A contract is defined by the Cl to be an agreement between two or more parties upon such consideration as to do or not to do a particular thing.

But the true contract includes all agreements executed as agreements executory, e.g. it includes subscriptions deeds leases

If a contract is some kind of agreement, this partly necessarily implies the agent of parties. With 2 Bl. 442 this mutual agent there can be no contract.

There are various classes of persons who do not possess the legal capacity of acting and such of course can make no contract. E.g. paupers, lunatics, maniacs.

With regard to this class their contracts, not of record are generally void and all the cases say that the better opinion is that such facts may be pleaded to them. But if thinks that the disability must be specially pleaded.

Their contracts, however, appear to be in general void only as to some purposes.
If a man compon is particular test and a contingent remainder depends upon it, if he survives his
next estate, the contingent remainder is not destroyed.

But a person when compon is competent to receive
property by devise, by bequest, by gift, etc., but how
can he acquire property by contract when he cannot
about - all that says the law presumes no
sent to what is beneficial to him.

But the law seems to dispense with
sent for his benefit.

If a man insane does not recover his understanding
and agents to the gift to the amount binds him and
his heirs; but if he dies without recovering his
understanding, or if having recovered he were affined
a disaffirmance his contract, his heirs may affirm it.

The purchaser, then, if a man compon are not void,
but only voidable and indeed they are prima facie
void.
But as to these classes of contracts the rule of the law is that the innocent parties cannot recover as to understand the advantage of his disability according to the maxim no matter of full age may stillify himself. 460 123. Litt 5405. 17 Fent 4110. 18 Pitt 147 26. contra however Bullen N.P 172. Sir 11001 2 Vent 195. 2 Kent 415 5 Pick 437 15 Johns 8 503.

There are still modes in which advantage can be taken of the voidness of his contracts. Thus his relatives or representatives may set them aside.

Again after office found the duty may be resisted all contracts made in idleness to best friend/brother during the life of the insane person. By office found as properly upon request of 12 men and 1 Pews 24 it this office found has relation to the commencement of the disability.

So count a man is not liberty to stillify himself.
Again a suit in chancery may be first by
the party sued or by the committee of the mad
compromised during the life of the mad compis
for the purpose of avoiding such contracts.

If a person while sane makes a contract and
thereafter becomes of unsound mind, a suit may be
brought in his behalf or in his name to compel
performance. In this case he indeed appears
by his committee to.

And both lunatics and idiots are bound by
consequences of record. The rule is founded on
the doctrine of estoppel.

An idiot is a person who has no understanding
from his nativity, or a person who has never gained
understanding, is not an idiot. Any one who
can tell his own reasons, or the reasons of his parent
count the days of the week, a count twenty is not
sufficient; his contracts may still be void, as being
invalid.

A lunatic is one who has had understanding but
who has lost it by some superveneat cause; and
all those sane persons are either lunatics or
idiots.
Intoxication is not per se a ground either in law or in equity for setting aside a contract. The rule supposes that the intoxication is voluntary.

But if one party draws another into a state of intoxication and then takes advantage of that state to procure a contract, such contract will be set aside in equity.

The fact that one party is of a weak understanding is per se no objection to a contract. For, by law, unless the knowledge amounts to idiocy or lunacy, it is not inconsistent with capacity.

But if any fraud or an unfair practice is used on a person of weak understanding, equity will set aside the contract. And if in such case there are any circumstances warranting a suspicion of fraud, a court of equity will set aside the contract.

On the ground of want of capacity, infancy, the want of capacity of a person under 18 years of age, by the civil law, full age was 25. With Parent & Child.
The contract of some court are in case not
Because she is supposed to act as his
consider. The contracts on good bind parties
him and her side Had: land wife 5

There are cases in which one person may lend
property in the hands of another as well as
be in himself. Thus executory trust may by
his sole contract bind the trustees, and the
trustee will be bound in equity to perform
the contract by executing he conveyed to,

On the other hand, the trustee may sometimes
nullify the executory trust just as a legal principle
of right, but to prevent fraud on third
persons. Ex. grant A is trustee to B but the
trust does not appear on the deed to C; if
I can grant of B's right makes a bona
fide purchaser of the estate for value Es.
The purchase here
will hold against B.

A has equal equity with B of the legal estate.
is in 2d the purchaser.

Again an ancestor seized in fee simple may
by agreement to sell his estate may bind
the inheritance in the hand of the heirs
and the heirs will be compelled in Equity
to convey if the ancestor dies before conveyance.

The contract for some pole will be good bonded the bus; where the afterwards marries for the bus; takes her property of the contract and use of it; and the marriage will heal her pole liability.

If ten in tail agrees to convey the inheritance, the issue in tail are not bound to convey for the issue claim for final done.

But if one such an agree the issue in tail receive the purchase money the issue will be compelled in equity to convey for the issue this lastly confers the agree made by his ancestor.

And an agree by ten in tail to dispose of the landment profits and improvements will not bind the issue in tail.

The ten and either of every person are in point bound by his contract the next named this is court suppose that they have affects.
A tacit agent is one not expressly brought into existence, and it may arise in several ways. For instance, if prior mortgages are present while the mortgagee is contracting with the debtors for a second mortgage, and knowing what is going on keeps nothing of it. If he mortgages the tenant runs to the priority of the second mortgage.

Vicarious agents cases 1 Eq. ca. 155. 2 Vexs. 239. 1 Psa. 132.

But in this case, 10 Vexs. 105. 2 Eq. ca. 155. 2 Vexs. 239. 1 Psa. 132.

And in such cases, the law will raise an implied agreement when necessary for giving effect to a principal express contract. E.g. a man sells trees growing on his land— a man rents a chamber.
ther according to the law it is imposed on all
contractors that if either party fails to perform his
part that he will pay all damages. This appears
to be a refining over which the law implies defeasibility
party shall pay the damages.

What circumstances invalidate a deed? Sometimes
ignorance a mistake in point of fact will invalidate
deed, ignorance of law as a good rule will never

of a mistake concerning one's rights is occasioned
in the fraud of the other in equity such mistake
will destroy the contract. If the manner in which
induced to think that his ancestor's will was duly
executed and to release for a small consideration
and in this case where the mistake is occasioned
by the fraud of the other it is not material
whether the mistake is of a question of law or
of fact.

If on a doubtful right a compromise is made
the contract is valid in law and in equity for
this is a voluntary bargain of hazard.
But where the party really entitled is ignorant of the extent of his rights, and of the means of ascertaining the extent, a lot of equity will under certain circumstances relieve the party ago an 316 agreement concerning this right. E.g. in the case of 2 Pa. 200 the orphan in London. I do think that this 120 144.5 case turned upon the fraudulent concealment.

One case will cannot will be reconciled to any of these principles, or any will known principles. 20 Pa. 846. While in the case of the case of the schoolmaster, 120 264 96 has the mistake was in point of law, and no fraud. But I do think that the only way in which it can be reconciled with principle is that the effect of the teachers advice was the same as fraud.

Bargaining contracts are in guilt and considered upon the parties, and it is not essential to the validity of such a contract that the event concerning 37 102. While the wager is laid should be itself contingent to 37. Of both are equally ignorant of that event, 5 5 3. But, if one party knows the event his concealment 120 145. 5 of that event will be a fraud.
There are cases where the actual purchase of an estate may be invalidated by misrepresentation or mistake concerning the estate, even where there was no fraud.

The rule of discrimination in this case is one where it appears to have been a mere error of the contract, but if the mistake relates to that which does not appear to have been the moving cause of the amount of the purchase, then if there is no fraud the contract will bind the purchaser.

Yet in this case it is said that the purchaser may be entitled to compensation for the difference. But the question then is whether the contract was that on which to found the claim of compensation—

But still Equity may order the repayment only of so much money as the

if, however, as an agreement for a purchase the purchaser makes it an express condition that the estate shall possess certain qualities, and the absence of those qualities discharges him from such case, the contract by its terms does not bind the purchaser.
And it said that in some cases, the intention of the parties as to their agent may be inferred from circumstances. i.e., a man purchases a female slave in the ship of a small vessel. And says that if a man pays a round price, 1200 1/2, for an unheard of price, the contract is void because want of agent or the part of the vendor can be inferred from the circumstances. But this rule is entirely at variance with 37 R 757, 10th C 111, 113. 2 East 314, 322. Comp 47, Levy 23. 17 R 133, 1 Del. 39, 287. 1 Delw. 119, 121.

If known in the case the vendor had known of the unreasonableness and cancelled it, the vendor might have recovered damages for the fraud, but the contract is still good.

Subjects of Contracts.

A distinction is to be taken between contracts executed and executory. A contract is said to be executed when the parties transfer property to each other either with present possession or with an indefeasible right of future possession. The converse of this is an executory contract.

By a contract executed no man can convey a thing in which he has not an actual or potential interest at the time of the contract.
Hence a grant of all the land he shall have a year hence is void. 

If a sells to a tenant on condition that the purchase money shall be paid six mos. hence and if the money is not then paid the sale shall be void. Now if A sells the estate to B before the expiration of the time and B fails to pay so that the lease becomes B's. Still the second sale is void for the second sale is absolute void.

But a thing of void is potentially the same may be transferred by grant in present possession or a thing merely acceded to a thing actually vested in the vendor at the time of sale may be transferred by contract executed.
If you, if man, may grant the profits of his land for three years and for that time may grant the future profits of any thing in his possession at the time of the contract.

But rights not vested in the actual estate actually or potentially may be the subjects of contracts.

Where no future act is to be done to give effect to a contract that contract must be in executory contract and hence if the covenants to stand siezed to the use of B of land while he shall hereafter purchase the covenant is void for a covenant to stand siezed in legal effect a grant executed. and hence no future act is to be done to give effect to the covenant.

But a contract executed may bind a future interest by way of estoppel e.g. A makes a conveyance of land by will he has no estate at the time with covenant Bell 143 328 if siezed then afterwards purchasing the land the grantee will hold for the grantee is estopped by this covenant of siezed from denying that he had a title at the time.

Rule the same where a fire is suffered of a contract interest and the contract interest afterwards falls to the grantor.
1 Part 160.7. If performance is not possible, the non-enforcement of the contract is not impossible.

Where something stipulated is physically impossible, it can certainly be intended by the party that the contract should be performed. Thus if one is to covenant to suffer a person in an action which is not pending.

But the law distinguishes between things actually impossible and things which are impossible to the party contracting the not in the nature of things impossible. Thus if a contract to sell the estate which belongs to B, the contract being that he is liable in damages for non-performance, in this case Equity will not decree a specific performance, but will leave the covenantor to his remedy at law.

There have been several contracts which have been brought before the court at West Hall concerning sales of 305 with the C having been at a great loss. In the case of geometrical progression, the terms in these cases took a middle course. But I think that the contract ought to be considered as void on the score of fraud, for it is evident that the person contracting was deceived.

The 106. When the thing stipulated to be done is not defined, the rule of damages is in guilt the value of the thing.
Contracts (172)

On the ground of impossibility of performance the contract is void unless the contract is altogether impossible. Hence if a covenant that if he dies within issue his lands shall be settled on B. the contract will be good if may be specifically enforced in Chancery; or the 
C will compel him to make a limitation according to the covenant.

And if one covenant to do a thing not in itself impossible by being prevented from performance by the act of God will not discharge him. for where the covenant expressly and unconditionally be as for the rents.

III. The thing stipulated to be done must be lawful. Why the contract is void.

Now the contract is unlawful in will the agreement is to do something malum in se a malum prohibitum. It being therefore unfit to commit murder theft a hunting sale is entirely void.

Any contract is unlawful void.
A contract is supposed to be governed by the law of the land while it is opposed to the public welfare or while it is opposed to some principle of the law with regard to policy. Or while it is void to some extent that is...

Hence a contract the object of which is to restrain one from trading in a particular way is void as being opposed to the public welfare. Hence if any covenant not to follow the trade of a person with the covenant is void.

Hence a contract by an individual that he will never marry is void.

And a contract the object of which is a real restriction of trade even for a limited period is absolutely void. A man therefore cannot bind himself not to exercise a particular trade for a week.

But an agreement not to engage in a particular trade in a particular place may be binding.

But a contract of this kind will not be binding unless founded on what the law shall deem a sufficient consideration, and the view prolonged is not to itself have the status of the contract, and the presumption of law is as the existence of a sufficient consideration.
But according to the best of a legal consideration is shown the presumption is in point invariable that the consideration is sufficent the preceding case is therefore an exception to the rule.

It is immaterial whether the funds are or not to pursue is his own trade or not.

in the same principle an agreement for unlawful maintenance is illegal Profit whether the agreement is in the form of a bond a contract or in any other form.

And in that any contract with an alien enemy is void because intercourse with an alien enemy is dangerous.

And an insurance on the property of an alien enemy is void for this insurance promotes the convenience of the enemy and gives one citizens an interest in the welfare of the enemy's enemy.

But a contract of ransom with an alien enemy is obligatory by a ransom contract is meant one by which a captured party on the sea in consideration of being discharged with his vessel agrees to pay a certain ransom the captain captures him's right to make such a contract and it binds the owner as well as the captain.
The contract is valid, still no remedy can be obtained upon it in the country of the captured until the time of peace.

Mar. 14 And such contract can be enforced only in a lot of ill discretion.

It is usual in case of a ransom contract for the captured party to deliver to the captor a hostage as a pledge that the hostage is not essential to the validity of the contract.

And the contract continues in force that the captor is afterwards captured either with or without the hostage.

And the capture of the hostage or the death of the hostage does not affect the contract.

Mar. 15 And any contract with an alien enemy will arise out of a state of war and will tend to mitigate the evils of war are binding.

Mar. 25 By Art. 12 Sec. 3. Ransom contracts are declared valid
Marriage by escape from contract to be void by
then not meant bonds to give to procure abstinence
in marriage but the form of the contract is
innocent.

1 Pet. 311. 1 Cor. 714—190. Eph. 525; 124.
Exod. 24:5.

Any contract may be void as being opposed
to some maxim or principle of law; hence 3 Shall 97
if the consideration of the promise or the
promise itself a thing stipulated to be
performed is not any principle of law the
contract is void.

A promise that shall fraudulently discharge
a debt due to his master is void. Here the con 3 Shall 97
is opposed to a principle of law 132
132.

If a slave promises for valuable consideration to perform an
escape the entire contract is void. Here the promise for 13199
itself is opposed to law and on the same 10 26246
principles a bond to indemnify the slave 102
ag the consequence of a voluntary escape is void 103
1170.

A promise by a minister of justice to do a thing 60 230
contrary to his duty is void and a bond of
indemnity to such minister.
But where the fact which makes the consideration of the promise a contract of indignity is unknown to the promise, it may be binding. Thus if the goods of the debtor are assaulted, and the promise to indemnify the goods if they do not belong to the debtor, this promise is binding, and if the debtor is subjected he may recover the debt.

All contracts opposed to the laws of morality and decency are void. Hence, where a wager was made as to the sex of others, and an action was brought upon it, but the wager as held to be void.

And any contract made for any corrupt purpose is void as being illegal. E.g. I make a wager with a judge that he will not decide my case in my favour.

Again a wager as to the correct mode of playing an unlawful game is void as promoting a knowledge of the game.

But a wager between the debtor and the plaintiff in a suit in regard to the ultimate decision of it is void if the wager does not tend to influence the decision.
Wages are in general by law valid, but the modern judge has strongly inclined to consider all wages as invalid. Justice Buller contended that they are strongly.

In Canada, all wages are made illegal if all losses of money made at the time and place of gaming to be party gaming can never be recovered.

Contracts made in fraud of third persons are illegal and void. e.g. an agreement made between the seller of the goods and one who provides goods that an excessive price should be given for the purpose of dividing the excess.

Examples of this are frequent in marriage settlement agreements, but in these as in all other cases the fraudulent part of the transaction is void. 25 Ch. 75; 29 C. 76; 14 Eliz. 322. 1666.

A promise to pay a jujjum for attending an auction to subserve the price of goods, is void. 1 Pau. 186.

Again contracts are void when their object is to the mischief of some legal duty. To the contract there is a duty of an under kite not to exude proceeds on a certain order.

Page 133 at 410
Ex 48, 1847
Act 1865, 766.
146 1822.
656.
1 Bn. 1075.
256.
2 Par. 1705. 176.
18 Par. 715.
a contract will tend to encourage an unlawful act or an unlawful omission is illegal and void — i.e., an obligation given to compound a felony.

But it is said that an obligation given for compounding a mere misdemeanor is not void. In doubt, this distinction seems to have been decided such obligation is void. — The case in 1 Wils. 341 is directly opposed to the rule.

A bond given to indemnify a printer for any indictment to be brought for printing a libel is void.

A contract to indemnify a clerk for embezzling a writ is illegal and void.

A wager between two that one of them array, a third person shall commit a criminal act is void.

Contracts forbidden by statute are void.

...
What certain stipulations in a deed are void and some made void by that law the whole instrument is void.

But where some stipulations in a deed to are good and some made void by C L. the same stipulations are good and the latter are bad.

This distinction does not arise from any principle which makes a difference in effect between a partial illegality created by C L. or by its law, but it arises entirely from the different manner of rendering the statute and the manner of rendering the rule of the C L.

But the an illegal contract creates no right at all can be enforced yet when such a contract has been executed in some cases the law, suffers it remain executed & will not allow the parties to rescind it & in other the contract even after execution may be rescinded.

Where the contract is such that both parties are deemed criminal if the contract is executed Stats 461 he who has paid the consideration of the illegal act 68. act cannot recover it back to be is in place P. 200 200 debtors and the maxim applies here as 202. 206.7 condition debtors, but while the contract remains executory the party who has advanced allows the money may recover back the money Ex 82. 5278 of has paid 81. 100 for committing a battery may 22. 10 before the battery is committed it may recover the less 790 money. It is too late to question 22. 298 this rule but it certainly is not a politic rule.
Since money deposited on an illegal wage contract with the loser's consent after the issue cannot be recovered back by the loser but before the contract is made either can recover the money from the depository.

But if the money is not paid over or is paid with the loser's consent.

106.7 

If money is advanced to procure an office it can be returned back before the office is obtained but not afterwards.

106.7 

So premium paid on an illegal insurance may be recovered before the risk is new.

106.7 

When the party who has paid money on an illegal contract is not himself parties in equity then he may recover back the money even after the contract is executed on the other side. E.g. pro hac vice.

106.7 

If money has been paid by a bankrupt or his friend to a creditor for showing his certificate the bankrupt or may recover it back.
But a security given as a contract made in conse-
quence of a previous illegal act is not de-
void.

To give a lien is sustained by, 2418 in a smuggling Co. B. Co. voyager A pays all the labor & B promises to pay half the labor, this promise is binding.

The contract here a lien is said when is not the illegal contract it is one step removed from it and the enforcement of the contract does not tend to illegality. The parity being is lawyer.

0. It has again been held that if one of the partners, paid shielf with the knowledge & consent of the other with any promise from the other that he will pay that the partner having might have a lien he said the rule is much shaken & indeed vacated.

And it is clearly settled that if one partner pays 2419 the whole lien against the consent of the other he cannot recover against the other.

If a person makes a contract the making of it all in itself unlawful the contract may be enforced 1681 1699 as the part making it they do claimibility.

Nothing under it is it is by it made unlawful for a clez to enter into by trade of course to draw a bill of exchange yet he is not be bound by it.
If one is concerned as a merchant in the 
importing smuggling trade and no other yet be is eligible to 
be a partner in the benefit of indemnifying him to 
the bankrupt laws.

An idle contract is void. Ex: A contract that 
19th or 13th of May will not arrive in 24 hours, etc. 

