fraudulent conveyance to C, prior to the fraud, and C conveys to D, a bona fide purchaser without notice of the fraud, D will hold as the Bred of A, and as the same principle viz. that the grantee in has all the rights with B, has before the fraudulent conveyance, and such a conveyance by B would have been good.

The conveyance to B is within the proviso in favour of bona fide purchasers.

In this state it has been determined in the case of Preston v. Grimes, that the breach of contract held as a in the law, but this decision would I think not now be considered law.
A conveyance originally good cannot become fraud by matter of post facts. E.g. a bona fide mortgageee possesses the mortgagee to remain for a great length of time does not make the mortgage fraud (the ill may perhaps be a badge of fraud) unless the grantee remaining in possession is guilty of fraud.

A fraudulent grant can never become legitimate in favour of the fraudulent grantee even by any length of possession. (Black & Catlin)

If a holder makes a fraudt conveyance to B. B continues in possession 30 yrs. the breeder of it may still take & hold the land as to B.

For B's possession is fraudulent. If to allow him to acquire title in this case we'd be to allow him to acquire title by continuance of fraud. The parties affected by such fraud must be dispossessed. But the breeder of it never had a right of possession & therefore was never dispossessed & therefore they cannot be barred.

Time never bars a fraud. Salt 63.
The 13th 27 Eliz. are like all statutes of fraud, construed liberally so far as they act upon the fraudulent transaction, but so far as they inflict. So, the penalties they are to be construed strictly, as penal laws always are. "Al. 39, 19-22."

In construction these statutes have been held to include cases not within the terms of the statutes. In the letter, 20 B. 307.

Thus where tenant for life commits a forfeiture, in order that the reversioner who was privy to the fraud might enter and defeat the beneficiary of the tenant for life, now the forfeiture has been held void as of the beneficiary of the tenant for life.

Badges of Fraud.

1. The fact of the grantor's being grossly including all of his property, is a badge of fraud, as regards the creditor.

2. The fact of the grantor's remaining in possession after an absolute sale for any considerable length of time. This indicates a trust, a sham sale.

3. The fact that the grant is made in secret.

4. Where a conveyance is made pending an action for a debt of the grantor. (Cited 13th only.) 1 Vern. 459, Rob. 574.

5. The fact that there is an apparent trust between the parties. If the trust is established, it clearly is a fraud.
Fraudulent Conveyance

Badges of Fraud

1. Suspicious clauses in the conveyance, as this deed is made bona fide to a stranger in the absence of the

2. The grantor's retaining the deed in his possession.

3. The grantor's being involved in debt, this applies chiefly to the 3rd badge.

4. A clause of rescission (strong)

5. 2d badge 45 558 559 611-641.

These may be other badges than these, but these are the more usual. These are all partly conducing to prove the first badge. All is the strongest badge, for the apparent truth means merely a sham sale, but even fraudulent conveyance is not of course a fictitious sale. For a conveyance may be fraudulent & void where a full consideration is paid if the vendor is prying to the fraudulent intent.

As to the 2d badge the prespective containing in the vendor is not so strong a badge in the case of land as in that of personal property. But it is a strong badge in either case. The rule supposes that the 2d is inconsistent with the conveyance. If there is no trust why does the grantor remain in life?
Where the grantor not only remains in poss but
accompanying that poss with acts of ownership
the presumption is much strengthened.

When the grantor remains in possession of land the
presumption of fraud may be rebutted by showing
reasons why the grantor's remains in possession. 37.537.575
But it has been held that the possession of goods 37.560.44
by the vendor after an absolute sale is per se
fraudulent. I no proof admitted to rebut this
presumption. This refers to the 13 Eliz.

But this last rule is frequently contradicted in the
books & it is held that the possession is only a
badge of fraud. If this appeals to 16 to be the
better opinion - both by authority & reason.

In this state the question has been decided both
ways in the courts

50) If immediate delivery of goods is impossible
the want of possession by the vendee is neither a
badge of fraud nor makes the contract per se
fraudulent. e.g. if a ship or cargo at sea
is sold. But the ship must be delivered as
soon as convenient after her arrival.

And when immediate delivery is very difficult
symbolical delivery is made as when a key of the
vendee house in which the goods are is delivered to the vendee.

Fraudulent
Conveyance
Act 541.9
555.
The rule appears, in Court, to be that in general, except in certain special cases, if the vendor suffers the vendor to remain in possession of personal chattels sold, the sale is deemed in law fraudulent, and the vendor will not be permitted to show that the sale was in point of fact bona fide, the retention of Robt. by the vendor after a sale is held to be in general conclusive of insubstantial evidence of fraud. 9 Comm. R. 63. 5 Comm. A. 196. 9 Comm. R. 134.

The English cases allow the vendor of property to retain the property in the possession of a former owner of it, the former owner not being the immediate vendor thus, in Gulliver v. Wood, 15 Stark. 367, the purchase of goods, under a distress for rent, was permitted to leave the goods in the hands of the former owner against whom the distress issued. In Hold v. Rawlinson, 2 B. & P. 59, the goods of A were taken in Ex. held by the sheriff to B who allowed A to continue in possession, and it was decided that B might hold the goods, and a subsequent purchaser from B.

See another case where the sale has been held good because the sale was made by a third person, not by him in whose possession the goods were permitted to remain. 4 Stark. 679. 1 Mere 1251. 4 Barn. & C. 652. 5 Barn. & C. 384. 10 B. Mees 189.
Fraudulent Conveyances (5)

Where the grantor's or vendor's possession is consistent with the deed of conveyance or with the conditions of the sale (Rel. 558), the repugnancy is no badge of fraud.

As if land or goods are sold on a condition precedent (Rel. 351, 47-4), as also if mortgage remaining in possession but as mortgage is void under the Acts (Rel. 564), if the mortgage continues in possession it becomes a bankrupt (Rel. 6287) that if it is void as to creditors of the bankrupt (Rel. 465, 455, 65).

Select 27 Jac. 1st. as follows.

If a person becoming insolvent is allowed to be in the possession of another goods the Creditor of the Bankrupt may take the goods but this has nothing to do with fraud "vide Briilmont" (Rel. 571-9, 149, 1271, 6). 21 Jac. 7.

If a creditor having seized goods on Ep. allows National and them to remain long in the hands of the debtor (Rel. 591) they are liable to be taken on the Ep. of another creditor, but this is under 21st Jac. 1st. of this statute was no force here, yet as it is in accordance of the common law this rule may include prevail here.
Another badge of fraud was that the conveyance was made pending a suit at the grantor. This is a badge only under the 13 Eliz.

Syr 295a

Syr 295a

The case in all these badges operate as a presumption of fraud are into, where the grantor does not retain other property in his hands stuff to satisfy his debts.

If one conveys his lands with intent to commit a forfeiture by a crime or that commits the crime the conveyance will be fraudulent upon us after the crown or state. This is in the principles of the common law.
And if one makes a voluntary conveyance and commits a forfeiture, fraud will be detected, even the effects fraud cannot be proved.