Comp 349. A contract with continuity affects either the 
interest in the peace of the third person is 

372.700. It may not tend to the introduction of 
19th or 22nd in that evidence is void.

Contracts must be certain in its terms.
If the stipulations are left uncertain 
and 250 in any material respect the contract is void.

Beg. 314. If it promise to have goods until 30th condition 
that B shall pay in a short time.

Judge not a promise to pay more after appointing 
417. any time in good for the money is due immediately.

If however a person promises to a specific 
8th. to not a new act in specific. 47. unless no time for 
performance has his whole life it is void for performance.

19th or 22nd of May will not arrive in 24 hours, etc.
But what makes this difference? A promise to pay money creates a debt, and a present debt is a present legality, but a promise to give a specific thing creates no debt.

But I doubt whether the latter branch of the rule is now law. I think, in such case the performance might be enforced in reasonable time.

It is a maxim in id certum est quod addi certum prostat. If then I promise to repay to A whatever sum of money he shall pay for me during a certain period, it is good for 3 years to show the sum by a covenant.

So again, if I promise to convey to B all the land conveyed by a certain deed, this covenant is sufficiently backed for the deed referred to becomes part of my covenant.
Nature and kind of Contracts.

A contract is executed when the parties transfer property to each other together with its immediate possession or with immediate right of future possession. A contract may however be executed on one part and is by on the other. In which one party immediately and the other is trusted.

Contracts are then able are introductory to the actual future transfer of property.

All contracts again are express or implied. All that has a third kind called constructive. But there is a necessary division. Constructive contracts are such as are raised by construction out of express contracts, but a contract raised by construction from the word of an express contract is an express contract. Be get of such notice in a grant of the title, if the grantor is a constructive covenant that he has such title, but that is still an express contract.

This again a contract by a marriage settlement against this is whereas the right is to pay to the $1000 the marriage portion of the wife. This is consideration as a covenant to pay $1000.

And a prime exception in a deed to may in some case and a covenant to be broken. Still this is an express covenant.
Again a lease thus. I desire ye quidling and
habit such a rent is a covenant on the part
of the lessor to pay such a rent.

Psalms 136:17. Go ye, see Zech. 16. 11, (Rev 3:7.)

Implied contracts are those which are neither express in
term nor arise out of the construction of the
words used but arise by operation of law out
of the nature of the transaction. To me
I respect it to labour for me and he, doing the
law implies that I promise to pay him for the
labour.

If a thief denies money or an et. the law raises
a promise that he will pay it to the ee.

All contracts are either absolute or contingent. Acts 23:6,27
The former are those by which one binds himself or
his property absolutely and unconditionally.
The latter is one in which the obligation depends either
altogether on in some respect on some event or acts.
1 Cor. 7:25. The happening of which it is to be dissolved or
to take effect or to be enlarged or abridged.

If it were a lease to B on condition that in a certain place B
rent B shall pay $10 in another event $25. Here the
contract is valid only quoad the event.

If I agree to pay B for land such as a tract of
8 that say it is until how its obligation is
suspended until its name a term. And if C does
not name a term or does not name it within
the time appointed the obligation is annulled
when C does name a term or obligation becomes
absolute.
Effect of unlawful condition.

If an unlawful condition is annexed to an existing contract not only the condition but the contract is void. Ex. if is bound to be in an obligation conditioned to perform any unlawful act the whole obligation is void; performance of the contract cannot be compelled for a right can never be acquired by committing an unlawful act.

2 Vent. 104. And if the condition is for the performance of any unlawful act or for the omission of any legal duty the rule is the same.

4 Vent. 105. If the condition militates against public policy the rule is the same.

In these cases where the object is to induce the obligor to commit some crime the law discharges him from all liability lest he else be under a temptation to commit the crime to avoid the liability. Where the object of the contract is to induce the obligor to perform some unlawful act the law obtains the same end by declaring the contract void for if he do commit the crime he derives no benefit.
Contracts (143)

2. If an unlawful condition is agreed to for the purpose of inducing the performance of an unlawful act, the condition only is void and the contract good. Ex: A makes a grant to B on condition that C shall do something unlawful. As the act is absolute under 2 Bl. 157 and the condition only void, D can hold the estate whether he commits the act or not, but, therefore, is under no temptation to commit the crime.

Rule of mine where the condition precedent 2 Bl. 157.

But this rule holds only when the parties are deemed to be criminals particularly. Where the party making the grant is with an illegal condition is not in pari delicto the whole grant the whole contract is void. Hence if A gives a mortgage to B as security for the performance of an illegal condition the mortgage is void.

We also know gain as a reward for prostitution to induce a party to the crime is void, but if given afterwards as a compensation it is good. 3 Bl. 1565.

1 Bl. 517.
3 D. 4132
3 D. 329
3 K. C. 52.
E. 155 52.
All conditions referable to the nature of the estate are void. If the grant in fee simple or condition that granted shall never alien or shall not take the profit of the land, the condition only is void and the grant absolute.

Still, if a grantee makes a bond that he will not alien or will not take the profit, he may be subject to an action for damages if he does alien or take the profit.

Effect of impossible condition.

The impossible condition may be one originally impossible or one which becomes impossible by some subsequent cause.

If a condition is impossible at the time of the contract but becomes impossible by the act of the grantee or by the law the contract is made void by this supervenient impossibility. This is supported in executed contracts.

Rule the same if a condition originally possible becomes impossible by the act of the party granting the estate.

Now the principle is that the estate being already executed it cannot be divested solely by some defect of the grantee.

But if the impossibility is the performance of the condition arose from the fault of the grantor, then clearly he loses his estate by non-performance.
But if a condition originally possible but afterwards becomes impossible is annexed to an existing contract it makes the contract and condition absolutely void. This suppose that the condition becomes impossible by the act of God, or of the party claiming under the contract.

Ex. Bond with covenants to execute but such execution is by law forbidden. But if the obligor disavows himself from performing the condition of no effect of the bond is abated. And the obligor incurs the penalty from the moment. And if the bond performance impossible and no Ex. 76 to convey land to A one year hence if I sell the land to B B tomorrow I am tomorrow liable in the covenant.

If a bond is given on condition that if a person shall appear to if not die before appearance the bond is discharged.
A bond conditioned to be void if it fails, a voyage to France, and the law declares such voyage illegal, the obliged is destroyed.

176 A 395. The performance of the obliged either prevents a debt, or renders it incapable of performance, the obliged is discharged from all liability.

41 R 570 7 1 8 3 3 1 East Eng. 1650 A 53.

3. If by the terms of the contract the act of a stranger is made necessary as evidence of the performance of the condition, if the stranger arbitrarily refuses to furnish this evidence, the obliged is liable for non-performance even after he has performed.

4. Proceed an insurance on his house, if the condition of the insurance was that the Pawson of the village a. certify that there was no fire, the Pawson refused to certify that there could be no recovery.

184 P. 487. If a bond is conditioned for the performance of one of two things, in the alternative, and one of the two things becomes impossible, the obliged is bound to perform the other unless the impossibility arises from the act of the obliged.
If a condition becomes absolutely impossible by the act of God or of the law, the obligor must be held to have performed as near as may be, or have discharged.

Condition originally impossible: each condition operates according as they are subject or precedent.

A precedent condition is one that must be performed before the right depending upon it can vest.

A subject condition is one by which a right already vested may be defeated or restricted.

The condition on which a contract remainder depends is always precedent.

If a precedent condition is originally impossible, the right vested is the subject of the contract (Law 26, 157, 192).

and that a precedent condition is impossible at the time of making the contract but becomes impossible from any subsequent event, yet the right can never vest.

So if a precedent condition is unknown, the effect is the same, no right can ever vest.
But if a subsequent condition is imposed at
consideration the time of making the contract the contract
2 Bl. 156:7 is precisely as if there were no condition.
1 Bl. 266.

18th 37.
18th 267

At [ sic. ] if such a condition is incorporated in the
body of the contract, instead of being evidenced
in writing, the whole contract is void for
in such a case the condition is necessarily precedent.

Institute of Trustees & securities, 29 b. 39
At 67 there is not kind of distinction
between a contract merely past and a contract
merely written but not executed.

Under this, it certain contracts do not
support an action in a Eq. unless the agreement
be some means of it be in writing signed by
the party to be bound or by some agent duly
authorized. This, it includes six classes of
agreements.

I. Any promise by an Eq to a d. to answer
out of his or her estate any debt a duty of
this last to be instituted.

II. Any promise by one person to another
for the debt of another or to compensate of
another.

III. Any promise in consid. of marriage.

IV. Any contract respecting land or tenements,
hereditaments, or of any interest in a concerning
the same.
V. The contract must to be performed within a year from the time of making the contract.

V. Any contract for the sale of goods which is of the value of £35 or less, in England, this clause extends as well to buy contracts as to contracts of sale to take effect immediately.

There is one diversity between one & the English law. In the English law under the 4th clause it is provided that the party sales lease, etc, of 1823, and except leases for three years the 2nd lease of 1823 to operate as a lease at will but the estate of 1823 at will is now an estate from year to year.

In count all parole leases for a time however that a house long is constructed and are leases from year to year.

The object of this law is to prevent the puffing of certain contracts by parole testimony. Because it is supposed that there is in theory, peculiar temptation to perjury or perverting them to be proved by parole parole testimony.

I also promise by the state.

In the construction of this clause it has been held that if there was a duty to observe the law, the parole parole parole may bind him — This is but a dictum Molinaro and the rule appears clearly to be unreasonable. The STR thing is said to be that the protection of a duty makes it more the good himself better. But this is untrue — he cannot he done as action.
Again a partial promise in that aboves as have been
and at 8 a.m. of that partial promise was not alleged
is binding under the st. then the above is a
dead letter.

But an acceptance of a bill of exchange by the
drawee is a admission of its
accepted and being in writing binds the drawee
so?

So also an endorsement of a bill by the holder
Endorsement binds the drawee for the endorsement,

is the drawing of a new bill.

And that the promise of an Endorsement in writing
not being is not bound by it unless some sufficient
is shown — which is the meaning of a suit to add
good considerations. The mere fact that the

test: any indorsement is no part consideration was
the the promise be in writing. In the object
of the bill is not to make the Endorsement in
all cases where the promise is written but to
make him tellable or be written, promise only.
in these cases is all before the to he would
have been subjected as a partial promise.
Again to make a lawful on his promise
and in writing there must have been an existing 340
debt a claim binding upon him in his representative
character

Where an e'da makes a promise in writing it
will not bind unless the consideration appear 3rd 10
in the writing—under the law the consideration 3rd 50
can no more be proved by parole than the promise Rev 16 270
itself.

(Contr. 6 Conn. Edgar Wilson)

And this rule concerning consideration holds in all
debts except the debt of ease, under the statute

To bring a case within this statute the e'da or
administer must have been such at the time of
making the promise—so if made by parl. Urb 330
before becoming e'da it stands precisely as at Rob 201
l. 2.

Ex. quia If a person not having as good a
claim to administration as another promises the
latter to pay to him a debt due from the intestate
if he will give up his claim this promise the parl.
may be binding.

On a promise made by such e'da in an adv
act e'da it is not necessary to show that the Rob 205.6
e'da had after for if tenable at all he is tenable
out of his own estate.
III. A promise made by one person to answer the debt duty of another.

In the construction of this it is held that if a promise made by one person for another benefit is original the promise that by law is still binding, even if collateral.

Where the promise is collateral within the distinction it will be found to be a promise to answer to the debt duty to of another — being made original.

By an original promise is meant not a promise to pay another's debt but one's own.

A promise is original in this case.

II. Where the person for whose benefit it is made is not liable at all for the same debt or duty.

II. When the liability of the third person for whom benefit the promise is made is extinguished by the promise.

III. When there is a new cause arising out of a new and distinct transaction and moving to the promise.

When the promise is merely in aid of a previous and continuing debt or duty of the third party.

Or where the promise is made to preserve.

Sec. 27: 1985.

1888-1889.

1869.

2140 25.
If it comes to a tender made for goods deliverable to be sold and charged against the goods deliverable to be sold.

If goods are deliverable to be sold on account of their delivery, the party will be entitled to payment for them. And I will pay them in all those cases if it is not at all liable, and therefore the promise by partial is good.

If contra, or, says deliver goods to be sold and by the company does not part with, then the promise is collateral. And to have the equity, it is in accordance with the law of a party, and continuing liability on the part, liable.

Deliver to to I, I will see you paid, they were sold to be collateral because it is said that the promise is collateral if not the same. And thinks that the exception 25,50:1, may be either required a collateral if it is more decided that this form of and is merely premised for collateral.

In such a case, it is clear, to make this distinction if the promise was before the goods were delivered, the promise is original if after then the promise is collateral. But this distinction is not the one finally established.

The doctrine now is that the law in collecting, the intention may inquire into all the circumstances of the case of the situation of the parties.
If a promise is made by only one of several debtors to pay the whole debt the promise is regard’d for the debt. Thus where sums were taken up for the debt:

- Bond 362
- East 325
- 26 July 484

When the promise is original according to the defect, the action of binding is a proper action also Bay 373 debt may be maintained.

But where the promise is collateral, debt or indebted: 22 Boro 1085, a proper action will not lie (the proper action is a Rob 216). Special action in the case —

When a promise is made in consideration of the extinguishment of the debt of a third person 1 N. 150:1 here the promise is not in aid of an existing Rob 223 and continuing liability, nor is it in procuring 1 N. 150 credit or prolonging credit for another & therefore such promise is original —

When the promise or purchase of a debt due to the said 1500 promise from another the promise to pay for the East 325 transfer is without doubt an original promise. Dib 226.
9. When there is a new consideration out of a
new and distinct transaction, and moving to the promise.

1 John 18:6

The rule in other cases is, if a creditor has
a lien on his debtor's property, if he moves him to
abate it, it is an original promise. The only
example given under the rule is in the case of
McLanahan.

1 John 4:12

The truth is this was the purchase of an interest
from the promise, and had nothing to do with the
Statute.

17 repair. idem. 18 25. 21 Ray. 769. 21 example. 16. 21 525.

Another class of original promise. Where one is
under a moral oblig to pay to a benefit to
another the promise is original and therefore the
contract is binding. Thus where an
apotropaeus furnishes medicines to a pauper on
the application of the pauper alone and the
perversion of the poor promised by pauper to pay
the apotropaeus the promise has been binding.

18 855. The promise to pay a certain sum in case of
the promise's withdrawing a suit against
for an assault & battery, has been held original.

70 204. 203 244. 384

2 Egg 467.

2 Selwyn 657.
of being a promise within this clause there must
have existed at the time of the promise a debt
or duty capable of being ascertained or actually
ascertained.

A promise to pay in consist of the promisee's
staying a suit at 6s for a Debt is collateral 2 Br. 201.

(Amb 330). contra 3 Burn 1897.

A promise to pay in consist of the promisee's
withdrawing an action of trover at 6s is
collateral.

A promise to pay in consist of the promisee's
withdrawing an action of trover at 6s is
collateral.

The value of the goods converted, therefore here the
debt is capable of being ascertained and a suit
at the time of the promise. — Suppose the
action had been trover? Is thinks the promise
is? be original. So here the damage are presumptively

A promise to pay B a debt in consist of with-
drawing an action to recover the debt, the promise
appears to be original for the retract is an
3 S. 296 extinguishment of the debt — but in our
practice a retract is no extinguishment

Where then arises a new consider it is said that
a promise to answer the debt of another is
collateral. But this cannot be law write
repealing this clause of the st. for with a new
consider the promise at 6s must be void —

7 R 201. st. 193.
A judicial confession by the defendant makes all proof unnecessary will prevent the application of the statute. C. 9. 14. If it is proved on a collateral promise by partial payment, tender and pay money into court the suit will not be applied for there is no necessity of proving the promise.

The partial promise is not as such made void by the statute. It merely declares that no suit be shall be maintained upon it. The only effect of it is to exclude all proof of the partial promise.

When it is necessary that the promise shall be in writing, it is not necessary in the declaration Bulla. P. 77 to aver the writing. It is sufficient that the writing be not appear in evidence. For the statute only introduces a new rule of evidence not a new rule of pleading.

1 Rand. p. note 1. Ch. 9. 214. note e. (Ch. P 228 contra)

A demurrer to a declaration on a collateral promise admits the promise to be in writing. Under a demurrer it cannot be objected that the promise is not in writing the demurrer excludes all proof of writing.
Contracts (124)

When there is an entire necessary contract to do a thing within the scope and a thing not within the scope, the whole contract is within the scope, there can be no rescission of an entire contract.

Where all the facts of a contract are present and the promise is made on the same consideration, the facts make an entire contract from the moment.

II. For agreements in consideration of marriage.

This clause does not relate to the promise of marriage, but refers to family settlements.

It has formerly, doubted whether a parcel agreement of this kind would render the parcel of it was a parcel of the parcel agreement that the contract should be reduced to writing, but it is well settled that such stipulation has no effect.

If the agreement does contain such stipulation, if the party executing it is prevented by the fraud of either party of the marriage to be effect, equity will relieve the party against the fraudulent party — for whatever reason, either in the instrument of fraud is provable by party under 858 in equity.
A letter written to one's own agent stating the terms of a parol agreement is a suffice note or memo; where the parol agreement was enforced.

But where a letter is the evidence relied upon, it must furnish distinctly the terms of the agreement.

If written recognition after the marriage of a parol promise before marriage will not take a case out of the statute. M'dd 297
12 Ves 73. contra Vince's Abr tit conc. Vagrems. (H's 34)
+24.
IV Contracts or sales of lands tenements &c.

By the words contract or sale of land is meant contract for the sale of land & sales of land be.

If a thing annexed to land is sold in contemplation of severance from the land, it is not within the Statute. A parcel sale of grapes standing on one 112 ft. 36 in. is good & a sale of trees growing on land 112 ft. 36 in. 1 comp. 74. 10

Full of R 182. 1B 1837. 3rd day 476. Park & 20th.

It has been held that a sale of a crop of potatoes is within the Statute & that is contrary to 1623. 11 East 6th. Co.

An agreement by part between the owner and the occupier that each shall share a certain portion of the crop is good. This agreement is made with a view of severance.

The same doubt once arose under this clause as under the former, whether a parcel agreement containing an agreement to reduce it to writing might not be bad now settled that it is 1B 1837. 24th 1863. 14.

No. 1B 1837. 1st 1841. 10th 1770. 1770 1st 1841.

It has been held in Court that a parcel promise 1B 1877. 15 to pay the purchase money of land is void 1B 479.

It is further, the promise made when a good conveyance of the land is made.
contracts of sales of land.

But such agreements for the sale of land are in some cases good—viz when they are proved consistently with the spirit of the Statute and the rules of evidence. For it does not make such contracts void. It merely says that the contract shall be maintained in the contract. The statute merely introduces a new rule of evidence.

1131 4 H 11. If on a bill filed for the specific performance of an informal agreement for the sale of land the defendant, by his answer, confesses the agreement, he is bound by it, because there is no necessity of proof and no danger of injury. Much doubt however prevails concerning this rule—

2 P 69. 3 G 156.

If the defendant in his answer confesses the agreement and does not plead the statute it is agreed by 2 P 69. all that the agreement will be enforced

2 P 69. 3 G 156. 61

So if on a bill filed the defendant submits to such a decree as the court may make the judgment will enforce the agreement thus by 

2 P 69. 3 G 159.

But it has been held that the defendant does confess the agreement in his answer yet if he pleads the statute the agreement cannot be enforced. But vide 3 A 153. 2 A 155. 2 H 509.

3 C 37. 38. 12 H 406. 7 C 53. 1 Peter 3:8.

Dr. 1131 C 600. Dr. Mansf. says that if the defendant answers, confesses the agreement, the agreement will be enforced.

2 H 608. But in these cases contract. 2 H 608.
In 2 Bro 12559, Sir Thurlow allowed the plea of the
2st when the deft answered with denying the agreement.
But Sir Thurlow refused to decree on account of
the peculiar circumstances of the case.

Roberts says that it appears to be nearly
established that if the deft pleads the plat
the plaint will refuse to decree if the deft confess
the agreement in his answer.

But I think the pleading of the statute
can make no difference.

But it has been a question whether a deft in a
bill filed for the specific performance of such a
contract must answer the agreement.

Sir Thurlow held that the deft must either
confess or deny the agreement. 2 Broc 1567.
If then the deft denies the agreement, it cannot
be decreed.

The argument at this rule is that it lays the
deft under a temptation to commit perjury but
this holds equally in every case where a party
is required to make answer — but the perjury
of the deft is not that at which the statute is
made.
Contracts or sales of land.

A joint agreement for the purchase of land at a purchase sale before the master will be impeded in chancery because the O. held that such confidence is to be placed in its officers that there is no danger of paying.

Of joint account between the two solicitors in chancery, but a suit between mortgagee and debtor was decided by the Court of Chancery because such confidence is placed in them that the O.

will consider no danger of paying.

A joint contract concerning an interest in lands if

Paul 65. infirmit. from a c. sale. 26th 3

Mor. 71. BINDING

Clark 71. money, remained in possession to be

This year decided to be a mortgage by the Capi

4th 71. is found entirely upon dicta.

Rever 2: 24. 50.

Other exceptions to the general rule are admitted.

Baker 49. 6. on the principle that an act made to prevent

5th 49. fraud should not be so construed as to prevent

18th 60. fraud. Therefore 1st of O. C. will decree a

performance when such deed is necessary to

prevent a greater fraud.
since if a past agreement has been performed as partly performed at the request of the other, by the duty of Chancery wise, decency, or performance on the behalf of the party having this partly performed.

(Yellow 37. 1 Bro. 217. 7 Tol. 1. 344. 3. Moode. 1433. 5. 2 Eq. caltr. 88. 6. Tol. 376. 1 B. & F. 397.) 4. 1. 55. 1. 3 Tol. 172. 7 Tol. 347.

Delivering possession of land by the vendor in pursuance of the agreement to sell a lease is a suffice part performance on the part of the Vendor —

If a purchaser being let into possession builds on the land this is a suffice part performance on his part.

Again, payment of money is part of the consideration. But if the purchase has been held a suffice part of performance on the part of the vendor —

this is denied. 2 Eq. Caltr. 512. Vol. 741. 51.
1 Comyn C 224. 9 Tol. 233. 1 tol. Add. 202. 4. 3 Tol. 737.
1 Tol. 221. 3 Tol. 283. 312. 6 Tol. 327.
1. 1. 5. 7. 2. 1. 5. 2. 1. 5.

I think that the law in England now is that past pay is not a suffice part performance, for the party paying may bring indeb. adsum. tit.
Contracts or sales of land.

[Page 225.]

Page 1860. The part of earnest on either side at the time or making the agreement has no effect, for this is in no sense an act of part performance.

Page 202. All Pond says that if one of the parties pays earnest he may recover damages in an action at law for the non-performance of a part of the contract for land; if he then the payment of earnest trust, the partial contract is by contrary to act in equity.

Page 145. To take the contract out of the statute on the ground of part performance the act done must be one which would be injurious to the party performing and the partial contract not performed by the other.

Again the act done must be such as not as in the opinion of the S. would not have been done but with a view to perform a part of the contract. e.g. A ree. Where a ree. was contracted for a new lease by having sold the lease after the old lease had expired this was not considered as a part performance.
being directed to a conveyance entering to

view the premises as reserved as acts of

part performance.


Cases 41, 32, 44, 379, 404, 359, 676.

But a parole contract made by a third person in case of marriage may be taken out of 21, 793.
the Act by the manner of the marriage 13, 297.
takes effect by the consent of the third person 369.

The selling of timber in pursuance of a marriage 26, 297.
settlement agreement has been held a sufficient performance to bind the other party.

A written contract (to prevent fraud) may be validly

ratified by parol proved this will have 17, 188.

a hand in the execution of the written instrument 16, 320.
whether the contract was concerning land a 60, 429.

and things else.
Contracts a sale of land.

Again a fraud, agreement respecting land to be proved by parcel where the agreement is merely incident to an action of fraud.

And whenever there is a mistake in behalf of fact in the draft of a written instrument the fraud agreement, or which the instrument is founded may be proved on a bill filed for that purpose.

Since the ft of hands by 17 Be 35 an action of

until a year after will lie for the want of occupation of land and land here will be admitted to ascertain the measure of damages.

We have no such ft. but the rule introduced by the ft is quoted in cases and that by the

Engaged and accepted more would lie present.

But Corporation or want of occupation will

lied where there is no express promise to pay.

but on the implicit contract. but here the possession of the land must be shown to be done.
Under the clause relating to the sale of goods of the value of £10.

It now once supposed that this clause extended only to executed
contracts, that is to say contracts made not by the Statute required to
be in writing nor to render them binding was cancelled or parts
delivered necessary; but it is now established that executory
contracts for the sale of goods are within the statute.

1/4. Stark 1617.

This distinction is however taken. Where the goods or
article contracted for do not exist at the time of the
contract but are to be constructed by subsequent labour
then the contract is not within the statute. The the
material to be employed does exist.

In such cases the contract is considered rather as
a contract for work & labour than for the sale of
property. 15tha 506. 3 M & 5 178. 11 Bum 2101. 5 B & 2 615

in Clayton v. Andrews 4 Bum 2101. The contract was for
corn which at the time was not threshed, but may
be so thrashed at.

But if the goods exist in solido at the time of
the sale the case is within the statute. Thus by
the contract the vendor is to deliver them at a
different place. 7 T.R. 114 &c.

By the 9th of Geo. IV. the provision of this clause
of the Statute to goods are made to extend to contracts
notwithstanding the goods may not at the time
of the contract be actually made.

10 Bum 79.

Where several articles are purchased at one time
the at distinct prices the case is within the
statute if the whole sum be £10. The no separate
article amounts to that sum. 2 B & C 57.
The delivery to satisfy the Stat must be not only a
delivery to the vendor but must be accompanied with
an acceptance by the vendor.

The modern English doctrine is much more strict than
it formerly was, in requiring that the vendor must take
actual possession of the property in order to render the
contract binding, where the other requisites of the Stat
are not complied with.

And the modern doctrine seems to be that the
delivery must in general be complete as to take
away the vendor's lien on the price
Stark 18 April 1618 note. 2 B & C 37, 5 B & A 855, 3 B & A 680.
the former doctrine was much more relaxed, thus
1 Taunt 488, purchase of a horse requested vendor to keep
him & the vendor removed the horse from an
stable to another

1 Camp 233, cutting off shill of a pipe of wine & marking
the purchaser's name on the cork.

So formerly delivery was a panel order to a
Carrier was suff't to take the care out of the Stat.
3 Camp 528, 3 B & C 585, 8 P R 830.

But it seems, that now such a delivery is not suff'it
3 B & A 326, 5 B & A 857, Hanson v Armitage
10 Bingham 376, delivery or brand a ship chimney by the left

But now where the goods are personal, I suppose
more symbolical delivery is suff't as he, &c. 4 Stark 609.
2 Esp @ 698, 3 John 399.

And an acceptance, of complete, of part of the
bulk is suff't to answer the requirements of the Stat.
7 East 558.
Every promise to pay the whole is not to be performed within one year from the time of making must be in writing.

This clause does not extend to any agreements concerning lands, tenements, etc.

While the performance of a personal contract is to take effect on an event which may not take effect within one year the contract is not within the statute. Ex. A promise 3 May 1250, to pay $100 on the marriage of promisee 3 May 1250. Peak Eq. 214. 1st May 316.

To make a personal promise binding under this clause there is no necessity that the event should actually take effect within the year.

This clause then extends only to agreements not by their express terms are not to take effect within one year.

VI. Contracts for the sale of $10 above the value of $10.

In this case the consideration need not be inserted in the writing, owing to the phrasing. The word bargain is here used instead of agreement. Agreement includes consideration. Bargain not.
Rules applying to all the six claus.

1 R 609. The construction of this shall be the same in law and in equity that the relief afforded in them cannot be

431. 

No suit to be whole to be upheld the agreement itself or some note or memo in writing.

1 R 679. Every writing intended to furnish evidence of the agreement is an agreement or note or memo in

2 R 892. writing within the state provided it be duly signed

3 R 986. From fact do, disclose with reasonable certainty the

3 R 805. terms of the contract

The terms of the agreement may be made suff."n

3 R 955. certain by a reference in the writing to other

R 647. documents or to extrinsic facts.

115

1 R 330.

2 B 49 235.

But where the written agreement refers to something

1 R 326 extrinsic if the subject is not made certain

R 2869 by the thing referred to no parole evidence is

170 B 376 desirable to make it more certain.

Suppose the memorandum as to price will be a suffi-

memor 170 B 376. 2 B 800. 8 R 83. The written it will 16 B 82-

3 R 959 cment containing the terms is

1 B 894 a draft note a memo of it. Such notice may

3 B 421. not always be a contract but for want of

16 B 821. evidence to be contract or are due to

16 B 821. reward to him who will return goods stolen

and an instrument intended as a deed may

still be a good conveyance in equity when it fails to operate as a deed for want of

due formalities or on account of some change in

the relation of the parties.
E can act with one act or is a draft
just a mere in writing if an entry against D. Mr. Muir to convey. 22. Mr. Bond to an intended. R. H. 109.
wife conditioned to convey land will be consid.
after the marriage as an entry agreement to convey land.

Signing

Not only a subscription but the name of the party to be bound written 1426.
by himself or by his authorized agent in an 3. Mr. 1589.

But when the name written in the body of the instrument is not intended to give it
authenticity this is no signing.

Finally, suppose that a party makes an
alteration with his own hand in a written
agreement was sufficient. But this has long
been overruled. 22. Mr. 1770. 142. 166. 17. 121.

But one's signature as a subscribing act is
he knowing the contents of the instrument, of N. is 18.
not to bind him to any stipulation that's 18. 114.
not contained in the writing.
In the absence of a witness, an instrument intended to give authority to the instrument may not fairly be considered as an adoption of the record by him.

The next sign, The party to whom the claim is made is all that is necessary provided it is clearly shown that the party intended or acquired. But if the decree asks the signing party it will only be on condition that the other perform his part. — Rule doubted, but well settled.

Sch. & LeRoy 20. 1st Add. 335.
Nov. 287. 4st draws an agreement between A & B &
Leg. 211. procures B to sign it is said to be bound
1st Add. 335. The decision of this rule cannot be discovered
2d Add. 204. Toland says that it's procuring B to sign
2d Add. 164 is a judgment by A — the rule was held
Sch. & LeRoy 20. because in equity if one is bound the other
ought to be 2 but admitting B to be bound
and if not, still in equity, it cannot be complained to perform unless in the express condition that it shall be bound.

of the agreement, the signed only by the party seeking a specific performance it is clear it will not be decreed. [P. 1770. New 211.

[Page 219. An agreement is not binding the highest
1st Add. If the bidder's name is held to be a subrogating
3d Add. 311. the bidder in his is agent for both
parties. This rule is now held to apply only to the sale of goods at auction under
Not - 2 Taunt 23, 4 Taunt 209.

Now, if the agent has not been authorized in writing
under his signature to make the purchase or sale of real estate,

and the purchase is by writing the purchaser's name

he has been entitled to the same, is not sufficient,

if the purchase is not within the Stat. for it is 20 to 1. 2d Acts 1921.

be so public that, there can be no question of public

harver. I think that they must be

within the Stat.

It is not necessary that the name signed shall be

in cursive, but may be by print or printing.

The rule signifies that the print

should be adopted as a signature.tosign

with unless filled in, suffic.

When the signature is by act, the act should be

be in the name of the principal or the

powers of the act need never be in writing.

And any acknowledgment in writing signs.

be of a verbal contract is 15th as a verbal

a mere in writing

The true writing of an agreement with a party, 2d Acts 1270.

can hand does not amount to a signature. 2d Acts 121.
Consideration. According to the definition of a contract a consideration is of the essence of every contract. This is universally true of every contract and generally true of every act executed. The term Consi is the material cause of the undertaking on either side.

If C and D cons are good & valuable, good is that of Kindred or natural affection between C and D. A good cons can extend to that of uncle, niece, and nephew. And as far as can be done for the assessor, 400, 400.

If a good cons is in contracts executed 281 277. Just as between the parties to it, but as act best and suitest best side particularly it is in will not suffice, with family convey.

In every contract on good cons may in some Horn 427 can be enforced in equity never at law. 2 281 277. 1 501. 501. 511. 311.

Of valuable consid is one consisting of some 3 26 33 reciprocary value as money, land goods 2 281 297 man and labor to.
To explain consideration it is necessary to keep of the distinction between Special and a simple contract. A special contract is one entered into 70,511 evidenced by specialty, a writing under seal. A simple contract is one by writing, not by seal.

In Court promissory notes are regarded as special in law. Every simple contract does not bind until consent and the party whose and it must prove the consent to 70,511.

33,132 A promise to pay. A promise contract but not law.

1637 the promissory note, the note of consideration is between any of the promissory note cannot be enforced. This is a case depending on the law.

33,132 1637 Chit Bill 819.

In the legal theory a consideration necessary to the validity of a special. But in such case the consideration is from the promissory note of the instrument. The law presumes no

231 It is a matter can the Deft deny a consider?
The rule that a consideration is necessary applies to its full extent to executory contracts. A promise to make you a gift is not a contract excepted by the delivery of the subject is good as between the parties. If there is a promise for a promise, there is consideration. A promise is only a promise for a promise for consideration. A consideration may consist of promises, of performance of an act, or performance of any service, or of a satisfaction to personal injury or personal property, or of a satisfaction to pecuniary injury or pecuniary property. And a promise to promise is a promise to perform the promise to promise.

It has been said that a consideration can arise in two ways: 1. from something advantageous to the promisee, or 2. from something disadvantageous to the promisee.

Rule too narrow. (vide post).

1. Consideration may arise from something advantageous to the promisee.

The law of consideration is the law of promissory estoppel. The promisee has no consideration unless the promisor's promise is an assertion or representation of fact, or an assertion or representation of law, or a promise that is not specific or definite. Any act that is considered to be done by the promisee is a consideration.

Promises must be certain. In some states, a promise to make a gift is not a consideration. In others, it is.

502 R. 378.
3. Consider me, arise from something disadvantageous to the promise. Ex. destroying a land at 2 S. 16:4; 5.

3 K. 74:5.

49: 131. 1 Sa. 5: 344. 8

But a contract is not sustained by a consent altogether past executed. But here the
2 Sa. 27:5 promise is, not the proceeding cause of the const. 1 Sa. 27:5. Let however much delayed.

51. 29:14. But if any of the cons. remain at the time of
1 Sa. 4:40, the promise that part will support the promise.
3 Sa. 29:16.
1 Sa. 29:19.

51. 16:7.
29: 93. A contract in a cons. past and executed is
1 Sa. 19:40 existing before. Ex. promise in cons. of a deed
51. 760. Invert by the 2t of limitation.
51. 138.

51. 167.
51. 105.
204: 5.
1 Sa. 351.

1935 - B. 1247: 181. And at 215. 2 Ex. 5: 56.

Observe: Obtain a base cons. will support a contract
5: 105. of the past cons. occurred at the request of the
5: 31.

22. 3. To 26: 19: 10. Within...
of non-strangers to a monstrous act done by another cannot support an action in his own name upon a contract founded upon that act.

But the rule is now qualified—A man, a non-stranger, is a mile to redress until the party, where the contract is made, is the stranger, about which no party can be held. But a man cannot enter into a deed or other contract to a deed or other contract between other parties.

And in the case of a parcel contract the stranger, by the count, upon a promise made to him for this is the legal effect.

A conveyance from one person will support a promise in favour of another made to him near relative.

But according to the late cases (ante) there is no necessity for such a relation in a parcel contract.
When the forbearance of a debt is the consideration, then on this requisition 1st it must be for even a far. 2d. 354. 4th a fixed period. 3d. they must at least be some 6th 356. colour of liability on the part of the promise.

15. 455

Ex 21. 9. oth. 2d. compare 410. 1st 41. John 18 217.

But a promise to forbear for a month is a good

considered a promise to pay — a promise to forbear

for a reasonable time of a suffic. consider for the

Matt 12. 24. pray determine what is a reasonable time.

41. 35. 55.

2d. be of promise by a woman to pay a debt.

3d. 9. 35. 6d. from his son while you dead if the 6. 35. 79. 8d. not due her — here there was no colour of liability

10. 35. 46. 5. of course no suffic. consider. Again an anesces

Ex 35. 4th. vv. 1d. promise of another promise; in consid.

of his being released this promise is void.

Still a promise in consid. of forbearing a debt.

Lact 141. is good if, there is a colourable liability on the

10. 35. 6d. part of the promise. Ex 4. 4. promise by Ex 3d. to

pay a debt due from the instigator an inst.

The mere act of entrusting property to another as

Lact 30. 41. the promise of another to something with it is

91. 7d. a suffic. consider. Ex a tailor promises to make

59. 8d. 53. a garment for me gratuitously. He may refuse

dact 26. to receive the cloth. But having received the

compel 135. cloth he must make the garment —

3d. 11.
The consideration of preserving the honor of a family has been held stuff in Chancery.

And it is not necessary that the consideration be expressed in direct words as a consideration for it from the term of the contract the contract is stuff, 

Contracts with reference to their consideration are of 3 kinds.

I. Where that which is stipulated on one side is in consideration of performance of what is stipulated on the other. Ex. A agrees to pay B to-day for performing something. If B does not perform, he is not bound by his declaration but if B tender performance in his declaration he has performed.

II. Where performance on both sides is to be concurrent. Here neither party can compel the other to perform until he has himself performed. Ex. A promises to deliver to B on Monday next a load of wheat and B promises to pay on the same day. A cannot sue B for the money until he has tendered the wheat. Neither can B sue for the wheat until he has tendered the money.
If a place of performance is appointed & one party is then prepared to do his part & the other is not there at all there is no necessity of going through the empty ceremony of making a tender.

 loaned 320. 2 B 331. 1. Prov. 335. 2. 34 B 339. 3. 34 L 372. 5. 34 L 135. 6. 34 L 128. 7. 34 L 78. 1. 34 L 108.

If a day is fixed for pay & no time fixed for doing the stipulated act the money may be paid for before the act is done. In such cases the intention of the parties is manifest that the money should be paid whether the act is done or not.

 talk 171. But if I promise to pay $100 in six months 2. 34 L 95. in consideration of his doing the act in five months I cannot sue me for the money until 1. 34 L 320. granting performance:

 loaned 320. 1. 34 L 128. 2. 34 L 246. 3. 34 L 246. 4. 34 L 246. (cont.)
III. When the promises are independent of each other the promise by one party is in 
consideration of the promise by the other, and either party may sue within one 
year for non-performance of his part. If A promise to pay £100 in consideration of his 
promise to deliver me a load of wheat £1.

But in each contract, if one party will not 
performs as agreed, but gives performance a solder to perform, and the agreement will frequently be incapable of fulfillment. This shall perform when the duty does.

I promise to pay £100 on such a day he 
transfers so much stock to me. And I promise to transfer him paying to be in this case the promise is dependent and no other can 
be with alluding performance or his part.