Mode of taking advantage of these statutes.
The party taking advantage of these statutes treats broe 223. the fraudulent conveyance as if it had never been made. They then attack the property as the ob. 591.155 property of the grantor taking no notice of the 56075 fraudulent grantee. And then when the 60 have acquired title they bring suit against the plaintiff. Sometimes indeed records is how to effect to set aside the fraudulent conveyance.

When the question is raised by special pleading the property is treated as if no conveyance had been made. broe 172. Thus a fraud grantor dies a bond being an action. broe 1495. As the heir at law if the heir antes no affect. broe 283. the 60 reply he has ante to wit the property fraudulently conveyed and prove the fraud. broe 653. broe 810 broe 6591. 25.
Fraudulent Conveyance

The first and direct step then is for the creditor to attach the property as the property of the debtor, and proceed as if no conveyance had been made.

685. If one having made a fraudulent sale of goods or lands dies, then goods to, or apt to may be seized on by the estate of the dead, or if the estate pleads no ejectment, the estate may prove the fraud.

In this State the real property of a person deceased is prior taken in suit. The property must be sold by the Executor.

Hence therefore the estate may claim that the conveyance was fraudulent before the probate of the estate may sell. The fraud grantor may be sued in ejectment, or vice versa.

To a debtor having fraudulently conveyed personal property, or dies, the estate can not take the property, but the proceeding is the same as in the case of real property.

3642. In England if one dies after a fraudulent conveyance of real property, the single contract debtor cannot take the property in ejectment.
Under 13 citing the fraudulent purchase of goods by the vendor, if he takes the goods after the vendor's death, may be considered as a stranger who intermeddles with the goods, and he may be treated as executor of his own wrong. In the sale is a new validity. So he the creditor may bring his action against the rightful esq. or seize the property fraudulently conveyed, at once.

The first rule supposes that the rightful esq. has permitted the fraudulent grantee to take posses-

sion of the goods. Then the esq's cannot claim back the property from the grantee, therefore if except the esq. the creditor may treat the grantee as executor of his own wrong.

And the same is the rule of the fraudulent vendor. If the vendor takes the property after the vendor's death, until he has probate of the will. If he takes the property, before probate of the will, a before administration for him the same necessity exists. There is no other way of recovering the goods.

If the vendor takes the goods after the vendor's death, with permission of the rightful esq. after probate of the will, the grantee cannot be treated as an esq. of his own wrong. For here is no necessity. 1 Bl. 97. 3 Leon 233, 27 Ch. 577, 27 Ch. 271, Publ. 1558.

Fed. contra. In some decisions according to these rules, the vendor may be the better opinion. The perhaps not so will supported by authority as the former.
In the state of New York, it is doubted whether they can be an equity of his own wrong, for if there can be an equity of his own wrong, the average claim will be defeated. (there are no cases)

Co. 610. A fraud, sale regularly binds the vendee, or by Rob. 643.115. representing, yet the equity of administration claims 661. such a sale for the benefit of creditors. This has been frequently decided in this state.—They can however claim them for no other purpose as for legacies.

(57) 56960. If an heir makes a fraudulent conveyance of an estate descended to him for the purpose of Pyth. 165. defeating the creditors of his ancestor, then Rob. 603. a conveyance will be void as to the creditors of the P. 544. ancestor. —

Rob. 405. Same rule in case of a fraudulent sale by the Rob. 603. q. an administrator for the purpose of defeating the 0. of the testator or intestate.
The remedy in the last two cases is in a b. of equity & that b. will pursue the property in the hands of the vendee & will treat the vendee as trustee to the creditors.

This b. indeed may seize the proper if they can find it, but if they cannot the only remedy is in a b. of Chancery.

But a bona fide purchase of the aétre from the b. of equity, error, ad & no. will hold them aft all creditors. 2 DM. 172.

If the purchase is honest he must hold however fraudulent the interest of the estate for he has a right to sell.

A fraud & conveyance is binding on all those who claim as volunteers under the vendor or grantor.

And this for when a voluntary grantor attempts to defraud the b. of equity will sometimes interfere & protect the conveyance. This rule will not extend to cases of actual fraud.

But a voluntary error, agreement will not in good faith the representatives for in good 2 DM. 172.

it is not binding on the vendor himself. And b. 66.

(18th. E. 84 contra.) & also in this case it was 9 Pit. 344 determined that where grantor does defect his own. 66.

voluntary conveyance the voluntary grantor has no remedy in chancery. 1 C. ch. 99. 98 & 112.

1773 (cont'd)
And no one can defeat his own fraudulent conveyance by his own will even in his estate. If a person make it for the pay of his own debts, if the will be made before the fraudulent conveyance, the will will be revoked by the conveyance.

Any equitable interest remaining in the grantor will pass under a voluntary conveyance, and will be valid between the parties. Any equitable interest remaining in the grantor after a fraudulent conveyance may be devised as the equity of redemption if the devisee of the equity of redemption may redeem from the fraudulent mortgage.
Powers of Chancery  (Vol.1)

It is difficult to frame any precise definition of the powers of Chancery. It has been said by Id. Names that 1. it abates the rigor of the law. 2. that it decides according to the spirit and not according to the letter of the law. 3. that it has peculiar jurisdiction over frauds, accidents, and trusts. 4. that it is not bound by precedent or established rules but acts secundum eium et bonum.

In these particulars all is clearly wrong. In fact, none of them is altogether correct.

As to the first, neither a law of law or of equity can abate the rigor of the law; many general rules are manifestly unjust in their application to particular cases, but in law and in Equity the judge must be adopted.

II. It is said that a law of equity determines according to the spirit, &c. But the rule of construction is common to both rules—and in construing contracts, the rules are in general the same as in a law; Song 264, with the exception of penalties, "law 24"
III. Is to fraud accidents & trusts—Some frauds are cognizable at law. Some frauds only are as fraud in obtaining a devise of land. Sometimes, indeed, a bill of equity will lie under a contract for fraud where a truthful law cannot. If fraud in the consideration, but for such a fraud there is a remedy at law. in an action on the case by the fraudulent party for damages.

Many accidents may be relieved at law as well as in equity. A lot of deeds & a mistake accident. Many accidents cannot be relieved at law. A device is executed to.

Mistakes may be relieved at law as a lot of law can investigate mistakes in an action even where a balance has been struck & signed by the parties.

Trusts it is true are not cognizable in equity alone. Thus trusts will create an interest merely equitable are cognizable only in equity. But some trusts are cognizable in a lot of law as deposits & all manner of bailments, so again in a pumpkin for money need to another use.

Day 6. In this state there are a few instances in which an action on the case lies for the violation of an equitable right & a figure of a chose in action,
There is however one species of accidental will can be relieved at only in Equity viz. a mistake in the terms of a written instrument with fraud. 1 Dall. 172, 1 Nev. 315. 2 Nev. 176. 7 Bro. 627, 341. 1 Roof. 944. 2 Roof 78, 415, 499. — 105.

So this relief must be had in Equity, not at all for the established rules of a bad law do not allow in such a case any relief. Thus a bond executed for $100. is by mistake of the Receiver drawn for $1200. is executed by the parties with discovering the mistake on a bill filed for this purpose the court will compel the obligor to execute a note for $100 in the obligee to accept such a note. But this mistake will be rectified only on a bill for the express purpose, of correcting it. The proceedings at law are not adapted to correct a mistake — a Ct of law must declare the contract void in toto a wholly good.

IV. It is said that a Ct of Equity is not governed by precedent. This is not true — all the rules should be manifestly unjust are followed in this Ct because the precedents are too strong to allow them to be altered. For example, note 2 Rob 432. Per Call at 312. 2 Pinn 690. 1 Ricket 684.
The difference between the laws of law and equity chiefly consists in different modes of administering justice in each, i.e., in the mode of proof, the mode of trial, and the mode of relief.

In mode of proof, the law of equity proceeds in a peculiar way to obtain evidence. Thus equity compels a party to make discovery upon oath when facts or their leading circumstances rest only in the knowledge of the party. Thus in case of accounts where common law evidence cannot easily be obtained.

By this means the law of equity have acquired concurrent jurisdiction over accounts.

And as incidents to accounts they take cognizance of the administration of personal acts and of debt, legacies, distributions, almost all cases of partnership, bailiffs, receivers, etc. In most of these cases the law has concurrent jurisdiction. From this source viz. the compulsory discovery upon oath the law has acquired jurisdiction over almost all matters of fraud and many subjects originally cognizable only atlaw.

But a person cannot maintain a bill in Equity if he might obtain adequate relief at law. If therefore a bill on an act is brought a discovery on oath must be demanded or the bill will be dismissed. The mere novelty of discovery on oath gives Equity jurisdiction.
II. Mode of trial. In the English Chancery practice, trials are conducted by written depositions which are introduced as evidence. In Court, indeed, witnesses in Chy are frequently examined "viva voce."

When a person is about to leave the County, or is already abroad, or is aged and infirm, depositions may be taken "de bene esse" to perpetuate their testimony. In a bill filed for that purpose, the Court will issue a commission to take those depositions, and this may be done before a judge or not by the "de bene esse" is meant provisional depositions.

In law, depositions taken in this way are not admitted if objected to. A Court of equity will however compel a party not to object to them in a trial at law.

When a trial is actually pending before a Court of law, that Court may issue a commission to take depositions in another state.
Powers of Chancery,

In this way again a C of equity sometime acquires jurisdiction over the main subject, merely in virtue of its power to take such depositions where otherwise it has no such

3 B 458

III. Mode of relief: A C of equity enjoins the specific performance of duties whereas a C of law can only give pecuniary damages for the breach of duty. The principle of all is this that a C of Equity considers as done what ought to be done to have been done; in that C considers the right to the specific subject contracted for as transferred by the equity agreement. And where as in case of equity contract the remedy at law is inadequate the C of Eq. acquires concurrent jurisdiction. Thus waste is prevented by injunction for the remedy for waste at law is inadequate. Thus again over questions that may be tried at law by great multiplicity of suits, as in the settlement of boundaries

3 B 456

these diverse issues issues within the jurisdiction of that C; many cases not originally within its jurisdiction.
A b. of Equity will set aside a deed for fraud in the consideration; but at law the deed must stand for the obligation is in good faith. Entitled to something. A b. of Equity can give the obligee what he deserves but a b. of law must compel the performance of the deed or consider it void in toto. It therefore compels the performance & leaves the obligee to his remedy: in damages in an action of the obligor but in equity all this is done in one suit with greater perfection.

There are other cases in which a b. of law differs from a b. of Equity. There are cases in which the court can enforce the rules of justice particularly in cases of penalties. In a b. of law if a deed is executed with a penalty & the condition is broken the penalty is considered as a debt & may be recovered in law.

A b. of Equity considers the condition as the real agreement between the parties & consider the penalty in tenor to compel the performance of the condition.
Powers of Chancery

The case is the same in the case of marriage, the 6th of Equity view the marriage in the light as a penalty. a 6th of Equity, consider a penalty as an act of conscience.

Relief of penalty, then forms an important ground of jurisdiction in a 6th of Equity.

2 Co. 275. In the case of trusts, 6th of law and Equity proceed.
655. q. upon different rules of justice, in law trustee may hold the land forever. in equity, the trustee may be compelled to convey to the equitable trust.

Besides the grounds of jurisdiction spoken of by 6th
3rd of Equity may enforce justice where positive law is silent, this a 6th of Equity cannot do.

2 Co. 275. 2 6th of Equity may alate the reason of supply the defects of a rule of law where the remedy might as defect is a collateral or unforeseen consequence of the rule.
Example of the first, a 6 of Chancery may stay waste by injunction - the common law has made no provision which requires this injunction, yet it is as the justice of the case requires it. A 6 of Equity will enjoin as a marriage of a child ward - positive law is silent.

Example of 26 of Equity enforces marriage settlements - the rule of the common law is that agreements made between huswife before marriage are made void by the interferer upon a 6 of Equity, considering that this was a case not contemplated by the rule of law. The rule could not have intended to vacate such contracts when made in contemplation of marriage of which marriage was the cause.

Where any hardship or injustice is a necessary, direct & obvious consequence of a rule of law, a 6 of Equity cannot abate its rigours or supply any supposed defect.
Power of Chancery - Specific Performance

The power to decree the specific performance of an agreement is the most important power of a Chancery Court in England. This power is exercised because the remedy at law is not adequate.

This power has been exercised in Chancery recently but not frequently exercised until 1831.

In what cases will a Court of Equity enforce the specific performance of agreements? It is said that equitable jurisdiction in case of contracts extends to all cases in which the subject, if the contract had been performed, would have been within the power of the Court of Chancery to act both in rem and in personam.

But this does not mean that Equity will enforce every contract where the parties or the subject are within the power of the Court. The rule is a discretion of the circumstances in all a contract may be enforced in equity and not a discretion of the parties or the character, will that the Court will enforce. That is, this rule is true where the Court have jurisdiction over the contract.

or the Act has been maintained in England to compel the surrender of lands in Penn, the decree in that case acts in personam: it cannot act in rem. Thus in the case of Penn v. Dallmow, in which a court of law is not in equity in such a case can give an injunction to the parties. This is, no indeed give any remedy.
And if a covenant to convey land lying in England be being in a foreign country, after notice to be thus, it does not appear the lot on a bill will make a decree in ren unm for he will vest the title in the Plf.

Thus also in case of a mortgage of land in England where mortgagee resides in this country, the mortgagee may foreclose by a bill brought either here or in England. In one case the decree is in rem in the other in personam.

And mortgages in such cases may file a bill to redeem either here or in England.

Anciently a lot of equity could decree only in personam but now it can decree in rem in 2 Pau. 61. 49. the latter case the decree is a process to put 3 Arts. 97. the Plf in repulsion + a writ of assistance directed 47. to the Def. If the Def refuses to deliver poss. 1 Act 54. 93. the Def acts as under a writ of habeas corpus 1 Nov. 45. 46.