The question whether promises are dependent as in £1 to be determined not of course by the 
act on the things are mentioned but 
from the meaning & understanding of the 
party is as connected by the spirit & nature of the contract.
Of late it has been more generally proposed to construe contracts dependent where possible.

Where the promises are independent it is said both must be binding, and neither is.

and the undertaking on both sides must be at the same time. So in such cases if one is to promiss it is no consideration for the other.

But the rule is too broad for a voidable promise on one side is a poor consider for a binding promise on the other.

Correct rule: Where the promises are independent if either of them are void the other is not.

A deed fraud in the execution of a contract by means and does not in itself invalidate it. Ex. v. B. for an endorsed note. But fraud in the execution of the violeate deed dead at C. D. E. by revocation directed to draw a note for $100 by a mark. Y. and the bond is drawn for $1000. The principle is where the fraud is in the case the deed is not to his deed it was not about to the contract. But in case of fraud in Consider the case defendant has the remedy of a collateral action of debt or of a bill in chancery.
and in relation to contracts executed with the [unreadable] the deed was the same rig that the [unreadable] defrauded must resort to an action of deceit. But the rule is now much altered. If A sells B an insurance article and promises a settled sum in an action at law he may give in evidence the fraud. v. Rappe v. the cor. 1833-293.

In Law, where there is a total fraud in the conveyance of a special, the gift may at least defeat it by a plea of presentation. But where the fraud was in the consideration only, partial, only a Co of Equity can have a final

Construction of Contracts.
The object of construction is merely to ascertain the intention.

The contract is to be carried to the full extent intended if the words will at all suggest that extent and something to will go beyond the terms for the purpose of carrying into effect the manifest intention.

In war the terms of a contract are to be expounded according to their most known out of use and not meaning and always unless some decisive reason to the contrary.
Of late it is inclined to constuct the
contracts dependent where possible
773 871
Miller 476. 1 East 619.
Dec 360
Walk 24.
Nov 87

Where the promises are independent it is said both must be binding or neither is

and the undertaking on both sides must be at the same time - for in such case it is
promise for promise & if one is void there
is no consideration for the other.

But the rule is too broad for a voidable promise
one one side is a poor consider for a binding
promise on the other

correct rule is: When the promises are independent if either of them are void the other is not

good.

Ex 2 I found in the context of a contract by
and does not in time terminate it. Ex Rouse
for an insured house, but found in the execution
no value & were due at C. T. By concurrence
directed to draw a bond in $100 by a mark,
and the bond is drawn for $1000. The principle
is where the paid is in the case the idea is not
his deed he is not bound to the contract, but
in case of paid in consider the facts depend on
the remedy of a collateral action of debt
or of a bill in chancery.
and in relation to contracts executed without the deed the rule was the same viz.
that the party defrauded must resort to an action of deceit. But the rule is now much altered. 14 Am. 299.

Eg. at sells B an interest in an article T promises to sell a settled term in an action at law to be given in evidence of fraud. V. 10 Lep. 383, 384, 393.

In cases where there is a total fraud in the consideration, the loss may at least, if not defeat it, by a plea of novus actum fraudae.

But when the fraud is in the consideration only, it may be set aside, only a Co of Equity can have a

construction of Contracts.

The object of construction is merely to ascertain the intention.

The contract is to be carried to the full extent intended by the parties to all intents and purposes, and sometimes a let will go beyond the terms for the purpose of carrying it into effect. the manifest intention.

In cases the terms of a contract are to be expounded according to the most known

and plain meaning and always with some reason to the contrary.
And the same language when applied to
its subjects may be construed as meaning
Ch. 3. 86. 
That things are here agrees in 20 lb.
10 lb. 574. of
But the carriages equally the swift, but agrees
for a pipe of wind carries the pipe.

Ch. 4. 61. If we make a lease for twelve months it is,
2 P.M. 141. for 8 weeks, but for a twelve month of
10 lb. 637. 28 weeks th is not the rule of the
law merchant.

Ch. 4. 76. Mails expire if quantity are understood they are construed at the place where the
contract is made.

And yet if money is made payable at
a place named, its denomination is to
be understood as at the place where it
is payable. If a contract here made
to pay $100 in New York is to pay 250.

Ch. 4. 425. Where the language is ambiguous the meaning
is inferred from the subject, from the
circumstances or from the effect. 4
Ch. 4. 40. a lease with covenant

Ch. 4. 273.
37 K 163.
476 19.
466 50
As I have already written, it is necessary that an instrument may take effect as if it were in a form totally different from that of the instrument itself. If a covenant by one of the tenants to another be E 33 per cent. as a release of the debt, it may be pleaded as such. But if the covenant it cannot bar an action.

Words not precisely certain may receive their construction from its effect as of the ordinary sense of the terms. See an interpretation.

So if an annuity is granted in consid. of Nov. it something to be done by the grantee, this annuity will be construed as conditional.

Circumstances again may explain this. As to releases, where there is a recital in an instrument of a particular claim and nothing more, it release follows the very words, not restrained entirely to the recital.
The above paragraph contains a variety of unclear and ambiguous expressions, making it difficult to extract a coherent meaning. It appears to discuss legal or contractual matters, possibly involving obligations and liabilities. The language is archaic and difficult to interpret without additional context.

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The following text, though similarly unclear, seems to discuss the application of law to situations involving obligations and liabilities. It mentions the idea of a penalty being due in cases where a certain act or omission occurs. The language suggests a discussion of legal remedies and the enforcement of contracts.

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Further down, the text refers to an act that may be taken to the injury of a third person, possibly indicating a breach of contract or a similar legal violation. It speaks of language being explained in a manner most favorable to the plaintiff, and mentions a lease or life estate. The text appears to navigate through complex legal concepts, possibly involving real estate or property law.
When an article stipulated for is not delivered, the money
value of the article at the time when it ought to have been delivered is the measure of damages.

But there is an exception to this rule where the value of the article at the time when a recovery is sought is greater than at the time fixed for delivery. But if the value diminishes before the time of a recovery is sought, the rule of damages is still the value at the time fixed for delivery.
If several deeds or instruments are made at the same time between the same parties and upon the same subject, these are all construed as one agreement.
Contracts (No 6).

The terms of a proposed contract are subject to mutual acceptance, that is, no contract exists until each party may retract their bid until the hammer falls.

As soon as an offer is made on one side and accepted by the other, either party may compel the other to perform or pay damages.

If an offer thus accepted one party has no contract or if a future time is fixed for performance both parties are bound, it is accepted as of the date of the offer. But if an offer made and accepted nothing more is done and the parties separate the contract is deemed to be waived by both parties.

If it agrees to sell goods to B provided B shall within 24 hours agree to take them and make payment known, his determination is not bound by his representations and he may lawfully deny them during the 24 hours.
Before a suit at action has accrued on a simple contract the parties may, by mutual consent, dissolve the contract by parole.

But after a breach of such simple contract on either side it cannot be discharged by any agreement.

But when a new agreement is substituted to operate this will discharge it, for this becomes in effect a renewal and satisfaction.

By the law merchant the acceptee of a bill of exchange may be discharged by parole after the bill has become liable, and after a formal dishonor equity will not enforce the contract.

But an agreement may in equity be raised by a long delay in performing it, and this includes anything but limitation.
And a contract executed may be rescinded by one of the parties if there is an agreement to that effect in the original contract. Ex: a defeasance.

3 Esp. C. 12. 1 Newe C. 351

But according to Poth. if a contract with B.

in property at such a price as I shall name, P. 915. C.

neither party can rescind the contract. But the rule is too extravagant to need refutation.

But a contract may be released as well before after as before a right of action has accrued. P. 916.

and a release may be either express or tacit.

An express release is an acquittance under seal. A tacit release may be by some act of the party claiming under a contract.

If he who is to be benefited by the performance of a contract prevents its performance the other party is discharged. The contract is not dissolved for the other party may recover and indeed the party prevented is in the same condition as if he had actually performed.
Again a lower species of contract may be merged into a higher species of contract for the same thing. By a judgment on a bond annihilates the bond.

145. 3 East 251.

250 (6)  But if the principal contract debt due from A to B. I give his bond to B. the simple contract debt is not merged. For the bond is not a substitute but in a collateral security.

145. The contract of a higher degree cannot be extirpated by one of the same degree and the second promise is no bar to an action on the first.

162. 156.  But in such cases if the new contract is pleaded by way of accord and satisfaction it may bar the action on the first.

560 117. 2 East 251
550 232
272 216
416.

But the debt can never recover for more than once.

There is no merger where a contract of a lower nature by way of accord to enlarge the remedy is inserted in a contract of a higher nature. Here as in other cases if the kind the action may be brought on the prior contract or on the deed.

2644 416
124 118
162 425
210 223
A contract by deed cannot be annulled by parcel or by illegality—nor by a
written only sealed 1 Januw 291 141 21 Nov 141 b.

Any of a bond is paid to be no discharge of the
bond—half of the money due on the bond is
however a suffic. plea

Some rule of accord & satisfaction they
must be pleaded of 1/2 of the money due on
the money bond:

Where the right and obligor wrote in eye and
the same person the bond at law is discharged, sold 300
A ct of Equity modify this rule
yellow 62
2 Rev 254
1 Col 575
In court once held contra 15 May 226 but in
Stick & Lockwood overruled—

Ex Obigo and obligee intermenary

A contract may be discharged by act of
law—
Again the obligation of a contract may
definitely be discharged by inevitable accident.

But the act of a third person can in no case
render annul or qualify a contract.

If by the terms of the contract the
act of a third person is necessary to discharge
the such third person may discharge it.
Monday 29th Oct. 1824.

Real Property. No.

Things which are the subject of property are of two kinds: real & personal. Things real are permanent, fixed & immovable. All other things are called personal. 2 Bk comm. 16, 384. 7. Co. Litt. 118. 2 Woods 4.

Things real consist of lands, tenements and hereditaments. Land in the law includes all things of a permanent & substantial nature.

Tenement is still greater extent & includes things incorporeal which may be held of a permanent nature. Such as lands rents franchises. 2 co. litt. 39, 206. 2 Bk. 17.

Hereditament is still more extensive & includes whatever may be inherited whether real personal or mixed. For some things strictly personal can be inherited. thus heir looms, a family picture, piece of plate. Which by custom is inheritable, or also a condition of all the benefit may descend (3 co. 2. 2 Bk. 17).

Now all three things are merely the subject of property.

Hereditaments are incorporeal & corporeal. The latter consists of substantial & permanent objects. All that may be included under the general term land. For land includes water & buildings upon earth. 2 Bk. 17. 18.

Co. Litt. 4.
Hence a conveyance of land passes all buildings & structures upon it unless they are expressly reserved. All water on the land as ponds & the beds of rivers not navigable 2 Blk 15.

But an action will not lie to recover a pool or water so nonexistent. the action must be for land covered by water. [96]

Land also in law has an indefinite extent upward & downward & hence arises the action for overhanging the land of. [97]

A conveyance of land therefore passes all minerals & fungi under it. [98]

These particular subjects woods, building, water may be conveyed separably from the land. So this they belong to the land they are not inseparable from it. by a grant of water however nothing passes but the right of fishing in it. 2 Blk 15. 19.

An incorporeal heredit is a right issuing out of concerning annexed to a receivable within something corporeal. [99]

This thing incorporeal may be personal property as jewels or real property as land. 2 Blk 15. 19.

There is however a distinction between the incor: heredit: itself & the profit produced by it. 2 Blk 20. 1. the profit may be incorporeal the right to this incorporeal thing may be incorporeal. In the kinds of incorporeal heredit: vide 13th 21 & onward.

Many of these common law incor: heredit: are unknown to us. Signifies to this office comrades - illmow.
But a right of common, a way, a rent
annuities, pensions and franchises are incorporated
hereditaments by our law, 1 rest here.

Right of common is a right while one
person has in use on the land of another
another, the right to fish in pond, etc. The owner
of a right of common has no right in an estate
in the land 2 Blk 32.

As to the right of fishing on
one's land the rule is in case of a navigable
river or arm of the sea the right of the soil
in the bed is in the state, but the right of
fishing is common. But in case of rivers
not navigable, the right of soil, i.e. fishing is
exclusively in the owner or owner of the bank
of the river, within their own limits. 2 Binny 245 1 Mead 570.
4 Bun 2164 2 Davy 425 318 377 437.
2 94 472 1 80 Rep 382 570 1 El 108 6 5o 71 2 All 367.

All navigable rivers are called arms
of the sea. But the right of soil in the navigable
river as well as the exclusive right of fishing may
be granted to an individual, here by the state
in England by the King. But no individual can
have this ex: right except by a grant from
the King or from the State
5 Co 107 2 Bin 472 1 Bin 32 82 510.
Syer 326 1 Hay of 397 12 300 3 167 267.

The same rule exactly holds in relation
to the sea shore between high and low water mark.
2 Bin 472 5 Co 107 Syer 326 4th Bin 2164.
Comy. Sir J. Va. c (vide Bin Rick 4 Hookwood 1811 5th day).
the soil between high and low water mark may be granted but if it is granted above the common right of fishery remaining.

But both may be granted.

The same rules which apply to arms of the sea as harbours do apply to navigable rivers.

Now a navigable river is one in which the tide ebbs and flows from that point beyond it ceases to be a navigable river.

3d. As to natural water courses every proprietor abutting has a right to the use of the water within his own bounds for culinary purposes and for watering his cattle; this right is absolute and exclusive.

He has also a qualified right to use the water for artificial purposes but not so as to deprive the owner below of water sufficient for culinary purposes or to water his cattle nor to the prejudice of the other proprietors above or below unless he has some special claim to do so — The proprietor above may divert the channel for irrigation, so if he return the stream to its original channel before it reaches the land of the owner below. If the diminution in the quantity of return, or absorption is regarded no injury to the proprietor below if he leaves enough at the point.

(2d. With Stant 140) 6 East 208. 2 B 4 P 400. 1 Camp 463.

2d. On Rep 584. 1 Do 382. 4 B 244.

1d. Wilson 174. 10 Johnson 241. 15 Do 213.

2d. Mass 136. But he may not unreasonably detain the water or give it another direction, or throw it back upon the proprietor above — the water must be used in a reasonable manner to not so materially to affect the use of the water by the proprietor below —
These rules explain the original rights; but further one proprietor may by grant a by 25 year adverse usage (in this 15 yrs.) plus exclusive, acquire a special right to appropriate the & divert the whole water according to such grant or usage. The same right may be enlarged or restrained by usage where the usage has done long past to rise in the presumption of a grant.

An adjoining proprietor below may acquire a right of the proprietor above in the same way (pay) to throw the water back on the land of the proprietor above.

This rule respecting usage is adopted by analogy from the limitations. The same authorities for the statutes of limitations apply only to enforce rights.

It was determined indeed in Court that this use need not be adverse (2 Conn. 258.) But I think that this use must be adverse, must be an infringement of the right of another, must commence in wrong the person aggrieved whom the right is claimed, must acquiesce in the violation of his rights — vide trespass on the case of evidence. But according to the modern (my) exclusive enjoyment for 20 yrs. in a particular way becomes adverse so as to raise the presumption of a grant.

The right acquired by use will correspond substantially with the use.

Note the presumption of grant exists where there is a personal disability to bring a suit to oust the Enjoyer. 3 East 2419 3 Bing 115 23 Kent C.

In certain cases, considerable effect is given to mere prior occupancy. 15 John 813 172 N.Y. 1828.
Estate

An estate in lands is in the 
use which 
the tenant has in them and not the lands 
themselves. 2 Blk 103. 6 Litt 345. 17 R 4411.

Prima facie therefore, estate means 
use but it is sometimes used to express the 
subject in which one has an estate. 1 Ves 226 
2 R 359. 2 P. 11749 335. 3 Milbr 414. 17 R 413-414.

The quantity of use which a tenant has 
is measured by its duration and hence the primary 
division of estates into such as are freehold for 
less than freehold 2 Blk 103. 4.

A freehold estate is one to which 
liency of seizer is peculiar by the common law 
as to common incorporeal subject, there 
must be something equiv to a lien of seizer 
which to constitute a freehold estate in them. 2 Blk 104. 6 Litt 359.

All estates to the conveyance of which 
liency of seizer is peculiar as common 
estates of inheritance or estates for life a 
freehold vice.

Freeholds are therefore of inheritance 
or not of inheritance.

The estates of inheritance are divided 
into inheritance absolute and limited to particular 
(2 Blk 104. 6 Litt 359) vice

An absolute inheritance is what is usually 
called an estate in fee simple. This is an 
estate in lands which will be held by himself and 
their forebear (Litt 31. 2 Blk 105-106).
The term fee has originally the same meaning as Free a Fief & this is in its original sense taken in contradistinction from alodial. It meant an estate held of some superior in whom the ultimate propriety of the land resides & to whom it reverts in case of coheir & want of heir etc.

2 Blk 104. S. 457.

An alodial estate is one with a person holds in his own right & of no superior

In brief, the tenure of one who holds lands to himself & to his heir is declared alodial & yet by another statute the law of entail is enforced.
 mmapnday. Nov. 30. 1824

A fee is the highest estate which a subject in England can hold. He is seated thereon in his demesne or of fee is the expression of the highest estate in England. 2 Bk. 108.

But fee is now used not in its original sense, but to denote the quantity of

2 Bk. 116.

The word fee now signifies an estate of inheritance, when used alone or with the prefix 'simple', it is used in contradistinction to fee tail. 2 Bk. 116.

A fee in this sense may be held in any inheritance. Whatever estate in fee, but it must be a heritage in fee, a fee simple can be held. 2 Bk. 210. 2 Bk. 20. 106. 7

The fee simple, or ultimate inheritance, must in every case reside somewhere; it can never be in abeyance. It is either in the present possessor or in him who has the ultimate fee.

(2 Bk. 107. contra red vide bottom of this page.)

Several inferior estates may indeed be carved out of a fee simple; thus if it makes a lease for years, he still retains the ultimate fee simple.
(26)

But if a grant is made to in fee for life with remainder to the heir of B, to being alive, then the remainder accrues to the Bl in abeyance for B has, while alive no heirs, see 2 Bk. 107. But this is not law for what does not pass from the grantor remains in him; therefore the fee simple remains in the grantee. In this case until B has heirs, when B has heirs, they leave the fee simple. 2 Bk. 275. 15. 6. 267. 513. 64-262.
So if a grant is made to a sole corporation as to person or his successor according to St. Bl the fee simple is in obedience for it does not rest in the person. Lit 640. 2 Bl 107

But this is incorrect for whatever does not rest in the person resides in the grantor, his heir ready to rest in each incumbent when appointed. 2 Bl 107

And the second incumbent when entitled is entitled to all the profits from the death of the first incumbent will could not be in obedience—2 Bl 107

To speak of a fee in inheritance of any kind the word "heir" must be used. In the words "estate granted to a corporation the word "successor" answers the same purpose and when a grant is made to a corporation an aggregate a fee simple the word heir. Therefore land granted to it forever to A & his assigns forever gives it only an estate for life. The word heir without any words of perpetuity is insufficient to pass an estate of inheritance. Lit 64, 2 Bl 66. 107

In the word "heirs" is used to denote the quantity of interest it is a word of limitation. It is not indispensable in a deed to create a fee simple that the word heir be used. It is necessary only in (common law) conveyances. In devises a more liberal rule is allowed for the man making the will is supposed to be in extremis. Therefore land devised with these words in fee simple, "heir"—cow 659. 2 Bl 108
Wards by all means a devise of lands to be forever or a fee may be a devise of an estate conveyed by a devise. If a devise of an estate conveyed by a devise then the devisee all my lands free

518th Adov 122th
But a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devise to a devisee without a devisee

Some however have taken a distinction between a devise of all my estate and of all my estate in such a place and that in the latter case, only an estate for life passes by the devise

17th R 41st. 1 Act 37th. 1 No 228th
2 de 614th. 2 P W 145th. Con 355th.