Decree in rem commenced June 1.
Powers of Chancery - Specific performance

When the decree is in process it is decided by process of contempt and sequestration of his goods.

Note: 471. Held in sequestration until the debt is paid.

Note 472. Held in sequestration until the debt is paid but this can be done only when the debt is in the country where the C. has jurisdiction.

Marriage settlement agreements are another class of agreements specifically enforced.

Sh. 473. These agreements are void at law on the intermarriage of the parties, the rule of Equity proceed now on the ground that

Note 474. the rule of the common law did not contemplate such a case, vide ante.

26th July 1843

Here to be an agreement in form of a bond for the making

Here 475. of a settlement a C. of Equity will enforce the

Note 476. condition of the bond. So that to treat the

Note 477. condition as a covenant, or it is in the form

Note 478. of a defeasance.

The C. of Equity in this case could set the例 of the bond.
specific performance. Marriages within the family

of a nobleman's house. By the law of equity, the
proceedings of the court, for which consequences should follow,
close not early, and legal relief is not before the legal relief.

the court. In an action to recover a bill of exchange, upon

a demand for payment, the court will order

the defendant to pay it.
There was a decision in this State in 1804, in which it was held that an agreement between husband and wife was not binding, at least it appears so from the report, but it has since been decided that the English law is our law. The decision in 1804 was founded on the particular circumstances of the case.

What sort of a contract will a court of Equity specifically enforce?

1. Chancery will decree the specific performance of a contract falling within its jurisdiction and requiring equitable interference in those cases generally in those cases, only in which a court of law will give damages for non-performance, if then a case is one which will not support a recovery of damages at law the court of Equity will not in such a case interfere, but if the case is such as that damages might have been recovered at law the court will interfere provided the damages are an inadequate remedy.

2. Chancery will decree the specific performance of a contract falling within its jurisdiction or requiring equitable interference in those cases generally in those cases, only in which a court of law will give damages for non-performance, if then a case is one which will not support a recovery of damages at law the court of Equity will not in such a case interfere, but if the case is such as that damages might have been recovered at law the court will interfere provided the damages are an inadequate remedy.
Hence it is that a Eq. of Equity will not in gen. enforce a voluntary agree., not even a voluntary agree. under seal,

But at law, if the agree. imports a consideration the def. cannot deny the consider. but in Eq. the def. may show that there was no consider. even by parole. for this evidence merely, instruct, the conscience of the chancery, whether he ought to decree a specific perform. or whether he ought to leave the def. to his remedy at law.

But there are exceptions to the gen. rule on last page. on both sides of

But these exceptions to the rule that were not

Thus a bill brought to the conver. of land ag. a subseq. vendee side purch., the notice of the executory conc. will be dismissed. still in this case, damage may be recovered at law from the vendor.

But if the subject purchaser had notice Eq. will decree a conver. from the purch. to the purchaser under the conc.
Dower of Chancery. Specific performance

But an agreement to convey real estate on valuable consideration & when every thing is fair will be enforced as an intervening judgment creditor. So the mortgage is only a good one.

To again where a bill is brought to accept

1. For 6.75 n. a conveyance & pay the consideration Equity will not compel an acceptance if the title is under embracement will cannot be easily removed. still in this case damage may be recovered at law.

2. For 6.24.

3. For 6.34.

Also if one person covenant to sell lands belonging to another expecting that he can purchase the land if the land cannot be purchased a 6 of Equity will not compel the specific performance of the covenant. the damage may here be recouped at law.
...But then in all cases in all Equity will decree the specific performance of agreements on all we deem could be recovered at law.

This is the case in all marriage settlement agreements 1 NCC 616 where they are rescinded at law but at 2 P4 694 the specific performance of them will be decreed in Equity.

And the rule is the same in settlements made by husband during coverture with the intervention of trustees.

So again if one lends money to an infant all the latter expends in necessaries in Equity the infant will be compelled to pay the value of the necessaries 1 NCC 616 to the lender the at law damages could not be recovered.

On the ground that it is altogether equitable that it assumes a jurisdiction of infants.
Powers of Chancery: Specific Performance

When the obligor, in an assigned bond after notice of the assignment takes a release from the obligee, a b of chancery will compel the obligor to pay to the obligee. The at law the assignee cannot recover. Here the principle is that the choses in action are not at law assignable yet in equity the beneficial interests is assignable. If that b will protect the beneficial interest.

In authority to vide Bills of Exchange. In Court an action on the case will lie ag: the obligor.

In cases where an agreement is made by the act of the b itself that b will enforce the agree: the no action at law: it lie on it. Thus a judicial sale of land &c., in this case a b of law will not interfere because it is the act of another b & equity therefore must support the agreement.
When the condition of a bond is destroyed at law by the vitiation of the right of obligation, the same person to whom such bond or the condition of it in favor of, binds the bond, may become obligee in a bond of whd the & is obligor, tho' at law the bond is extinguished yet at law in Equity the bond is good in favor of.

The same rule holds of other contracts besides bonds.

But in Con. the bond in this case is not extinguished in Equity in any case even tho' there are no &. Bardon v. Sheldon Supreme Ct. of Con. New London June term 1826.

If the recovery of damages at law can be had, it is an adequate remedy Equity will not in gill 139 devote a specific performance in such cases 208, 641. need of Equitable jurisdiction. This rule admits of no exception unless where modern rules of law give an adequate remedy & where the ancient rules of law did not afford an adequate remedy. For the introduction of new rules of law shall not oust the ancient jurisdiction of that Court.

What are those contracts in which the remedy at law is inadequate? This depends in a great measure on the subject matter of the contract as being real or personal. As far as equitable interposition depends upon the subject matter of the contract, the general rule is that a court of equity will enforce the specific performance of no other contract than such as relate to real property. In such contracts the court will generally carry into specific performance. This is good but not universal. The reason is that, where the contract is concerning real property, a recovery in damages is not in general deemed an adequate remedy.

Now, in cases of this nature, if equity requires a specific performance of contracts relating to personal property, in such cases a court of equity will enforce the specific performance of the contract. But in general the remedy at law on personal contracts is deemed adequate.
The point in view with the damage, is, if equity will
deem the specific performance of a contract relating to personally
the parties, or if it brings an action at law as T on a personal debt, 6, 216
contract T brings a bill in equity charging 6 with fraud, 4, 17, 521
may bring his debt bill in equity charging the fraud. Praying 1, 3, 64, 526
that the 6 will decree the specific performance, if the fraud
is not proved or is disproved, the 6 will decree the performance.
In as the Def at law is driven into equity on a groundless charge of fraud, the 6 of Chancery thinks it is reasonable
that the Def at law 62 have his remedy where he is thus reluctantiy brought.
But in this case the Chancellor
cannot use the damage, but must direct
an issue Quantum damnum facit, assumpsit at law to be
tried by a jury. But in Chancery the Chancellor
appoints commissioners to determine the damage.

A. If Def files his bill in Chancery on a personal contract, 6, 216.
If the Def does not demur, he tacitly submits the 6 to the 6.
That 6 will decree the Def in the case is supposed to answer not demurring the
proper way of objecting to the jurisdiction of the 6 by demur or.
Powers of Chancery. Specific Execution.

If an agreement effects an interest in lands or stipulates the performance of some specific act on a bill filed a 1 Fons 27:8. if chancery will decree the specific performance.

189. 357.
1 P. 393. 282.

2 Pan 6:219 If an agreement concerns the personalty on one side and realty on the other the C will decree a specific performance on a bill filed by either party. In this it is almost always the case. If the agreement is seldom concerning the realty on both sides.

Thus if A convenants to convey for a consideration to be paid by B A may file his bill and compel B to accept a conveyance or to pay the consideration. So it is a general rule that the interference of Equity must be mutual.

1 Myn. 450. A quit covenant to convey lands of a certain value with any particular description of such lands will not be decreed in Equity to be specifically performed. In here the principle that the C considers the title as transferred from the time of the conveyance does not apply. Besides here is no room for specific performance - what land shall the C order to be conveyed.
Gently he who prays for the specific performance of an agreement must show in his bill either that he has performed or is ready to perform his part so if he will not a thing his own fault cannot perform his part he cannot have a decree.

But the rule is different in law.

This rule results from the discretionary interposition of the Chancellor.

It is therefore a general rule that where a Pef has performed in part but is prevented by something adverse from performing the rest the Pef is not entitled to a decree.

Thus A agreed to pay $1000 to B within two yrs. Stilly C, his provided B shd. marry A's daughter & settle in 2 yrs. a certain pointe on her within two yrs. B marries Kin 287 but his wife died before the pointe was settled B lost his bill for $1000 but the bill was dismissed.

But when the deft having performed in part
it being in no default for not performing the
entire contract, he is not left in statu quo. Here equity
will decree that the deft has not performed.

Thus, when on an agreement between
the owner & freighter that freight be
charged only, the homeeward cargo & the
freighter had no cargo to bring home:
the ship came home without any cargo.
The owners were entitled to & received
a compensation.

And when the deft has been willing to perform
on his part but has been prevented by the deft
the deft is entitled to a decree.

Readiness,
in this case is equivalent to actual performance.
Here the rule is the same at law as in Equity.

But a lot of Equity will not decree a written agreement
under seal, which has been discharged even by parol.
Proof of parol is admitted in the purpose of rebutting
an Equity.

Now at law this parol discharge will have no
effect whatever. In Chy it is admitted not
to affect the contract; but to sustain the
conscience of charity, so that it will be equitable
to carry into specific performance such a contract.

It leaves the parties to their remedy at law.

[Handwritten notes and equations]
Again when a party has permitted a claim to lie a long time dormant, his delay will prevent a decree in his favor unless he can show some good reason for the delay. Such a delay is prima facie a waiver of the claim.

Hence where there was a marriage agreement on the part of the husband to settle lands within three yrs. and the claim was not insisted on until several yrs. after the three yrs. were expired on a bill for performance the husband existed on the length of time but the same was made ag't the husband it being shown that the claim was delayed because the husband was in business and required all his capital.

But no length of time will prevent a person from taking advantage of a trust. It is from 4th ch. on the 34th of a trust. The Plf's omission to perform his part precisely at 12th hr. the time fixed if he is ready within a reason 4th ch. 327. all time after the time fixed is no objection 4th ch. 327.

But in a late case at law it is said that the rule of Equity is altered.
Power of Chancery: Specific performance

Again when a party seeking specific performance has himself defaulted with the contract a shown as
2 Mor. 626:7 it is said that there is no exception to the
52a. 626:7 guilt rule that the def. cannot have a decree in
specific performance unless he has performed his part a shown a readiness so to do in favor
of the ipso under a marriage settlement agreement
for they on purchasers under the settlement it is not their fault that one part of the agent
is not performed it cannot be performed as to any duty to be performed they are third persons. But
any non-performance is a fraud upon them.

Nes 377:8. And the same principle holds with respect to
2 Pet. 6:28 a settlement made on the wife provided the
wife is no party to the agreement.
There are many cases in which a lot of Chancery will decree a performance as far as possible when complete performance is impossible.

And this is the rule at law but not so much so as in Equity. 2 1 R 254. 2 2 C Bl 163. 587.

As where complete performance is rendered impossible by the law as by a subsequent statute,

Or by accident or by act of God. In each of these cases if the party wishes he may compel a performance ci praes.

Again where one has a power to lease for 10 yrs and lease for 20 yrs now a lot of Equity will support the lease for 10 yrs. the lot will consider the lease for 20 yrs as an agreement to make a lease for 10 yrs and will therefore compel the lessee to make a lease for 10 yrs.

Now such a lease at law is utterly void.

It is a rule of law that when one conveys to a for life remainder to the heir of his body a take an estate tail. In executed agreements the rule is the same in Equity.
Powers of Chancery. Specific Performance

But in an article of covenant to settle land on it for life remainder to the heir of his body, and remainder in strict settlement. The C of Equity will construe a conveyance to it for life only, and the C of Equity will construe the agreement according to the words and apparent intention of the parties.

The C held that they may in conveyance convey a freehold for sale and gift or for sale and gift to be conveyed according to the grant intent of the parties. And the C has even gone so far that after a settlement has been actually made after marriage, on an agreement made before marriage, "to a for life remainder to the heir of his body, so to set aside the settlement and make another after its own words, to make a new settlement to it for life remainder in strict settlement. In this settlement, is void at law.

And where there were such articles of the settlement made before marriage, it appears to be in pursuance of the articles that the C held that it was not in pursuance of the articles that it set aside and made a conveyance of it in pursuance to the C.
There before remarked that a lot of equity considers an executory agreement as executed from the time when it ought to have been executed which is the time of making the agreement. Unless some other time is fixed according to the opinion, but the better opinion is that the contract shall always be considered as executed from the time of making it. In equity, regards the future transfer of the legal title at a time fixed as a mere formality.

This rule means merely the time that it considers the right as vested in the purchaser from the time of contract made & considers the vendor as trustee for the vendor from the time of the contract made.

It follows that if money is articles or devised to be laid out in land equity considers the money as land from the time of the contract made & will carry the laid to the heir as land.
Powers of Chancery. Money articles

(36) Hence money thus arrested is subject to coming in the hands of the person who would have been entitled to coming in the land if the purchase had been actually made, and his right may be affected in either of two ways viz. a 5. of Equity will compel the money to be laid out in land + settled on the husband for life remainder according to the articles, or the husband may receive the interest of the money during his life.

But in similar circumstances the wife is not entitled to dower. But in some a 5. she is entitled to dower. For the wife is not in Engl. entitled to dower from an equitable estate.

From 520
30th Apr. 1729
1 Dec. 1729
17th Jan. 1730
9th Feb. 1730
29th Mar. 1730
2 Pa. 112.
2 Pa. 651.