And it is not material what words are used in a devise where the intention to pass a fee simple is manifest.

Therefore a devise "I give all my effects personal and real" paper in fee simple of the realty.

Con 299th. 1 East 33rd. 3 No 576th. Crew 343rd
"I desire to all I am worth is a devise which makes a fee simple of land 1 de. 674th.
It has been contended by some that the word 'heirloom' or 'in a devise' carries a (re)fer in a devise, but this rule is now different.

Therefore a devise of all heirlooms passes no feu simple but merely an estate for life.

57 Ed 337: 3 De 356: 7 De 175: 8 De 497

Dalk 239. 1 B 4 P 358

The words 'all my property' pass a feu simple if the testator has it. The word property (2 N e w E 201: 2) denotes an interest like the feu estate.

And even the word 'legacy' has been held to pass real by 4: even a feu simple arises from its connection the intention is apparent to pass a feu simple. Song 39. 1 Bn 368
1 P 196: 577: 716. 1 East 378

A devise that I give all my lands to A B. he paying any gross sum towards debts. "we" will carry a feu if the testator has a feu

6 bo 16: 2 N e w E 343: 1 B 4 P 350: 3 B n 1623

37 Ed 358: Poole on Devise 502

The reason of this rule is that the devisees is always supposed to be an object of the testator's bounty. but to take an estate for life in this case would be no advantage therefore be takes an estate in feu. for by taking the estate he becomes personally liable for the debt.

On the contrary a devise of land to be he paying a certain sum out of the profits of the land pays only an estate for life. for he is bound only to pay the rent of the profits, therefore by taking an estate for life he cannot be a looser. 6 bo 16: ban 239
2 new E 343. 37 Ed 358. 5 East 67. 3 Bn 1618: 23.

vide title Devise.
A devise of the rents and profits of land has the same effect as a devise of the land itself. 1 Chit. 352. 1 Molec. 377. 1 Bur. 647. 5 East 97. 1 Nevill 116. 2 6b 220. Indeed all the right which a subject in England can have is a right to the rents and profits. The circumstance that a will is attested by 3 witnesses is not sufficient to carry a devise. 1 Nevill 116. 2 6b 220. 7 East 97. Indeed nothing is more common than to find wills of more personal profy so attested—It has been contended that 50 R 1314. Supposing introductory words in a devise will 503 525 568 convey a fee to a devisee where otherwise only a life estate is held, but this opinion is exploded. But such words will turn the balance where there is a balance. The word heirs is not necessary to pop a fee simple by a fine or common recovery for fine by a fine simple fee by act & operation of law. 2 Blk 105. 154. 357. In fact at least these are not common assurinces.

In many cases of land to a sole corporation the use necessary or proper the word successor should be used. So if a person intending to convey land to a sole corp. grants land to a person for instance the heirs of the individual person will take the land & not his successors. 2 Blk 108.
But in a grant to a corporation aggregate neither the words "heir, or successor" are necessary to pass a fee simple for an aggregate estate. For every estate is a body aggregate and never dies. For in law the King never dies.

Suppose then an individual grants his land to a sovereign state, the state will hold the land in fee simple. For a state of this kind is a body aggregate. Indeed it is absurd to say "to bound, and its heirs, or to bound, and its successor" there can be no words of limitation.

The word "heir" is regularly supposed a word of limitation that is a word expressive of the quantity of interest given but it sometimes is descriptive or rather a word of purchase who describe the person who is to take after the first demise. If therefore land is granted to A's heir, the decedent not who shall take on A's death but what quantity of land shall take of the law decide who shall take of A's death.

If an estate is granted to A for life remainder to his heirs, A has a fee simple. Again an estate to A for life remainder to B for life remainder to C is a fee simple in fee simple. In_bg_59. 1 Bl. 194. 1856. 2 Bl. 249. 109. In law the King never dies.
Day 299. And this rule holds whether the conveyance is by devise or by grant, and the heirs by
condemnation; each of these cases take by descent — not by purchase.

This rule originated in reasons merely tendency — for the sake of securing the claims of
the lord where a descent takes place.

The note here, is essential to the passing of an estate in free by deed; yet in duty contracts a more liberal rule
prevails; it in case of a deed or Ct of Equity will stop,

way of correcting a mistake to supply words of inheritance,

where the intention of the parties was to pass a free

Ct Kent C.7, and this note agt an attaching creditor

with notice 10 Conn. R. 24; Chamberlain v. Thompson.
Wednesday Dec. 1st 1824

Real property No. 21.

It also the words 'heir of his body' is a term of limitation, and describe the quantity of land taken by the devisee. (Will 1155, an estate take.

A direct present of devisee to the heirs of A conveys no estate at all unless he dies before the testator. 2 Kent 313. Ray 332 Bov 313 14. for until his death his heir or heirs are uncertain. But on his death his heirs take by way of estate devise (by post epi. de) The words 'heir of' from other words in the devise of it appears to be used as a word of description. it will pass an estate by purchase to the heirs apparent. during the life of the ancestor. Every mode of acquiring estate except by descent is called purchase.

If a devise is made to the heir of A, taking notice that it is now alive. The devise will convey an estate to the heirs apparent. 1 Bov 576 29. 2 Bov 116 10. 2 Bov 114 14. 1 Swai 142 12. 2 Lev 232 the heirs will take in the death of the devisee the the ancestor still lives. And when a limitation is to "heir" it is construed as a word of purchase. the estate is taken in fee simple. 2 Ven 313.

Suppose a devise to A for life remainder to the heir of B. here heirs is a word of purchase. see 10 bo 93. 104 5. 2 Ven 21 31 109. & give the heirs of B take in a fee.
But the word "heir" is always taken as a word limitation in a deed. If a fee is granted on a condition act any of its incidents is void, as a condition that the testator in fee simple shall not alienate shall not commit waste, shall not [sic] alienate shall not commit waste, shall not (see 31 C. 311. 323) take the profits, that if he shall not have done to 4 Kent C. 131. 2.

Qualified fees. There are such estates of inheritance as are attended with conditions a qualification. Of 2 sorts.

1. Qualified in a bare fee.
2. Qualified in a conditional fee.

These last have by the English law of tenancy become estates tail. 4 Bkt 189, 50. See fees, estate at an end, retain qualified.

A bare fee is one which has a qualification annexed and must determine when that qualification fails. This kind of estate is now out of use. Co. Litt. 87. 2 Bkt 109. Kent defines an estate which may continue forever and be determined by some event circumstantial.

And see 85.* 50. Tenants in a fee are restrained to some particular heir of the donor. 2 Bkt 184. not to the heirs general.

The donor and the donee are called a fee coulct, if the donee dies without such heir the estate returns to the donor (called a de coro).

Mr. Weden 241.
But under such a condition if the donee had any issue the estate was at common law deemed absolute by the fulfilment of the condition; but this was a plain perversion of the intention of the donor. At least it was absolute for these purposes:

I. To enable the donee to alien it

II. To subject the estate to forfeiture

III. To enable him to incumber it so as to bind it in the hands of issue

2 Bl. 111. 6o. 23. 3/7.

If however the donee did not survive during the life of the issue of the donee died before himself, the land on his death reverted to the donor, and of his heirs. The estate became absolute in them.

2 Bl. 119. 11. On his death the estate must have vested, for it was limited only to the heir of his body.

In consequence of this construction the 1st of West 11. 13 Ed. 1. De donis - cautioning that the will of the donor should be followed, and that the teneurments should at all events go to the issue if any of more got the donee.

2 Bl. 112.

In the construction of this it the minors divided the estate into two parts, viz. a species of particular estate called an estate tail vested in the donee and the ultimate for simple in the donor except in the termination of the fee tail, as a reversion.

This is then converted for estate into fee tail. 2 Bl. 112.
Now there was no reversion to a fee conditional at the common law, but to 1Bch n it is always a reversion of the fee done in prima facie
the law of this country.

But for conditional are
not in every case converted into tenure
for they extend only to tenements +
the includes, perpetual herid + incorporeal
riety, while Law or the reality, causes
rights of common de 7 to 35, 2 Bl 113.

But there are certain retenements which
are incorporeal + do not arise of the
reality + to these the 2 do not extend
as Annuities + after these therefore are
lost as at Common Law.

An Annuity does not come within
the word tenement + therefore is limited to 2 1 the hrs of his body to take
a fee conditional at common law
2 Bl 41, 113. to 354. 164. 19:30.

The reason why an annuity is
not a tenement is because it charges
only the person of the grantor.

It follows that if an Annuity is
granted to A + to the hrs of his body, when
it has being he may alienate the annuity + this
interest (1 Bo 67354. 2Ne 170) admity of no
remainder for an issue born + has a fee to most
purposes. A man shall not be entitled
now be the subject of a fee conditional at
common law, because such an interest does not
admit of a limitation by way of inheritance.
If therefore a personal chattel is granted to A & his heir or heirs of his body, let it be in new Estates absolutely. A fee of any kind cannot exist in a chattel. 1 Bl. 64. 2 Bl. 395. 113 Ed. note 174. 2 T KH. 649. 1243. 3 P. Wms. 259. ta rae 304. 5. 542.

The reason is that personal chattels are movable, transient & perishable they are object subject of inheritable estate.

4 even at common law a life estate is by way of a person can have in them, if he who has a life estate has the whole interest in them.

An estate tail may be created by mere implication, as if one desires land to A & if he dies without heir of his body to B. it takes an estate tail by implication —

Or if an estate to A of the fee

without issue to the same rule holds. B is not to take if A has issue the intention then is clear that B shall take an estate tail. But in a deed not to 378. 63

9 Ed. 127. 1 P. Wms. 625. 3 Atk. 398. Bow 234. 5 H. 343.

2 Atk. 365. 310. 14. 2 Bl. 625. — in a deed the words 'heir of his body to' are indispensable.

Mention of land is devised to it & her heirs forever & if he dies without heir of his body to B. it takes an estate tail 76. 1569.

ta rae 170. 301. 2. The latter words qualify the generality of the former — But in a deed it would take a fee simple for in a deed the first words govern. In a devise the last words govern.

See other examples bow 234. 5 TR 336. 7

3 de 5. 111. 3 de 145. 6. ta rae 170. 300.
Ed: John N. devises land to A & B to his
estate tail, his forever but if he dies without heirs, the land shall go to his heirs if B is
distinguished? collateral heir to B. It takes no pre
tail for implication, if B is not a
collateral heir to B the rule is otherwise—

Several species of estate tail
Can't be special.

Male or female.

Male male gen't. Male tail special
Male female gen't. Male female tail to


Where an estate is limited to male
heirs the descent must be traced exclusively by
male heirs, if to of female must, best, 524.


To create an estate tail by deed
not only the word heirs but the word
body or some other word of possession,
is necessary to limit the estate to the particular

And if either of these two terms is omitted in a deed no estate tail will
pass. An estate therefore to A & B his issue
to A & his children or to A & B his espousal
is only an estate for life in it. Co.

A grant to A & his heirs male or
female, his male or female, a fee simple
descentible to his heirs male or female. —
indifferently.
The reason is that there are no words of
procreation + also it is impossible to limit
the estate to make heirs you'd a female heir how could
you'll for no such estate is known to the
law. 4 Bl 321. 2 Bl 137 n. 5 PA 328.

The reason why it takes an estate
to be is that where a grantor express himself
ambiguously the construction is made most strongly
of the grantor's will. 2 Bl 326. 2 Bl 131. 5 PA 328.

But the same words in a devise create
an estate tail for in a devise the intention
must govern. 5 PA 328. 2 Bl 115, 331. Doug 322.
And the intention may be inferred from anything,
And by devise an estate tail may
be created without the word heir, as where
one devise’s to a 4 to his posterity.” 1 HBlk 447
2 Bl 115. 331. The term ‘posterity’ signifies in
common language heirs of the body
such an expression in a deed
would give it an estate for life only.

As in a devise of land is given
to be his children or issue it having no
children or issue it takes in estate tail.

descendable to his lineal heir.
6 b 17 a. 1 HBlk 456: 60. Doug 326
50-5: 10. 1 New 227. 331. 4 PA 201. 2 Bl 135, 331.

For the intention is, that his children shall
take + they cannot take with 4 for they are
not in life, neither can it be the intention
that they shall take by any of remainder, they
must therefore take is issue in tail.
State tail

On the other hand if land is given to a of his children in a devise he having children at the time he takes a joit estate for life after born children take nothing 6.6.166. Bpo Eliz 743. 1 East 262. Bow 314
1 Nis 114—

If one devises land to a of his children, whether he has 2 or more children he takes an estate for life and after him they take an estate for life. An child or subsequently born take with the others in this case, 6.6.166
as in 745. 2 Term 545. Bow 366. Comp 310.114
as in 199. 3 Nis R 343. Bug 4.196.17.

In 745. there is a 25 in 745
working the rule in the 745 case (see ante)

If an estate is leanted to a 4 to the his female of his body the female ipse of
it will take in estate tail the by law having a son they are not a's here to be lct 24 6. 77 of
4 Cross Hej 35.

It was formerly held that if an estate was leanted to a 3 5 female as such children if a had 0 son they should not take but there is now law to be lct 24 6 27 6 note to
5 Bow 366. 1 Nis R 422. 3 Jack 326. 2 391
Bow 32. 147. Hej in 657. The reason for the old rule was that the daughters did not ensure both parts of the description viz of
being heirs as well as being female but this rule was technical and always disappointed the intention of the deviser.
The incident to a tenancy in tail are

1. The tenant in tail is not liable for waste in tail.
2. The wife of such tenant is entitled to dowry.
3. In a manor, such tenant is entitled to socage.
4. The estate may be barred, i.e., the heir
   elected a converted title with simple by find a
   common recovery.

2 Bl 1154, 60 Ed 214, 2 Bl 345, 64.
2 Bl 305, in to wipe down to she cannot
have it unless the estate is so limited that he issue might
inhabit, - - State. The issue first barred by civil
Fines and recoveries are truly made of
satisfying the will of the donor, 2 Bl 116-18.

The tenant's right to levy a fine if
after a recovery is an incident inseparable from
an estate in tail if a condition restraining the
right would be void in law 47 P 160, 4

28 61.

By the laws of this state entails are
distressed in favour of the first issue of the
issue, 14 643

"Your estate given in fee tail shall be
requisite an absolute estate in fee simple to
the issue of the first done in tail, statute of
land, 21 6 4, 301.
Estate of fee simple not of inheritance
estate for life.

are the lowest kinds of
fee simple. Of the smallest of all real estate
2 Blk 120. It has been doubted whether an
estate for life in land is real estate, but I G
thinks it must be real estate, as much as another:

Estate for life are either conventional
is created by contract or legal is created
by operation of law (P).

Conventional estates are always
created by some species of common affection
+ may be for the life of the tenant
+ for the life of some other person
+ or for the longest number of persons
+ then it continues until the death of
the last survivor among them.

A legal estate is only for the life of
the tenant. (P)

An estate for a life of another
is called an estate for another vie.

If such an estate is limited to
A of his heirs + A dies before executors vie
the heir of A takes the estate by special
occupation. 2 Blk 356. 2 Blk 120. He cannot take
it as heir for the estate is not of inheritance.

But if it is not thus limited to
the heirs of the tenants the estate is to die
before estate is over vie. The estate at common
law is hereditary in person but by 1629 bar 2
+ 14 St 3. directs that in this case that
it may in his death devise his said as his
heirs. 2 Blk 258. 261. 3 Blk 41. 2 Blk 356.
In our law there is no it on the subject of how that would be done here. I suppose it may be that our lot would adopt as common law that the Act of England + the estate is devisable under the Act ofCNT, which is that all estates in land may be devised.

A conventional life estate can not be created at common law without execution of devise for it is a fee simple. 2 Br. 120 104, p. 559.

A quit or grant of land, not defining any specified estate, gives an estate for life. As a grant thus I grant to the certain lands he may have.

The principles that induce the lot in this case is that they give the strongest possible construction on the grantor if what the words will admit. The lot estate is deemed to be an estate for the life of the grantee.

2 Br. 121, p. 42, 36.

Indeed any estate whatever except an estate at will suffers a

Determinate will may be perpetual. This will determinate may last during the tenants life for a life estate. Therefore an estate to a widow during her husband's life is a life estate.

3 to 26. to p. 42. 2 Br. 121.

As a grant to A until he shall marry to is a life estate for it has no determinate limit + it may last for the life of the grantee.
The incidents to all life estates.

II. The tenant is not restrained by express covenant, take of common right all reasonable estoveries in all necessary wood & timber for the use of the farm, as wood for fuel, for repairs of houses & implements of husbandry, sec 2 Blk 35, 102, Sec. 41. 53.

But a tenant for life is not allowed to fell timber for other purposes. (Sec. 41. 53, 1 Blk 102, as for erecting new buildings &c.)

III. Such a tenant is not to be injured by a sudden determination of the estate unless it is by his own act. His representative are entitled to the emblements.

Emblements are the profits or crops produced by annual labour.

But grape is not an emblement in part.

Sec. 112273. Sec. 41, 55. (5 Barnard 105. 2) Ellis.

On the same principle of the lease as in Sec. 76, the tenant is entitled to the emblements. (21) for here the estate terminates by the act of God, not by his own act.

The rule is the same when the estate ends by operation of laws. See Sec. 1116

Sec. 3 Blk 123. Sec. 41. If a husband during coverture & they are divorced &c. it is not the wife who is entitled to the emblements, nor the wife for the labor bestowed on the crops is presumed to be husband's labor.
But when such sudden termination of the estate happens by the act of the tenant, incident to the estate, he is not entitled to emblements. It is his estate for life, not for the estate.

3. The under tenant or lessee of a tenant for life is entitled to all those rights and in some cases even greater rights than those possessed by the tenant for life himself. Thus, if the estate of the tenant for life is terminated by the act of the tenant, the lessee or tenant is entitled to emblements. Thus, the right life in this case is not to have them.

Bro. Eliz., 461. 1 Roll 727. 2 Bl. 124.

By the common law, on the death of the tenant, the under tenant may leave the land and avoid the payment of all rent accrued during the time since last pay day, for at common law rent cannot be appurtenant. But by 21 Will. 3. The tenant in such case must pay rent pro rata.

2 Bl. 124. 16 C. 127.

If ten for life under life for years + 2 Bl. 125 dies, the estate for years expiring unless the life +76 remain dies in any has previously commenced 2 Pl. 125.

Ca. 1 412
12 H. 56
An estate for life may be defrauded by attempting to convey an estate greater than his own by waste, by delay or treason.  2 Bl. 125.  6 Bl. 27.

All conveyances of estates by act of the parties are called common aperances.

**Legal life estates of 3 kinds**

**Tenancy in tail after death of issue extinct.**  This is an estate given to the heir in special livery, though the person from whom the issue was to spring is dead, without death a deed, leaving issue who is now dead, in wh circusstances the tenancy in tail becomes "tenant in tail after the pop. of issue extinct."  8 Bl. 320.  2 Bl. 124.

Here by operation of law an estate in tail is converted into a species of life estate.  It must be created by law; it is impossible to grant such an estate.  2 Bl. 125.  If a grant were made to a man of an estate to hold as tenant in tail after popishe the grantee would probably take a life estate, tho' the books are silent on the subject.
If an estate is limited to A and his wife, and they are divorced, a husband and wife in tail, nor is the law of the country, neither is the wife or heir of the husband. Even if he have the estate but they remain tenants for life issue extinct. (2 Bl 125) In such case the estate cannot descend to nor can descend for the issue are illegitimate. In common cases when the marriage from which the issue is to spring is lawful the possibility of the issue exist during the life of the parties (bld 134. 60 Gills 23 2 BL 125) for in law the possibility of issue exists until one of the parties is dead.

This estate the claped with estates for life is of a mixed nature partaking of an estate tail and an estate for life.

He is like a tenant for life, for the parties his estate by attempting to convey a fee. He is like a tenant in tail in that he is not liable for waste.

This a c. of Equity will restrain him from malevolence waste.

2 BL 125. 60 Gills 23.

Yet if he sells timber and leaves it on the land, the party is not his, it belongs to that person living at the time who has the next estate of inheritance in the land.

2 PLMW 240. 2 BL 125. c. note.

It is regarded as a mere life estate to all intents except those mentioned supra.


2d Tenant by the courtesy of Eng. When a man marries a woman seized of an estate of inheritance by her free-born above and capable of inheriting the estate she dying he is tenant for life of all such lands as tenant by courtesy.

Ctll 535. 52. 2 Bl. 126

To this estate there are four necessaries all which must concur, 

1. Marriage
2. Seizure of the wife
3. Spouse born alive
4. Death of wife

Ctll 30. 2 Bl. 127

Marriage must be legal & canonical. Otherwise there can be no legal right in the husband.

It must be valid.
If he marries an idiot. If he marries within the canonical degree, he is not entitled to be tenant by courtesy for in these cases there was no legal marriage.

Ctll 30. 2 Bl. 127. 130. Bloudon 263.
The seizin of the wife must have been an actual seizin existing at her death.

If the wife were desized of, or desized, the husband cannot be seized by the seizin, tho' the wife was entitled to the estate.


Co. tit. 11. 15a — so long as issue of wife not inherit from her.

The rule was exploded in this state — The C. supposed one Stat. law made a difference (5 Day 166. Bulk & Bradley). For here by

...at the issue of a deceased ancestor may inherit from the deceased ancestor. The heir's estate cannot be disposed by

...of remainder in remainder after appurtenance. For the wife cannot be seized of them.

...and the latter rule is implied in this at law.

This rule requiring actual seizin in creating the wife does not apply strictly to 2 Bl. 128. incapacitant hereditary party & to Equity of redemption to here what is equivalent to seizin will answer, ex seisin of the property to, ...
the third requisite to a tenancy by the courtesy is that the issue be born alive and must be born during the life of the mother. 2 Bl. 29, 31, 856, 2 Bl. 127.5

The issue must also be capable of inheriting the estate. 2 Bl. 128, 60, 29, 16. The issue must be such as that by possibility they inherit.

It is immaterial however at what time the issue was born, whether during her seizen a wife if it was, during coverture (94) and it is immaterial whether her seizen was during the life of the issue.

A husband is entitled to this estate on his wife's equity of redemption on a mortgagee for 1 dtt 603. Powell on mort 112-115

In the birth of the issue the husband becomes tenant by the courtesy inter vitas and then by the wife's death it is consummated. 2 Bl. 128, 60, 29, 31.
The third species of legal estate is tenancy in dower.

If a husband seized an estate of which his widow has a life estate in one-third part of all the lands and tenements of which he was so seized at any time during the creation of will by possibility, any issue which she might have probably inherited); ditto 3d. 2 Bl 139.

The widow in such case is called tenant in dower; the estate tenancy in dower. In the first place to entitle the widow to dower she must have been the actual lawful wife of the husband at his death. If then they are divorced a vincula mat. these bars her of dower but a divorce a vincula at that is not a bar. The (2 Bl 130. 60 dit 3d) legal relation still continues.

It was formerly held that the wife of an idiot might be procured but this is not law. 2 Bl 130. 60 dit 3d.

By the ancient English law the

in the case of dower was inflicted by the husband's treason to the person of the felony. But this at any rate is not the law here. 2 Bl 130. 1.

In the case of treason of the

no treason can extend beyond the life of the traitor by the statute law 1753 act 35.

With respect to common felony it is presumed that they are no law to dower in any state. That is the felony of the husband is no due to the wife dower.
An alien cannot by common law be endowed except by express act of parliament. 2 Bl. 131. 1 Dan. Cod. 31. This rule is modified by the rules of some the western states. See V. of Ed. above to alien. 2 John 22.

But independently of these statutes 16c. 125. If an American marries an English, French, or woman she can have no dower unless by an express statute authorizing her to hold her dower. These rules of course contemplate an alien before naturalization.

By the English law a female above 9 yrs. may be endowed. 2 Bl. 131 But not under this age.

But the estate in which the dower may be held must be such as any issue of the wife might inherit. 2 Bl. 131. 1 Dan. Cod. 31. In short in the example having a son by a former wife marry the second wife is entitled to dower for in case of the first son's death her issue might by possibility inherit.

But on the other hand if a man holds lands to himself & to his issue by his wife 2.

The wife B can have no dower of such lands (if) for the issue could by no possibility inherit such lands.
To entitle a wife to decree a seisin in law without a petition in fact is unjust. That is, she is entitled to all dower from all lands of which he had the right of inheritance ACT, Bajo, Bajo 503, for it is not in thewife's power to compel the husband to take dower. And a seizure of the heir for any time however short during the coverture is sufficient to entitle the wife to dower. But if the same act which gives the estate to the heir transfer it to another, her wife is not entitled to dower. See Case 614. 2 Lec. 67. 2 Stitt 41. 30 L. 200. Here the heir is the mere medium thru which the land is conveyed. And by the common law the heir by no act of his own, exclude the wife's right to dower. He died with he can give, such is the rule in most of those states but not here. And as it is evident the dower is traced thru the lands of wife the husband & wife have made a joint deed. As Enr. the heir may by his own act deprive of the wife of her dower for she has dower only in those lands of which the heir is seized in fact or in law.

In Eng, a wife is not entitled to dower in the husband's equity of redemption but the rule supposes the mortgage to be executed before marriage. So if it is made during coverture the wife holds in exclusion of the mortgage. 2 Crit 42. Pemb. 424; 321. 323. 3 Pitt 60; 30 70. 229. Salt 138. 3 Bl. L. 135. 161. 1 Br. 15; 20 725 (compa 2 P. 59. 70. 5 64 127). This rule was made when it was supposed that the wife of the mortgagor was entitled to dower but now it is well settled that she is not.
In this state however the wife in the case
has power 1 cor 13:55. 6 John 290. 7 De 275. Ease,
So in New York, — how to prove marriage with
the wife.

By a law it is the duty of the husband's
heir at law to assign the wife the power for
he becomes entitled to the estate, but if
the heir or his guardian does not assign down
a deed in writing she has her remedy at
law in a suit of Dower, by the will the wife
is appointed to assign dower, to market out by metes and
be. Act 34:5. 2 Ch 136. The heir becomes entitled to the
whole estate. The wife is indubitable to him.

In this state no suit of Dower is here assigned by the Judge of Probate he
appoints commissioners to assign, if they return
proceedings to him. Subject to appeal to
supr. Ct. but all the original jurisdiction of dower
is in a Ct. of Probate, wireless before 1830 follows
here. For the manner in which wife may indefat
the Dower see Act "Hus & wife"

All estates for life are forfeitable
not only by felony or treason but for waste
or for allowing the estate for any other life
than that for which he holds the land outside
Act 34:5. Cod 251. 2 Ch 137. 274. Act 34:5.

Estate for life must to husband's interest.
Estate less than freehold

I. Estate for year
II. " at will
III. " by sufferance

An estate for years is one in land,
ten: a her: for some determinate period
of time, as for a year or more or for three
months, etc. 2 Bl. 140. 6 h. 51. 67.

The party creating this estate is
called lessee, the tenant lessee.

By a year under this title in the English law
meant a calendar year, but by a month
t is meant a lunar month.

A month in the law means a lunar
month, with only one exception, the age of
moons, 6 b. 61. 2 Bl. 141. But the term a
twelve months means a year. 1 H. 4.

The law sometimes takes notice of
parts of a day, yet as a general rule a day is
considered in law the fraction which an indivi-
disable point. 2 Bl. 41, 6 b. 81. 135. But when
it is necessary for the plain purposes of
justice the law will take notice of a fraction
of a day. Every estate which must expire at a
fixed period by its own limitation is an
estate for years. Therefore it is frequently
called a term. 6 b. 45. 2 Bl. 649.

c. 1846.

Anciently a term might be defeated
by a fine a common recovery suffered by
the lessee. Anciently these terms were
considered of but little value but now
by Henry 8 this old rule is abolished.
It is said that an estate for years must have a certain beginning as well as a certain end. But it will of course have a certain commencement if no day is mentioned in the lease. It will commence from the delivery of the lease.

2 Bl 143, 6 Blitt 46 et vide 4 Kn 72.

If certain rent and covenants are to be paid, protest is made by his Majesty, and his Majesty issues a good lease for many years. If I shall name 100 years naming his Majesty's name, there is a good lease for year years the lease has a certain end.

6 Le 35, 2 Bl 143.

But a lease for so many years as are named is the estate for life because no lease of revenue because there is no determination of the estate for life. This is not intended by the parties.

2 Bl 143, 6 Blitt 45. It.

Yet a lease for twenty years if I shall so long live is a good lease for years for there is a fixed period beyond which it cannot go. (It) Indeed this is clearly a lease for twenty years on a condition or with a defaulter.

Every lease for years is but a chattel in the estate and is personal estate and consists of time for years from his Majesty not to being chattel status. There is no need to the creation of such an estate and hence a lease for a term of years may be made to commence in future.

5 Le 94, 2 Bl 140, 4.

Hence a lease for years can never be said to be leased of this term for years it is unadmissible in pleading. However in the proper words 2 Bl 140, 6 Blitt 45, his Majesty is prejudicial only of a fee hold.
The word term is used either to express the duration of the lease or the estate itself. 2 Bl. 144. Co. Litt. 455. Hence the term may end before the time limited.

Incidentally,

Thank for years until rent reserved by express conditions has the same duration of tenant for life.
2 Bl. 144. 122. 35. Co. Litt. 45. 55.

If the estate terminates at the express period, the tenant is not entitled to emoluments. But if the lease is defeasible on a contingency before the term or expired, the estate terminates by that contingency the tenant or his heirs are entitled to emoluments. 2 Bl. 145. Litt. 356. 55. E.g. a tenant for life leases for 20 yrs. + tenant for life dies tenant for years is entitled to emoluments.

On the other hand if the estate is determined by the act of the tenant himself, he is not entitled to the emoluments. Precisely, as in the case of tenant for life, e.g. tenant for years 111, the estate is not entitled to emoluments.

Estate at will in an estate determinable at the will of either life for life or life 2 Bl. 145. Litt. 356. 1005. Co. Litt. 55.

Such an estate has no determinable period but is the life of the tenant or the lesser of 100 years. The tenant is entitled to emoluments until rent. 2 Bl. 146. Litt. 455. 56. Co. Litt. 95. 55. 

So, if the lease determines it by some act or event the lease is entitled to emoluments until rent. 2 Bl. 146. Litt. 455. 56. Co. Litt. 95. 55. 6. So, if the lease determines it by any act interfering with the tenant’s possession. 2 Bl. 146. 1005. Co. Litt. 55. 56. by various other acts showing an intention to determine the estate.
It is determined by the death or rectification of either party. 5 Bl. 116. 2 Bl. 146 to 17 Bl. 512.

If the lessor determines the estate, the lessee has an absolute right to enter and take away his furniture. 6 Bl. 479. 2 Bl. 147.

These old leases are generally estates at will now generally conceded and tenants from year to year. 5 T. 85. Exp Dig. 469. 2 Bl. 1173. 2 Bl. 147. 3 Bl. 1689, so long as both parties may choose.

The estate of a mortgage in possession is an exception to the last rule. That is or to the right of possession quiesce a tenant at will.

There is an important difference between tenancies from year to year, and at will for the former cannot be determined by the will of either party alone except at the end of the year, nor even then without express previous notice given by the party who intends to determine the estate. 1 H. 159. 1 Bl. 116. 11 Bl. 84. 9 do 84. 55. 1 Bl. 561. 2 do 481. Exp Dig. 467. 41. By the end of a year is meant the end of a year from the commencement of the estate.

And even the one of the parties die six months notice must still be given either by the heir or administrator to the other. 2 Bl. 147. 6 note. 3 Mill 25. 2 Bl. 159. The estate therefore is not like an estate at will ipso facto determined by the (Ca 4 Th 159) death of either party.

This explicit statute of tenure of years that passed for more than 3 years shall merge a tenancy at will yet they are now construed as tenancies from year to year with every word of the statute notwithstanding. The Act agrees. 32 161 to 2 Bl. 145 to a.

As to a lease for any term, however short is good law in countess fees.
The notice given with a view of determining the estate must be to quit at the end of the year. It is suff. however to give a quit notice to quit. 1 CR 139, 2 Bl. 447, 1 Cr. 219.

If after the landlord has given notice to quit, he recieves rent accrued after the year he continues the lease for another year.

If the notice given is not good for the year for which it is given it is not good for any subsequent year. 2 Bl. 147. 14.

So if it is not notice to quit at the end of the year, the tenant may not have the same time deny his landlord's notice of claim notice to quit.

Where there is a lease for a year, the tenant continues in poss. after the year with the landlord's consent, he is regarded as tenant from year to year. He however is not allowed from year to year for this is a lease for years. If therefore he needs leave no notice to quit. 1 CR 219, 149.

1791 No. The continuance of the lease in poss. by consent is an implied contract to renew the lease on its original terms. And once there is such an implied agreement, notice to quit is not necessary for the subsequent year.

The chief difference between rent for a year or lease from year to year is that in case of the latter, notice of determination must be given 6 months before the end of the year, whereas no notice is necessary in case of tenancy for a year.

In case tenancies from year to year are unknown, under an state of fraud cannot exist without a written contract.
Estates at sufferance,

If a tenant comes into possession of land by lawful title at a certain time, and keeps it without any title, he is called a tenant at sufferance. This differs from the case before stated for the continuance is here without consent.

2 Bl. 150 Co Litt 57.

And formerly if a lease at will was made to A, he continued on the estate with consent after the death of the lessee, he was considered as tenant at sufferance. But now if the lessee dies, the lease is not determined (cuius) the tenant now continuing tenant from year to year 2 Bl. 157. 3 Wils 25. 2 Bl. 150. 60 Co Litt 57.

A tenant at will is not entitled to any notice to quit, his estate may be terminated at any time by entry of the lawful owners, but the owner cannot maintain trespass at the tenant until entry or something in the hands 2 Bl. 150. Co Litt 57.

For the entry if it were actually lawful it is presumed to be so until declared otherwise. To recover possession then by 3 Blaw the owner must actually enter before he prays out his complaint. 5 Eliz 384. 2 Bl. 151.

But as before stated the tenant is not entitled to any notice 13 R. 142. 2 Bl. 150. 1 Co.

But in England the 15th & 16th Geo. have nearly put an end to this species of tenancy. Here we have no such statutes. These statutes 2 Bl. 150 have destroyed the few privileges of this tenant. I objected him to some hardships unknown at 2 Bl.
Estate in Possession, Remainder and Reversion.

This regards the time of enjoyment, not the quantity of estate in the owner.

Estates in possession, estates in expectancy, and estates in remainder are divided into:

1. One created by a party called a remainder.
2. One created by the act of the law called a revision.

There are all known to the common law, but a new species has lately been introduced under the act of devices called executory devises.

Estates in Possession.

All estates of which I have so far treated are further to be estate in possession.

An estate in possession is a present estate having no dependence on any future contingency, together with a right of future enjoyment. 4th Ed. 1. Powell on Dec. 247.

Estate in Remainder is one limited to take effect after another estate in the same subject is determined or granted in the simple to a for life remainder to 13 in fee.

2 Bl. 164. 20, 120, 143.

But the particular estate of the remainder are equal to one estate in fee only if the remainder is in fee—In other words, they are different parts of one of the same whole. 2 Bl. 164. 2 W. 287, 186.

No remainder can therefore be limited to take effect after a for simple for a fee simple exhausts the whole estate.

2 Bl. 164. 29. 29.
By the way of executor or devisee, indeed an fee estate in
may upon a certain contingency be substituted for the
remainder. But this is unknown to the

The most frequent term for the creation of a remainder is the word remainder itself,
the only word even in deeds. Ex tanta
after his death (Powell on Deed 242, How 1894, 189, 170)
to B this lease gives B a good remainder.

In relation to the mode of creating a remainder, there are 3 rules:
- To create a remainder there must be
  some particular estate precedent to this remainder
  in there must be some prior precedent to expire
  before the remainder is to take effect in possession.
- In the law of remainders, this precedent estate
  is called the particular estate.
- See tit 47, Powell on Deed 249 18 Bl. 165.

There may indeed a future estate be,
created without a particular estate, but this
future estate in such case is never a remainder.
In the word remainder is a relative term implying
that some part of the same thing is previously disposed of

But a freehold cannot by common
law be created to commence in future, the it estate must
may be by executor devisee. No mode known to common law of conveying an estate will
allow it to commence in future. because
at a law there is no mode of conveying a
freehold except by delivery of seisin. If law
seisin is the delivery of the present corporeal
possession of the fee simple. See 34, 5 to 94
2. Bl. 165, Ray 19, 154.
Another reason why an estate of freehold cannot be created in futuro without a part
estate for the policy of the law is to prevent the freehold being in
abeyance, and the evil of allowing it to be
in abeyance is that there would be no
default to a real action or the precise
there is no mode except by a real action
to acquire the possession of the inheritance.
for the real action can be tried only of
the tenant of the freehold in possession.
2 Wills 280 2 Wetts 116 Serres 534
Rams. 151 2 Bk 362

But there is one exception to this
general rule at the common law. I allude to a
freehold vested when it is granted de nunc
it may be limited to take effect in futuro,
but it cannot after it is created be transferred
to take effect in futuro. 2 Vent. 264. 1 Dce 144
577 3 Plsc. 156 2

In the creation of a freehold
remainder a freehold must pass immediately
at the creation of the particular estate
or the creation of contingent remainder;
the freehold does not pass at the
creation of the particular estate but a freehold
must pass. An estate is given to B for life
remainder to D for he her heirs line the immediate
freehold rests.

But an estate is limited to a
for years remainder in fee to a son of B yet
unborn here no freehold passeth for the
freehold remainder is void.

But if it were to a for life the remainder an
be good for a 2 then take the freehold
Both the reasons for not creating a
field in future without a particular
estate have ceased practically to exist.
In lieu of seisin is out of date
and there is no need at present of a real
action for an action of ejectment lies,
but the rule is abolished in case
a real action is not by the
law of limitations.

Secrecy of seisin necessarily takes effect
in present.

Suppose a grant is made to A for life
remainder to B in fee simple, his lease of seisin is
made to A in present in favour of B, indeed.

But suppose an estate to A for
years + remainder to B, the lease of seisin is
given to A, yet A inures to the benefit of B
+ B is vested with the freehold consistently with
the estate of A, for both interests make but
one estate.

1 Bk. 1667. 9 It is B's interest
comes in present to be enjoyed in
future.
**Estate in Remainder last.** In the creation of feehold remainder a feehold must pass out of the grantor at the time when the remainder is created. See (9) such feehold remainder is void if regularly passed to the grantee of the particular estate to and to the benefit of the grantee of the remainder and the possession of the grantee is deemed the possession of the grantor in this case the feehold passes out of the grantor at the time to. But if the remainder was contingent as to it for life (then in case B survives him t B in fee). Here B takes a feehold but the feehold, i.e. the feehold of the remainder he does not take for that feehold does not vest in B only he survives as the feehold therefore he does not take + 99 says he need not take to make the remainder good. a feehold is void if the he takes for his estate being for life is a feehold estate the Bl says (Bl b 2 vol p 77) that the feehold must pass out of the grantor.