On the same principle where there has been such a devise a article of money it will geld, past under a geld devise of real estate + the geld will not help to a geld legatee under the form of all my money etc.

These rules obtain whether the fund to be paid for land is distinguished from others, but the agreement will bind all money + indeed all the personal property of the covenantor.
But &c. does not consider money as land only
the agreement to vest it in land is positive. If
therefore one agrees that a certain sum of money 170c. 174
shall remain in the testator's hand until a convenient 2 Vom 227
purchase can be had, how the agreement is not positive. If 3 Act 255.
purchase is not 2 Vom 227
inland or uncleared, the election must be made Nov 295
otherwise the money will be money. The who is
to make the election can have nothing under the
contract.

And land may be considered as money thus if the 2 Vom 659.
owner of land covenants to sell certain land for
his with making a conveyance. the land will 640.
become money if the land will belong to the Epp. 170c. 174.
in Equity. And the former rules holds 2 Vom 653.
& converso in these cases.

Another effect of this principle is that the 2 Vom 260.
property agreed to be conveyed is considered as conveyed 170c. 645.
from the time of the agreement made is in the
possession of the vendor provided the vendor is
guilty of no fraud or misconduct.

This rule holds even the a future day is meant for
the execution of the conveyance.
Thus it owned a bead for 3 lines, and agreed to purchase, but before the time of conveyance came, 2.82.6. one of the lines drops; the vendee was held to bear the loss. He was obliged to pay the whole purchase money. Then a subsequent day was fixed for carrying into effect the agreement. Before that day the life
2.8.17. died. (Other examples.)

But when the agreement is not for a date but for the right of preemption, this doctrine does not apply; for this is merely an agreement that another shall have a right of preemption. It is an agreement, 23.8.67. that they will hereafter come to some agreement concerning the property. Now, even in Equity the title does not pass.
But the money, as it is laid out in land, is prima facie land, until the party who is put in the possesee of the land when purchased, the money will be money or land at the election. Zorn 296. if the person entitled to the possesee for the Act 76, 66, for the right of the third person can be affected by permitting Zorn 112, the money to be considered as money or as land, for if the land was decreed to be purchased the person entitled to the possesee immediately sells it & therefore the decree will be nugatory.

But if the decree were that A shall purchase land worth $1000 & settle it on B & the heir of B's body, or to B for life remainder, to B & on the heir of B's body might claim that the money will be laid out in land. But in such a case if the money is to be laid out in land to be settled on C in fee, if A does not make his election & c 626. to have the money as money it will be considered as money as land. For instance if it dies without making an election B's heir at law may claim the money as land & the heir at law may retain the money as land or he may obtain a decree that the money shall be laid out in land. But if it should make a will giving the land money to B & describing the money as money will not, must be laid out in land. C 626 will have the money but the money will pass by a will not executed according to the will of persons.

And in this case partie proof is admissible to show that A did in his life time elect to treat the money thus entitled as money. 235.
Powers of Chancery: Specific performance

This election may be shown by acts of the party in favor or by proof. Thus it may be shown by the personal representative that the tenant said he was not to be purchased.

A want of certainty is a sufficient objection to a decree for specific performance. Hence want of mutuality in an agreement is a decisive objection to a decree for specific performance.

Want of certainty is a sufficient objection to a decree for specific performance. Hence want of mutuality in an agreement is a decisive objection to a decree for specific performance.

How far a voluntary agreement will be specifically decreed - see 1 Bla. Add 326:7.
But if the agreement is originally mutual no subsequent want of mutuality will prevent a decree for specific performance. Thus if the agree to pay 8 per cent for certain stock but after the stock fell to pay. Here it was held that the stock at 10th was the purchase money for stock at 10th. The time of the purchase was worth 70 percent.

A & C agreed to convey a messuage in consideration of an annuity on him for life & if died before the first installment yet the heir was held to convey the messuage.

---

**Respectful penalties.**

Finally a C of chancery will neither enforce a penalty or permit one to be enforced if one files a bill on a contract which contains a penalty. He must expressly waive the penalty or the bill is demariable & will be dismissed.

A C of Equity considers a penalty as unconscionable. But Blackstone says that relief agt. penalties is founded on the policy to relieve agt. accidents.

Equity will generally not suffer advantage to be taken of a forfeiture or a penalty when the value of the contract can be obtained without the penalty. Thus on a bond the obligor may file in bill for relief agt. the penalty or paying the condition & interest & costs. He will make an injunction agt. the obligee from suing on the bond at law.
Powers of Chancery: Relief agt penalties,

It follows then that where a compensation can be made to a party claiming a penalty by a clear rule of damages, Equity will guilty relieve agt the penalty. Thus in a bond or mortgage deed. So also if one gives a bond or covenant with a penalty for an amount capable of being ascertained by any known standard the let will relieve agt the penalty. Thus a bond with a penalty for the delivery of such a quantity of goods the penalty will be relieved agt for the value of the goods can be ascertained.

But where the case is such as to furnish no rule of damages the court will not relieve agt the penalty. Thus if lesser covenants under a penalty of forfeiture be not to apply.
If there is a rule of damages yet if by reason of intervening events its compensation can be made as a complete substitute for the penalty a & if it will not relieve as a penalty. Thus A agrees that unless he made a certain payment on the wife within two years before payment made B was held that the husband must forfeit the portion for the wife being dead no compensation & be made for the portion a not be made.

Again when one party voluntarily stipulates a favour to the other party with condition that unless the other party does such & such the favour shall be forfeited if these things are not done the favour is forfeited.

In this it is not within the principle on all equity relieves as penalty. It is not unconscionable. It is not oppressive. The creditor agrees to take 75 % if paid on a day certain & the day passes. The debtor must now pay the whole debt. The thing lost is a mere gratuity & here nothing more is now to be paid than natural justice requiring, therefore this is not strictly a penalty.
Powers of Chancery. Penalties

(30)

Where Equity on no side will relieve as a
17th 1441. penalty contained in an agreement will on
the other side enforce performance of the agent
& the rule holds & converts.

It was formerly held that where there was a
17th 1441. penalty in an agreement the party bound had
2 Smo 6136. his election in all cases to pay the penalty
3 Smo 477. or to perform the agreement & this rule is
clearly according to the letter of the contract
not of Equity will now enforce the performance & not allow the obligor his election for
the object of the contract is clearly to secure
17th 1441. the performance of the condition. This rule
1Bov 515. holds whenever the penalty appears to be
1 Port 171. a mere security for the performance of something
Cont 431. collateral, a lot of Equity will on the one
hand relieve at the penalty & on the other
enforce the specific performance of the contract
for the condition is regarded as evidence of
an agreement to do the act contained in the
condition.

Dwre 267. This relief is generally given by an injunction
2 Smo 149. that the obligor shall not, on receiving pay
10dell 517. of principal first a gently costs prosecute
2 Ves 328. for the penalty
2 Ath 371.
But there are cases in which the obligor has his election of remedy by paying the penalty for himself. 2 Atk 345.