From the grant rule it will follow that if an estate is granted to B for a term of years + in case he dies without issue remainder to B in fee the remainder is void for no feehold passes B can take no feehold for himself for his is not a feehold estate he cannot take livery of seisin for 6 for B's estate is contingent.

But if an estate is limited to a for years remainder in fee to a son of B yet unborn the remainder is void for no feehold can pass it cannot pass to it for B's estate is not feehold. He cannot take livery of seisin for a person unborn.
Real Property (Monday 3d Oct 1824) 514

A lease at will is not sufi to support any
remainder. 2 Blk 1867. 8:80. 5: Clay 157. It is too slender a title to convey
an estate to be deemed part of the inheritance.

If the particular estate is void for
any reason in the beginning, the remainder engrafted
on the void for these can be no remainder with 2 Wood, 1790. 1 a
particular estate & a void part estate in the
estate.

Bo 1: 298 2 (Bl 117). The remainder must
fail as a remainder but if it is limited by devise it may take effect.

In every case if the particular estate the good and
its creation is afterwards defeated before it
expires by its own limitation the remainder it
is paid must fail because the defeating of
the particular estate, the case is as if there never
had been any particular estate & Bl 167.

The rule is too general for as
to vested remainders the general rule is the
reverse of this that is to contingent remainders it is perfectly true. If an estate is
limited to it for life & an unconditional
remainder to &, if a party his estate "B3
remainder takes immediate effect. 2 Blk 189.
155. 2 Wood 180: 6:7. 2 4 B 155. The true distinction
is this — In the case of vested remainder's if
the particular estate for life is defeated
during the tenant's life, by anything which
avoids his estate as invalids the remainder
the vested must fail in the liberty of seisin is her death.

But if the life estate is defeated
by anything which does not avoid it at
all moment but merely terminates it from the
act done the vested remainder is even
accelerated by the defeat of the life estate.

Kerne 204 234. 241 244. 261
Remainder

The remainder must commence a legal estate in the grantee at the time of creating the particular estate. This is not true of particular and contingent remainders, the meaning is that the absolute and contingent remainder must be created at the time of creating the particular estate.

Suppose an estate to be for life and remainder in fee to the first born son of B. The remainder does not happen out of the grantee at the time of the creation of the estate but in the time of the creation of the particular estate. Stone in Per. 242; 3 B. & C. 107; 3 T. & L. 41; 2 W. & S. 177.

The remainder then vests in estate in the unborn son when he is born if the particular estate is existing at that time but before his birth the estate in the remainder is in the grantor and his heirs. 3 T. & L. 107; 2 B. & C. 107; 2 B. & C. 186; 2 B. & C. 267.

This rule is true however with regard to vested remainders. Here the remainder vests in interest in the livory of seizin to the particular estate. A remainder cannot be limited in an estate already in being or in a particular estate created at a preceding time for in such case what appears to be a remainder is a remainder. 2 B. & C. 128; 2 B. & C. 145.

The particular estate and the remainder must be created at the same time (by the same instrument).
The remainder must rest in one in the remainder man during the continuance of the particular estate or co instante when the particular estate terminates. 

(Please quote further references for exceptions)

The particular estate + remainder make an estate + there can be no chasms between them + to e 1/13 for thine joint lives remainder to the survivors in fee how the remainder is contingent but it rests in interest trust rest in interest + in fact + co instante or all the particular estate determines.

But suppose an estate to e 4 for life remainder to an untimely son of 13 now if 13's child is born during the continuance of the particular estate all is well but if it dies before he is born the remainder fails.

Ex 13 for life remainder to B to take effect one hour after A's death the remainder is void. Please note 13, during this hour there is no particular estate.
Vested and Contingent Remainders

An estate vested in possession is one of which there is a present right of present enjoyment.

An estate vested in reversion is one in which there is a present fixed right of future enjoyment.

A contingent estate is one which is to accrue in reversion upon some future uncertain event, even if in which there is no present fixed right which is a present a future enjoyment.

A vested remainder then is one by which a present fixed right is passed to the grantee to take effect in future in possession. Farnam 1:42.

A vested remainder is one vested in reversion only, not in possession.

Contingent or executory remainders are those by which no present fixed right passes to the remainderman but which is one to vest in reversion hereafter on some contingent event, when such a remainder becomes vested in reversion it becomes a vested remainder.

Farnam 2:3:4. When the remainder becomes vested in possession it ceases to become a remainder and becomes an estate vested in possession.

Whenever a remainder vests in reversion the continuance of the particular estate it will vest in reversion the particular estate determines. On the other hand if the remainder does not vest in the interest during the continuance of the part estate or to instant to it can never take effect in reversion.

(En 7)
Out of by the terms of the grant a remainder cannot vest in possession during the entire
use of the particular estate or as the
instant of its determination the remainder
is void.

10. If in any way it does not
so vest the remainder is void.

11. If to the joint heirs or
children however to take a remainder when
the joint estate is limited to the father for life

1 Bl. 130. 2 Bl. 114. 2 Bl. 225.
2 Bl. 51. 2 Bl. 52. 2 Bl. 53. 2 Bl. 54.

Our courts have adopted that statute
as our common law.

A remainder limited to one not in
being must be limited to one who may
by some possibility be in being at the termin
ation of the particular estate even
it is void at its inception. 2 Bl. 349, 74. Bars. 175
2 Bl. 51. 2 Bl. 349, 74. 1 Bl. 66.

If an estate is given to A for
life he himself being unborn a remainder to
the heirs of B the remainder to the B
estate is void.

If limited to A for life
remained to the heirs of B5 first born
yet unborn the remainder is void as there is
a remote possibility only if the events
taking place will form the contingency.
There must be only one possibility d contingency.

2 Bl. 349, 74. 2 Bl. 254, 184 a

2 Bl. 175. If such remainder were good the
estate of B would in time too long unalienable.
Contingent Remainders,

A remainder is a particular estate of freehold, or a remainder to B the survivor of A is void because there are very few properties upon which the remainder depends for A must have a son + be must be called B

2.051. Frame 177. 2 Blk 170.

And a remainder limited on the happening of some unlawful event is void ab initio probably on the ground of policy, This is the reason given is that the contingency is too remote, a remainder on this principle to an unborn illegitimate son of A is void 2.051. Grotto 579

Frame 175. 2 Blk 170.

A contingent estate of freehold cannot be limited on an estate less than freehold so to create a freehold remainder a freehold must pass from the grantor at the time of creating the particular estate the freehold if it passes must rest somewhere it cannot rest in the remainder man for his estate is contingent therefore a freehold contingent remainder must be limited on a freehold estate 1.030. Bag'd 151. 2 Blk 171

2. Wood 191.

A contingent remainder may be defeated by a termination of the particular estate before the contingency upon which the remainder is to rest or if it happens + therefore the remainder man is in the power of the tenant of the particular estate when the remainder is contingent 1.060 66. 135. 2 Blk 171

Frame 241.4.248.322.58.62.78. 2 Blk 39.
And a contingent remainder may always be barred by a fine levied on a recovery suffered by the tenant of the particular estate. 2 Bl. 171 & 3 Bl. 630, 1 Chit. 214. If the particular estate is determined by the fine etc., but a vested remainder is in such case accelerated, and the consequence is the same that the recovery was suffered by the particular tenant for his own use for the particular estate upon which the remainder was limited is gone before the estate. 2 Words. 186, 7. 1 Co. 66. —

But a determination of the particular tenant's actual remedy before the contingency does not of course defeat the contingent remainder for the freehold in the tenant of the freehold is still in issue.

Suppose the particular tenant's devisees died desisted before his right of entry is barred by 30 of limitations, the remainder is good. 2 Niss. 196, 9. 1 Ed. 316, 12 Geo. 1st, 7. 1 Co. 66, 7. But when the right of entry is barred the remainder fails.

From the disability of contingent remainders to be defeated by fine & recovery arose the practice of appointing trustees to preserve contingent remainders.

As if this form a limitation was made to A for life, remainder to B & C & D for life of A, remainder to an unborn child or any one on contingency, the remainder to B is to provide age the signature of A by reason the B is considered trustee. 5 Ed. 81, 6 Co. 578, 32 Geo. 3, 1 Will, 362. 95, 123, 152, 7.
Contingent. This expedient was devised during the
Remonstrance civil war of the Houses of York & Lancaster,
To decide the question whether a
remainder is vested or contingent.
It depends not upon the pretb. or
unpretb. of its ever taking effect in possession
but upon the nature of the limitation that
is upon the remainder's being limited
absolutely or on contingent events i.e.
on condition. 
1st Sam. 528:4. 2 Mord. 192:3

 Frequently the actual enjoyment of a remainder
is always contingent.

If an estate is limited to a fo
life & if he die without heir of his body to B.
here is a vested remainder here is a condition
in language but it is tantamount to this
that if the heir of his body is remainder to B
or to A in tail remainder to B.

What does make the distinction
it is universally the uncertainty whether
a remainder will vest in interest will
make a remainder contingent & if it is
not now vested in that it is of course
uncertain whether it may or will vest in fact
2 Mord. 192:3 Salk 149.

Is a grant of a for life
remainder to B but for a vested remainder
but to a for life remainder to B in fact if
B survives a this remainder is confusing.
for by the terms of the grant B has no exit
in the remainder unless he survives A
2 Al 170.
Universal criterion by which to distinguish vested from
contingent Revis. Is the present capacity of
taking effect in possession or the estate should
that moment determine all things else
remaining as they are. If there is this cap-
acity it is vested (see note). 2Benn. 49. 2 Works 192

Grant to A for life remainder to
B in tail immediately after the death of
this estate the question is is this remainder
vested or contingent? Answer this question
if you answer that if A's estate should at
this moment end would B's remainder take
effect in possession? It would therefore B's is a
vested remainder

Grant to A for life remainder to B
if he survives A is B's remainder vested?
Could it take immediate possession if it's
estate should fail this moment by forfeiture?
He could not therefore his remainder is vest.

If an estate is limited to two persons
in their joint lives with remainder in one event
to one & in another to the other these remainders
are denominated co/b remainders.

Sec 31. H 33
It has been said that crop remainders cannot arise between more than two
See 1 Ace 655. 41 Bae 333. 31 Remainder tile crop
Rem.

But the rule is this: when crop remainders are claimed by implication between only
2 persons, the construction is in favour of
supporting the crop remainders, but when
they are claimed to arise by implication between more than 2 persons, the construction
or presumption is at such crop remainders
yet this presumption may be rebutted
by manifest intention either way,
Cow 780. 97. 2 East 31. 40. 41b. 16 East 229

Again it has been said that crop remainders can only be created by devise.
not by deed. See 25 Bae Abe Rem.

This rule is not law,
A crop remainder cannot be created by
implication in a deed only: it may be
in a devise. 1 East 46 - (so of assure
tail)

Example of crop remainder in a
device. If a devise is made to A. B.
in joint lives, remainder to D. if
A & B both die without issue A & B take
crop remainders in tail by implication.

It has been supposed in Courts
that under one estate a feuhold estate can
common in futuo when created
by deed — sed non sic videtur Indici

D

Day 300(e)
Executive Device is a species of executory devision similar to a remainder, but the term sometimes describes the kind of a Testamentary act by which it is created.

1 Bl. 730

It is defined to be the devise of an interest to take effect not on the testator's death but on some future event. 2 Bl. 172; 1 Esp. & Eliz. 116; 3 Harr. 176.

This is an illusory devise for it includes all estates remaining.

The true left of this is such a limitation of a future interest by will as the law admits in willy but not in common law conveyance as 2 Blackstone 295-303. 2 Lord 381. 3 T.R. 487, 703.

2 R. 611. 2 Words. 202: 603. 2 Vent. 254. 2 C. 284.

But even this merely refers to a collateral testament. It is not logical.

It follows that if such a limitation of a future estate would be good by the way of a devise, a remainder vests made by devise. It is good as a vesting remainder. It is not an executory device.

Ex: devise are of modern origin viz in the reign of Elizabeth. 3 T.R. 13. 95.

They are allowed merely out of indulgence to a man's last will and testament. 2 Bl. 172; Harr. 299. Powell on Dec. 280. 2 Words. 221.

In the devises as to the mode of its creation differs from a remainder in 3 respects.

1. The way an executive devise a fee simple may be made to commence in future without any preceding part estate.

2. In the way of a devise a fee simple or estate 283. 4 other estates may be limited after a fee simple but 224
in the same subject or rather one fee simple may be substituted for another. 2 Bl. 730. 375.
3. By such devise a remainder may be limited in a chattel unit after a life estate in the same subject.

4. If a contingency is made by devise to depend on a preceding freehold capable of supporting it as a remainder if the preceding estate fails before the testator’s death, by the death of the first devisee the second limitation will come as an executory devise.

II. By the way of ex devise a freehold is thus a person may devise a freehold estate to A to take effect in the day of its issuance he being an infant at the time of the devise so a devise in fee without preceding estate to the heir of A when A shall have an heir.

Even if at the death of the testator A has no heir, at A’s death, the heir at law will take the estate.

2 Words/233. Powell on Dec 255. 1 Eq. ca 188. Selk 226. 224. In these cases the fee simple descends to the heir at law of the testator on the testator’s death subject to be devised on the happening of the contingency by the devisee.

2 Words/233. 1 P.Mo. 585. Doug 451 note.
By a devise a fee simple may be substituted by another fee simple. Thus a devise to A + his heirs, but if A shall die before the age of 21 to B + his heirs. Such a limitation by devise is good the in the way of deed it would be utterly void again if one devise to A + his heirs provided that if B shall pay $100 to it by such a time the land shall go to B + his heirs this last devise by devise is good. See p. 333, Ball. 229, 2 Bl. 173, 398, 2 All. 289, 2 More, 31, 156, 221, 1 Eq. ca. 310, France 416, Powel 2 Dec. 250, 10 Penn 120

3 By co. devise a remainder of a chattel may be limited once on some contingency. This is at some law impossible for the disposition of a chattel for life as a limitation of it in toto. at some law (Law to estates for years Cruise 272)

If B having a term for years devise it to A for life + on his death to B + on A's death takes the unexpired remainder of the term 5 Co. 95, 2 Bl. 174, 2 Wob. 235, 9.

Such a limitation may be made in any chattel not perishable, plate, jewels, watch to

Formerly a distinction between use of a chattel & remainder once. & the chattel itself + remainder once, but this distinction is now exploded. See France 304, 2 Bl. 398, 174, 1 P. Wms. 1, 160, 95, 10, 2o 46, 620, 15, 346

Such a remainder may be limited to any number of personal lives with remainder over thus to A for life remainder B for life for then remainder to + but they must all be lives in being except the ultimate limitations
These three distinctions between a devise and a remainder relate to creation of the estates. The essential difference is that remainders may be barred by fine a res judicata by the prior tenant, but an devise cannot be so defeated.

The reason is that the devise does not in any sense depend upon the estate of the particular tenant. There is no need of a particular estate to support an devise. 2 Bl. 170. 2 Co. 393. 1 Paines 356. 314. 2 Will. 227. 10 Co. 591. 6 Co. 183.

But from this very fact has arisen the necessity of a general rule fixing a time within which the contingent event must happen in order to render the devise limitation good.

If the contingency on which the devise limitation is to rest must not by the terms of the limitation happen within the prescribed period, the devise is at once void, for as it cannot be barred by fine recovery so if this time was not fixed a perpetuity would be created.

Paine 314. 5 2 Bl. 175. 1 Paine 356. 314. 2 Will. 227. 10 Co. 591. 6 Co. 183.
An devise to be good must be so limited as to take effect if at all within a life or lives in being 21 years and a fraction afterwards, be limited by its term 2 Bl 174

Sec. 314. 318. 392. 522. 595. 100. Tull 228

Doug 570

Then an may devine to the first unborn son of it, for this must happen within 21's life or a fraction afterwards.

Or to the first unborn son of it when he shall attain the age of 21.

Or to his heir on condition that in a certain contingency it shall go to the first unborn son of B, or his heir attaining the age of 21.

If then according to the terms of the devise the ultimate contingency may possibly happen at a more distant period, it is void at its creation.

Hence a devise to the unborn son of an unborn son is void.

To render the ultimate limitation good within this rule the devise must necessarily happen within this period or it is void.

Sec. 314. 2 Al 174. 1 Wilson 207

Sec. 200. 320. 355. 6.
Real Property 125 (Jan. 13th, 1824)

Executing Devices

It now Blackstone lays down this rule that all the remainder men of a chattel trust must be in being during the life of the first devisee and that the contingency must happen during the life of the first devisee.

2 Bl 174:5

But this rule is incorrect.

The limitation of a chattel trust may be for any number of lives in being and remainder to an unborn child. And now the period for the taking effect of the remainder is the same as in a chattel trust as in real property.

*Hume 320:1 333:6 3 Atk 382:132
J. B. 252:113 2 P. M. 421 2 Woods 230:1
2 Br. 97:30. 1 Ch. 587 395 12 Geo. 254

If an executory devise is limited to take effect after the death of issue on the part of a prior devisee the limitation is not limited.

Chol. on 256:2. Hume 315-221. 341-
2 Woods 233:3. 241. 2d. 268. 2d. Run 277 129:28. 56

This rule holds as to all three sorts of executory devises.

This is not an arbitrary rule.

The words 'if he dies without issue' mean if the issue shall ever fail. And if any other construction were put on the words an estate tant could never be created by implication.

That is *At present the limits of executory devises of real and personal property are precisely the same* (2 Bl 175 Ed note)
If a devise of land is made to A and the
heir of A; if he dies without heir of his body
the remainder to B as an estate for
and notwithstanding the general rule
if there are other words in the devise showing
that the clause respect dying without issue may
not a general devise of issue but a want of issue
at the death of the first devisee or at the death
of any other person in being, the devise is
good as to the devisee for here the contingency
is to happen during lives in being.

Fernie 352 — Tulk 225. 1 Moode 207
3 ch. 332. 1 P.M. 433. 3 N. 258. 3 T. 146. 7 H. 522
Pio on Dec 357. 2

If a devise is made to A and if he dies without
issue, or without heir of his body, to B for life this
devise is good to B as an estate for here B must
take within his life i.e. within a life in being or
not at all. 2 Moode 179. Fernie 376.
The general rule that a lineman, if a girl, failure of issue he can have no effect in the perpetuity state of born. For, by our statutes an estate is absolute in the immediate issue of the donee.

And further any limitation whatsoever of a future estate either by the way of remainder or devise, tending to a perpetuity is void at its creation. No estate can be carried beyond the unborn children of a person in opcs 10175-353. Town 391-3. 207 281-4. 8 Bon 1632.

By a perpetuity is meant a perpetual succession of estates less than of inheritance, keeping the fee always unalienable.

In some cases, to effect a girl's intent in devises or wills construct such a devise as an estate tail, according to the doctrine "as near as may be," but it can never be done in deeds. 2 FR 248 284.

Suppose an estate devised to A for life remainder to his children for life, remainder to his grandchildren for life to the three last remainders would be void, or as donees they would by title be construed into an estate tail and be good as an estate tail.

When a contingent or other estate is devised over in a condition annexed to a preceding estate if the preceding estate fails the subsequent one will take effect. This holds of devises only.