If the penalty appears not to be security for something collateral but is in the nature of anticipated damage, and in this case equity will not

relieve for the penalty nor enforce specific performance, since the sum ascribed is not here fixed in terems to compel performance.

It is frequently difficult to determine whether a penalty is for the security for something collateral or whether it is in the nature of asserted damage.

If a lease covenants to pay $50 for every acre of meadow which shall plow, now in this case the lessee may plow $ a lot of equity will not

injure, nor will they relieve at the penalty.

On the other hand when the penalty is in the nature of asserted damage a lot of equity will not enforce specific performance.

But suppose the contract of the lessee had been that I hereby covenant that I will not plough

vacation of 4 then adds I bind myself in the sum of $1000 not to plough it. Now the $1000

is regarded as a penalty for the performance of something collateral, in this case a lot of

equity will forbid the lessee to plough it if there be any case of damage the lessee will be relieved

at the penalty.
Powers of Chancery. Penalties,

whether a breach be made on behalf
of a condition or non-performance of an
assent is to be considered as applied damage
or as a penalty strictly speaking is to be determined
from the intention of the parties as collected
from the whole assent.

Ittrue law, breach of condition entitles obligee
to recover the whole penalty.
But from the earliest periods our basis of common
law precede up penalties by reducing down
the penalty to the real damage.

14. 21/30. And by the English Statutes § 9 Will 2 & 3 Ann
1 Dec 544. Where an action is brought to recover a penalty
2 Dec 649. a 3rd law will render judgment for the damages
3 Dec 347. actually sustained.
4 Dec 341.
5 Dec 152. The English Statutes do not extend to all penalties
6 Dec 256. but two it does extend to all penalties will
7 Dec 116. may be relieved up in Equity. vide Court of Chancery.
The rule of equity relieves at acts by frequently ascertaining the damages by directing an open quantum deminimis at law.

When the damages can be ascertained by computation there is no need of the plea at law.

A C of Equity cannot relieve at a forfaiture incurred by the non-performance of a condi precedent. This cannot properly be called a forfaiture for the 1st rule 41.2

Estate non vest, in case of a condi precedent.

Settling aside agreements.

This is how the power of doing this by acting in esse or in personam, Equity will 205.7 192.8 often refuse to decree the execution of an agree 267.305.8 and it will not set aside on a bill filed for that 170.116.

The reason is that the intervention of Equity is discretionary. Thus the single fact that a contract is a hard one of the sort is decisive at decreeing its performance but this alone is not sufficient ground for setting it aside.
In all cases indeed where the defendant can rebut the plaintiff's equity that he will refuse to rescind the agreement, for the interposition of the court is discretionary.

But fraud in obtaining an agreement is a sufficient ground for setting the contract aside.

If the contract is such that a court of law cannot consider it as void a court of equity will not set it aside but leave the matter to be determined at law. But it seems that equity has concurrent jurisdiction with fraud except that of law.

And that unreasonable price is not for its self a sufficient ground for setting aside a contract yet that with other things may furnish evidence of fraud.

Thus great inadeguacy of price with other facts may contribute to presumption of fraud.

But imposed hardship or oppression constitute a ground of relief in equity distinct from that of fraud.
When an equitable assignee is also unknocn, 
they will a further relief aft the assignee but 
only in favor of him who is not partly 
sure of Wh. the party 21st. 
agreeing to pay unlawful interest is not partly 
summen. But in equity it is partly applies to 
be relieved aft being he will be relieved on 
the plea of using proved. the whole contract 
is void. The reason of the rule in equity is that 
the bill pray to be relieved from the provision part of 
the contract. the interposition of the chancellor is 
more to the same, the may therefore impose terms on the 
applicant. & the terms here imposed are reasonable 
for the applicant partly over the debt & lawful interest.

And where the parties to an unlawful contract are both 
convicted guilty, chancery will interfere for neither at least 22d. 
equity will not interfere beyond the provisions of 23d. 1E24.195.

fisica l law.
Powers of Chancery. Setting aside contracts,

(44)
due any unfairness on the part of the P. if any
will present a decree in his favour. "the P. must come
with clean hands."

(V) 227.

229.
36th 353.
2 Temp. 221.
226.

206 325 And with regard to unfairness, suppression of
facts is equivalent to misstatement; thus, when a bill was
brought to compel performance of a purchase where
the rent was stated truly, but some necessary
repairs were not stated.

206 325. And in some cases, where there has been some
misconception, this is deemed a b of Eq will
206 326. refuse to decree a performance, it will in some
cases set aside the agreement.

206 326. And a mistake in fact is in many cases a
ground not only for refusing to decree a
performance but for setting aside an agreement.
206 326. But mistake in law will have no effect, one
exception where a title to an inheritance was
in question between an elder and a younger brother
case of the school question, but in a simple case
a contract will not be set aside for mistake in
law.
But if there is a mistake in a point of fact will that move the moving cause the purchase money of the agent the contract will be set aside. 

This mistake supposing no fraud on either side of the objects of one party it is to sell part of the other to purchase a mill rent if there is no water power the agreement will be set aside.

The compromise of a doubtful right is a good consid. 1 Pet. 726. creation it being fairly made the it can afterwards 127th 10. be shown to the court that the entire right was in one party. This case supposes something of the kind A owns a piece of land B claims it. It is doubtful to both what we be the merit of a suit. they therefore compromise now this agreement is good for the very doubt is a consideration if they knowingly enter into a bargain of hazard.

Agreements obtained by coercion that are not amounting to legal duress will not only be 2 Pet. 16:16 not deemed but will be set aside. and undue influence the not amounting to coercion is a sufficient ground for setting aside an agreement.
Tours of Chancery. Setting aside agreements.

But a person cannot set aside a contract in equity on the ground that it was obtained by parental influence unless it can be shown that such influence was unconsciously exerted, for it is a general rule that from due and proper respect to such a relation is near a sufficient ground for setting aside a contract.

Intoxication in one of the parties is not a sufficient ground for setting aside a contract, but if the intoxication was produced by the practice of the other party and advantage taken of it, the rule is different; it is unfair advantage is taken of one's intoxication, the contract is void, not an act of the intoxicated person is void at law as well as in Chancery.

Imbecility of mind when the party is legally competent is not a sufficient ground for setting aside a contract, but such a fact is sometimes a suspicious fact and accompanied with indications of fraud and unfairness, may be a reason for setting aside a contract.
Elements intended as a spealing as a fraud on third persons are illegal and are set aside both in law and in equity. A contract made between ship master & a stranger to defeat the interest of the owners is not allowed at law. Indeed the contract is not set aside but when an action is brought on the contract a Ct of law will give judeg. eg. the Ry, 1a, Sec. 185.


And such contracts cannot be ratified for if it could be ratified it w't still be a fraud on third persons. A party can indeed waive for himself a rule of law intended for the benefit of himself, but he may not waive such a rule when intended for the benefit of third persons.

These cases frequently occur in marriage settlements. Thus the husband agrees to return part of the property settled on him and his wife for the sake of deceiving the wife or her friends. The agreement to return the property will be set aside, but the property will be the husband's.

Marriage croseate bonds are always set aside 136, 185, in chancery because their tendency is to produce fraud on third persons.

185. P. 174. 190.
Town of Chancery, setting aside agreements.

(48)

And contrary with their apparent face

their expectations are always set aside in

Equity, even tho' the heir be of full age.

All the time the agreement might be beneficial to

Vest

the heir. The such devisees are contrary

Verse 75. to the policy of the law.

167

Sec. 150. The rule formerly was to set aside only

such agreements as were prejudicial to the

heir, but not so now.

Sec. 151

8. Pm. 292. And such agreements have been set aside after

Verse 114. They were carried into execution, even where

Verse 153. it was so in obedience to a former decree

in Chancery.

8. Pm. 189

Sec. 157. But if the original contract is fair it is

fully ratified in full information of this

after he has come into possession the agreement

1 Wil. 320 will stand.

18 Pm. 320.

Sec. 158. But at law a deed of conveyance with con

venant of seisin must bind heir, so he is

obliged to obey that he has title when

he makes the deed. But at law if the con

venant of seisin appears on the face of the

deed that the vendor was a young heir

the con venant will be void.
Powers of Chancery (Rev.)

It is a general rule that an agreement to do any thing tenders to evasion injustice induces the statute 6 & 7 will not decree its specific performance - (and 2 1799, probably in many cases would be set aside) so the time is no case all goes so far.

And extending head of equitable jurisdiction & 8604 performs re-set-offs but now by 2 1799 & 1175 Co. II. Set-offs may be made at law, & the 6 & 7 may plead a debt due from the Pet 2 1466 to himself. The head of equitable jurisdiction 1 1756 to own equity any in England. Of it being the same to have no such statutes. Set-offs are therefore impossible here to be decreed in Equity of at all.

In this state Equitable jurisdiction is in the Circuit Court & 14 & 15 P. to the matter in dispute above the 17th speed 55. The P. has original the same for jurisdictions and if a bill is brought to set aside a judgment rendered in the State in the State or concerning a cause pending before this State the P. has original jurisdiction whatever be the same in dispute or.

In England an appeal is made from Chancery to the House of Lords but in court a writ of error may be brought & carry the question from the Court to the judge & from the Judge to the supreme (by statute).
Injunctions.

An injunction is in the nature of a prohibitory order, viz. a party from doing what he would otherwise be permitted or equity or justice. Where a party is commanded to do something the decree is called an order.

3 Bac. 172. Ithe most usual injunction is that intended to restrain a party from proceeding at law so that, where a party is proceeding at law and where at law he might recover yet if there are equitable reasons against his proceeding at law an injunction issues against proceeding at law and of the bill.

Colloq 16. But Equity can never issue an injunction to stay proceedings in a criminal case for Equity has no equitable jurisdiction over the same. If a person is a contemnor and if a Ct of Equity shall interfere in a criminal case the Ct of CR will protect any such who proceed contrary to the injunction.

1 Br. 67, 173. 3 Pl. 438. 1 Trob 29, 30, 124 G. 124. 2 Ch. 221. 2 Pl. 127.
In every case where an action of waste will lie at common law, or in various other cases, as Nemo 23, an injunction may be granted to stay waste 3 B. 244, in favour of one who is not the immediate 723, remainder or possession for this can be no 3 B. 327 injury to the intermediate remainder man.

A mortgagee may have an injunction to stay 3 W. 73, waste on the mortgagee. So the mortgagee has no P. 78, right to diminish the value of the security for the mortgagee may recover possession by getting that yet be ahead a more speedy remedy.

On the other hand, an injunction may be had 3 W. 23, as the mortgagee in possession. In the case of this unless he will apply the value to the debt and probably in case of destroying building an absolute injunction. But in this case no action at law will lie.
If tenant with impeachment for waste is
about to commit or is committing more waste.

Nov 23. waste he may be enjoined, as from destroying
ornamental trees, not timber.

2 Ven 7:38. An such a tenant may be compelled by decree to
repair waste of this kind already committed.

And an injunction may issue against the person
having the legal inheritance where he is now

2 Ven 7:38. And an injunction may be granted at law, as
after possibility to stop attempting unreasonable
waste.
Injunctions for Nuisance

To an injunction may be issued to restrain nuisances of a permanent nature as to prevent one's building so as to obstruct ancient light, an action may indeed lie at law, but

the preventive remedy afforded by chancery is better.

So an injunction will lie to prevent one from practicing an unhealthy and unsome trade near the house of another.

Again an injunction may issue to prevent a person from building on another's land until the question of right is determined.

In those cases the injunction goes immediately on affidavit but if the right is determined to be in A the injunction is made permanent but soon the injunction is dissolved.

With regard to nuisances injunction will be granted only at common law nuisance.
An injunction is a court order to prevent or stop someone from doing something. It is used when legal remedies are not enough to protect the plaintiff. An injunction is often used to enforce a legal right or to prevent harm. It is an equitable remedy, meaning it is granted at the discretion of the court.

There are different types of injunctions, such as temporary and permanent injunctions. Temporary injunctions are granted to prevent harm while the court decides an ongoing case. Permanent injunctions are granted when a legal right has been violated and there is a possibility of future harm.

Injunctions are sometimes granted to prevent harassment. When someone harasses another person, an injunction can be issued to prevent further harassment. This is called a protection order or restraining order.

Injunctions are also used to prevent people from selling or transferring property, such as land or a house. An injunction can prevent the sale or transfer of property until a legal dispute is resolved.

Injunctions are sometimes granted to prevent a person from entering a property or neighborhood. This is called a no-contact order or a no-possession order.

Injunctions are granted to enforce a legal right or to prevent harm. They are an equitable remedy and are granted at the discretion of the court. Injunctions can prevent harassment, prevent the sale or transfer of property, and prevent a person from entering a property or neighborhood.
Injunctions may be granted to prevent a multiplicity of suits in other cases than in ejectment. Thus where several tenants of a house claimed each for himself a right to a fair far at law this case might be determined indeed but not until as many suits as there were parties but in Equity it may all be determined in one suit.

And thus also where there is a question of boundaries between a dozen parties.

While a suit is pending in the ecclesiastical court 1821-272 between several claiming to be an E.P. or admr. 1326-633 an injunction may issue to prevent any of the claimants for intermeddling with the estate until the question is determined in the prerogative Court.

This it will grant a provisional injunction to Nov. 1849 stay proceedings at law on suggestion of fraud Threatening in obtaining the bond to until the question of whether said bond can be investigated in the and if it is found that the bond was fraudulently obtained this injunction is made perpetual. So if E.P. do the unless the bond is one will cannot be tried at law or unless in discovery is sought or something of the kind for the true having amount jurisprudence 1863 shall not yet the case has a right to proceed to which to at suit.
Where a præt at law by reason of any thing expirient ought not in equity to be confudged & where there is no relief at law ch. 3, v. 4. of equity will relieve at per leg. 34 of tit. 3, sect. 223. by exaction or by ordering satisfaction to be rendered on the præt.