And to A for years remainder to his eldest son in tail if he will take the name of A. If not, it to B now if A's son will not take the name of A B will take the estate. 1 470 3. Town 103 317 415-18 Rev in 175 14 75 176 17 134. 13 125 25.
Suppose the same example is to remainders vested or contingent? It is vested

If land is devised to A in tail for want of his if his body to B + if A dies in the life time of the testator B's estate takes effect immediately in possession for the limitation to B is lapsed by his death before the testator.Doug 593. 6. B. E. 424. 2 Kern 724. Blaw 340.

But where a preceding estate is void from the remoteness of the contingent on which it is to take effect the subsequent estate is necessarily void. 2 D. R. 251 245. 2 H. Bl 362. 1 Wils 134. Frawe 417. 18.

If a subsequent limitation is so framed as to depend on a prior one or the prior one never takes effect the subsequent must fail. In this the subsequent must be a contingent remainder that not an es devise for an es devise never depends on a preceding estate. 2 D. R. 251. 244.

Land to A in tail remainder to B in fee if B lives to the age of 21. A dies after the death of the testator or before B is 21 year of age B's remainder is gone. If A dies without issue but if it had died before the testator A, B might have an immediate estate.
Nestled Remainders are descendible.
If a devisee of a vested remainder dies, the remainder goes to the heirs of the devisee are transmissible to heirs or to executors are assignable if may be assigned by common law conveyances are assignable

2 Wooder 157 213
At this day the same rules hold as to contingent remainders as except that they cannot be assigned— at law they may be in equity

A possibility clothed with a present not in the term used in the law for contingent remainders to

Bye 336 71 439 46 T 117 181 1 429 005 L H 83 2 348 T 220 223 209 3 28 83 438 459 note Pearson Dec 334 477 1 Ves 46
1 Br 6 3 131 2 338 2 347 T 211 121 14

Suppose land is granted to A for life remainder to B in fee on contingency if B dies before the contingency happens letting a son B's son a heir at law will take it when the contingency happens a he may devise it before the contingency happens when the contingency happens the devisee will have the estate.
Such a contingent interest does not of course vest in the person who is heir at the remainder man's death but to the person who is heir at the time when the contingency happens.

Land is limited to a for life remainder to B in fee on a contingency B dies before the contingency happens leaving a son by first wife, the eldest son dies without issue, before the contingency happens the second son by the second wife will have the estate when the contingency happens to the exclusion of the great heirs of the first son.

Contingent remainders + in device cannot be transferred by law by deed etc. as soon as they become vested then by law they are transferable. 1 Penn 1 Cor 152. 2 Blag. 300. 2 Wood 187. 212.

But these contingent estates may be virtually transferred at law when they are casually by fine or recovery suffered by the remainder man or the devisee of the ex-devisee. 1 wood 212. 235. 267

Brook 575. 2 D. 385. 01. 3912

The principle on which they can thus be passed is that of estoppel i.e. the person sufficing the recovery by his heirs are estopped from pleading that they had no present vested when they suffered the recovery of their interests may be passed by deed by way of estoppel 2 Cor 439.
Contingent estates may at law be released but a release is not a transfer. In 
Vicey 411 N.C. 153 2 N.C. 213 it is in nature of an abandonment of a 
right, the release must be to the present owner of the 
land. But an assignment or sale is direct 
transfer of such estate is allowable only in its nature 
even then the agreement is considered merely an 
assignment hereafter to grant it an executory agreement. 

Such assignment of such estate will not 
in law be enforced unless it is made for a 
valuable consideration or it is for a valuable 
consideration in the second degree for 66 of equity 
never enforce voluntary agreements 2 
Vayg 435 440-2 2 N.C. 213 Telled 101 211 M 668.

The reason why equity considers these agreements as 
executory agree is that they have extraordinary power over 
executory agree. Reasons over executed agreements as such 
Events happening after the execution of 
the deed before its confirmation may vary the 
limitation from a contouring remainder to an 
executory but events happening after its consum 
ation is if after the devisee's death cannot in 
you'll have the effect 464 Fl. 411 419 
Cong 305.6 476 note 1 For then the will has gone 
into execution from the moment of the testator's 
death it ceases to be executory.

But events happening after the testator's 
death may change the character of the limitation. 
if there is a double contour included a provision 
for such events because this device is effective
in by the limitation itself. This double 
contingency is usually called a contouring with a double 
respect to 42 249 249 N.C. Cong 4170. Frame 120 2 211 Mor.

Indeed the limitation is not here change 
such a double contingency may however 
be implied.
If a prior limitation is an estate devise there will follow it must of course be estates devise and cannot be contingent remainder.

For if the prior limitation is an estate devise viz a freehold created without any part estate in fee simple those will depend upon it must be of the same character. So they must be either substitutes for the former or to take effect after it. In either case the latter will be with any freehold lasting at the time.

Suppose land limited to A in tail to take effect on it's marriage remainder to B in fee now when A takes his estate in possession B's remainder takes effect in full. Douglass.

But it is not always true that a subsequent limitation takes effect in full when the prior one takes effect in possession.

Thus land to A in tail when he is 21 remainder to B in fee on the day of his marriage now both these are in devises now when A is 21 his estate rests in possession if B is not married. B's estate is not vested in future even tho' A's estate has taken effect in possession.
The last species of expectancy is a reversion. An estate in reversion is the peculiar of an estate left in the grantee after the expiration of a smaller estate granted by himself. 2 Bl. 175. 2 Woods 175.

The reversion rests in the grantee by operation of law without any express reservation what he does not part with remains in him. 2 Bl. 175. 2 Woods 175.

A reversion can be created only by operation of law while a remainder can only be created by act of the parties by some species of commutation. 2 Bl. 175. 2 Woods 175.

But a reversion in a vested present may be transferred as well at law as in equity like a vested remainder. 2 Bl. 175.

But this conveyance cannot take effect in possession until the first estate is determined. 2 Bl. 175.

All reversion are now vested by the ancient common law there might be a contingent reversion, i.e., a reversion expectant on a base for being determined but base for now out of use. 2 Bl. 169.
A reversion cannot be created by parties
hence if A having a fee simple grants
an estate for life to B remained to himself
thereby this limitation of a remainder to
himself is of no effect

If he grants an estate to B
for life with reversion to C of his heirs C
does not take a reversion but takes a
remainder, for a reversion cannot be created
by act of the parties—

And if rent is reserved out of
a particular estate it accrues of course to
the grantor for it is incident to a reversion
2 Bl 470. 2 Nored 173. 3 Dec 406.
see 32. In the case last stated C did not
have the rent for he has a remainder only.

A reversion of reversion where
rent is reserved of course carries rent with it
for whoever has the reversion of course has
the rent. The accident follows the principal
excepting: Co Litt 143. 2 Bl 174. 176.

But the incident to the reversion
is not inseparably so as they may by
a special clause be separated. The
reversion may then be granted without the
rent or the rent be granted without the
reversion. A good grant as before made
however of the reversion always carries the
rent with it. By a good grant of
the rent however the reversion does not
so, with it. Co Litt 151. 2 Bl 176.
The principal draws after it the incident but
the incident does not draw after it the
principal.
It is a good rule of common law that reversions if one makes a lease he cannot grant away the reversion before the lessee enters so he lease the rule is founded on the feudal doctrine of attornment. Reversions cannot be granted away with attornment. By attornment is meant an acceptance of a new landlord on the part of the tenant.

4th Ann. 11th Geo. have taken away the necessity of attornment, attornment never existed in this state

2 Hott. 55. 67. Co. Litt. 46. 8. 315. 10
2. Mordr 173. 47. 2, 3170, 255. 290. This rule must follow the fate of the attornment, a reversion may be granted by the word "land" without more. Ex. Of the grant is of such a kind of land. & the grantor has only a reversionary estate in it the reversion being but it is only in such cases that reversion will be held under that name. 2 Lord 174 106. 107. 110. Trow 433

In estate in p.p. might at common law be granted without writing by mere livery of seisin. But a reversion could never be granted except by deed & attornment. A by statute for lives &c. could not be made of a reversion.

On the same principle that an incapable heir did not lie could not be transferred without deed. The rule however requiring deed 2 Lord 147 & attornment. It applies only to freehold as. 143 reversions, not by a reversion for years.Pk. 286. Might be granted by part. This now let. 55. 67 by stat. of friends.
But a vested reversion for years may be passed at common law without deed for it is a chattel int. 2 Inst 530. 9 B. & C. 92; 1 Lord 174. 3d. It might be granted by

As the whole reversion may be granted

There may be a reversion of a chattel

The reversion expectant on the
determination of a fee tail is so remote
an intestate in contemplation of law it is of no value. As therefore before it takes

Therefore the heir at law of a reversion

One reason is that the reversion is in the
Year 111. 9 B.C. 177.

When a decree of the estate without an uncertainty exists, the estate is merged in the present law. Where a decree of the estate without an uncertainty exists, the estate is merged in the present law. Where a decree of the estate without an uncertainty exists, the estate is merged in the present law. Where a decree of the estate without an uncertainty exists, the estate is merged in the present law. Where a decree of the estate without an uncertainty exists, the estate is merged in the present law.
There is one exception to the general rule of merger when the greater estate meet in the same person in one of the same character or right — viz. the case of a tenant in tail who purchases the reversion in fee. Here is no merger for to allow a merger in just a case the issue might be injurious.

2 Ic. 61. 69. 71. 2 Cal. 77. 8. Bro. & Co.

Besides tenet in tail more & surrender his estate to the reversioner & merger is nothing but a virtual surrender.
Real Property

Estate upon condition

are such as depend upon some uncertain event by which they may be enlarged or defeated. The estate is to be created by the grantor. Conditions are implied and expressed under the latter of which is called estate upon

pledge. 2 Bl 152. 60 Litt 201

Estate upon condition implied are those to which some condition is annexed by law to that kind of estate from the essence and nature of the estate. An alienation in fee for example by a tenant for life is an implied condition because (60 Litt 215, 2 Bl 378, 2 Bl 152:3) by which his estate is affected. These implied conditions are always considered subsequent to express conditions in one in ten

an estate upon an express condition is one to which some condition is annexed whereby the estate will be created enlarged or this condition is express in the estate. 60 Litt 201. 2 Bl 354, 154

Conditions of this kind are either precedent or subsequent. The first are such as must be performed before the estate can rest at all or be enlarged at all

Subsequent conditions are those by which an estate already vested may be determined or defeated as an estate to be for a certain time with a condition that if the rent is not punctually paid the grantor may enter and defeat the estate. 60 Litt 225, 60 Litt 154, 217. 2 Bl 154.
Estates on condition: To this latter clap may be referred the fees free of fees conditional at common law.

In estates on indented conditions that unless the rent be paid on a certain day the estate shall fail. The grantor cannot enter unless he has demanded rent.

5 It. 140. 36 84. 828. For such conditions are in nature of a penalty and are not favourable.

There is a distinction between an empf condition in deed and a limitation which is called a condition in law.

The expressions "so long as," "while," "until," and words of limitation are not of condition these are words of duration.

The expressions "upon condition," "provided," and words of condition in deed and not words of limitation.

Lit. 380. 18 Co. 41. Lit. 385. 35 84 41. 2 Bl. 155

If the qualification annexed is a limitation then on the contingency happening the estate ceases immediately and of course without any act on the part of the person entitled to the estate, or of him next in expectancy.

But if an estate is limited on a condition in deed, the law permits the estate to endure beyond the happening of the contingency until the grantor or his representatives take advantage of the happening of the contingency by entry.}

Lit. 380. 2 Bl. 155
There is a single exception to the latter rule. The words of strict condition are condition used still if upon breach of this condition the estate is limited over to a third person. This condition in deed is construed as a limitation for if the qualification was considered a strict condition, the limitation one might have been completely defeated if the grantor or his heir failed to make entry for breach of the condition for no one can take advantage of a breach of the condition except the grantor or his heir or executor. 1 Nen 208; Cro. E. 205; 2 Bl. 155

If a lease contains a clause that the lessee may enter for breach of peace or riot an actual entry is not necessary to entitle the lessee to an action of ejectment. This holds only of ejecting the tenant in the action of ejectment. Entry is considered Dong 460; 3d Raym. 730; 4d Fall. 259.

It is now well settled that formerly doubted that an express condition in a lease for a term of years that the lessee should not assign is a good condition.

2 C. R. 138; 5 Bl. 1041; 60 + 61; 2 Bl. R. 76.


An it "covenant broken, and a cond. that neither lessor nor his eis shall assign binds the eis." 20 R. 138-140, 425.
A condition in a lease that if the lessor become bankrupt the lessor shall enter is good.

And also a condition that the term for yeare shall not be taken for the lessor's debts is good. (42) 10 R 544. 24 R 153.

2 R 219.

If a person holding a term for years an estate for life on condition that he shall not assign if the lessor attempts to assign the estate is ill for want of requisite; the attempt does not perfect the estate. 1 R 641. For if the deed of assignment is utterly void there is in law no assignment—If a condition subsequent express is impossible at its creation the condition is void but the estate is absolute. The condition being impossible at its creation is ab initio void and therefore cannot defeat a vested estate. It can not have any legal effect.

For example, a condition that if we shall marry a person already dead then being impossible is void and the estate is absolute.

The rule is the same if the condition should become impossible by the act of God or of the grantor.

Thus, if grants an estate to B that unless he die within a year marry B if C dies within the year the condition is impossible; is impossible; therefore the estate absolute. The case would be the same if D should during the year marry C. or that render it impossible for B to be married by D.
If the condition subsists as a law or a stipulation, repugnant to the nature of the estate, the condition is void. The condition operates precisely as if there were no such condition. 27 El 157. The condition being void, the estate is absolute.

In the first of these cases, the condition is void because illegal. In the second case, the condition is void for the grant and condition being inconsistent, the grant shall govern.

If an unlawful or impossible condition precedent be inserted in the grant, no estate is created. For the condition being void, the estate limited upon it is void.

The performance of an unlawful act can never acquire a right. If the act were already vested, indeed a void condition cannot defeat it.

See 27 El 157.

The performance of a condition is matter of fact provable by parole evidence notwithstanding Pown (on Con) v. Elliott 57 El 6. Barnard 90. Ex. payment of the matrige debt may be proved by parole.

Under estates on condition subject, full estates held in pledge.
Estate held in pledge are of 2 kinds.

I. Vivum valetum an estate granted to
be held by the creditor till the profits of
the estate shall satisfy the debt.

And when the debt is satisfied the
estate results back to the grantor or debtor.

This kind is out of use

Exptt 205. Park v. Hald 3 T. & B. 157

Mortgages.

II. An estate in pledge of the 2 kind is
medium valetum or mortgage

A mortgage is an estate granted by
a debtor to his creditor in condition that if
the grantor or his representatives shall pay
the debt according the covenant he
may recovey the grant or shall become void.

Exptt 205. Park v. Hald 157

This definition does not comprehend
all cases of a conditional grant made
as an indemnity to the grantee when there
is no existing debt is clearly a mortgage
as an indemnity to an endorser or
an indemnity to a surety.

Exptt 205. Park v. Hald 157

Where the grantor pays the debt
according to the condition the estate reverts
in the grantor without any act by the
grantor yet it is more safe to take a release
from the mortgage to the mortgagor because
otherwise the payment of the debt which is a matter
to be proved by parole evidence might be forgotten or
it might by death of witnesses become impossible to prove it.
And a b of equity will compel the mortgagor to release or pay off the debt for it is considered unreasonable that the mortgago
should withhold the release - face the mortgago to depend upon parole evidence for proof of the pay of the debt - or if he pleases
the mortgago may compel a reconvenance.

If the mortgago fails to pay the debt according to the condition his estate at law is gone forever bts of law construe
the condition according to the latter.

But bts of equity will allow the mortgago to redeem after satisfaction at law.

[footnote]
2 Bl. 158. Dowel in ch. 4
13. 105. 401, 447, 49. 452.

Thursday Dec 16th 1834.

The term mortgage in its original sense means the estate pledged but the term is frequently used
to denote the mortgage debt.

The condition of a mortgage deed is a dispensance intended to defeat the estate if the condition is performed.

The condition may be incorporated in the deed annexed to it imbedded or it a
separate from it - the effect is the same which one of these courses is taken.

The mortgage debt must be described in the condition. 1 Com. 387
with suff. certainty to enable subsequent creditors purchasing
to ascertain either in the condition or by inquiry ainiude 7 Com. 286
the extent of the incumbrance. 7 Com. 286. 3 Com. A 146
Matishes. If the condition is separate from the mortgage, and the deed is in itself absolute, but the condition if it refers in terms to the deed is taken with the deed, the two instruments taken together make the mortgage. Bowden 75.

If therefore the grantee of an estate of the nature of a mortgage, gives back to the grantor a condition that if the grantor pay a sum of money, the grantee will reconvey, without reference to any deed given, then the deed and the condition do not make a mortgage. Thos. & Co. of Eng. will enforce a specific performance. Beach & Baggart 1809. Bom. Taylor.

By the condition is subsequent, it follows that on delivery of the mortgage deed the mortgage is immediately vested with the estate defeasible indeed on pay of the condition.

But the said usage is for the mortgage to remain in possession at least till the day of payment. (3 Bl. 175) It has been contended in this county that the mortgagee is not entitled to immediate possession on what is called the mortgage. A material difference between a grant to secure a gift or gratuity and one made to secure an existing debt or duty.

In the first place neither of the money according to the condition discharges the whole obligation, but in the latter case the whole debt only is discharged the mortgagee lien on the estate is secured, it in the mortgagee but does not of course discharge the debt, if release from the mortgagee of the estate also does not discharge the debt. 26th 207a 207a 26 9 6 77 Bowdwell 6724. Co. 1215. B. 35 8.
The reason is when the deed is to secure mortgages a gift & the lien on the estate is gone nothing is left; there is no debt to be recovered but in the late case although refusal the mortgagor became entitled to recover debt & interest on his lands yet the debt being a duty distinct from the condition still remained. — Of late C & E have acquired a complete jurisdiction over mortgages & as they interfere in favour of mortgagees so also they do in favour of the mortgagees.

How mortgages are regarded in equity is an important inquiry. The common law has construed the condition strictly for non payment at the day the estate was vested absolutely in the mortgagee. C & E of equity consider the transaction 200% personal contract of the mortgagee & the mortgage is a security for the performance of the contract of the mortgagor as the actual owner of the land even after a failure to pay according to the condition. The jurisdiction of mortgagor almost entirely to equity & in Eqy the debt is regarded as the principal & the mortgage the incident & it follows that whenever the debt is paid the incident of the mortgage is gone & he becomes trustee for the mortgagee.

Pron. Dec 615, 2 Corn 90:11.
The right of the mortgagor to redeem a mortgage is called an equity of redemption. The equity of redemption before the forfeiture of the legal estate is called a legal equity. In equity, mortgage = mortgage in law. 

Part 6 of 9: a bill filed in equity to recover the estate to which the debt is due. 

Note on equity: In equity, the equitable estate is to be had but the equitable interest is not to be had. The equitable estate is often called a mortgage interest, and the equitable interest is often called the mortgage estate. 

The death of the mortgagor makes the mortgage void, unless the mortgage is executory. 

The mortgagor is bound to pay the principal of the mortgage, but the mortgagor is not bound to pay the interest.
of mortgage there is not an alienation. Mortgages
of the estate, nor will it affect any prior voluntary
disposition of the estate except so far as
it is necessarily affected by it.

Suppose then it settle land on one of
his family, afterwards mortgages the land.
The land may be redeemed by those who claim
under the family settlement. It therefore is
not alienation for it is consistent with the prior
voluntary disposition in the way of family settlement.

1 Vern 182. 327. 342. Forn on bill 15. 17.
2 Vern 474. 2 Ed. 22 brym 598.

The distinction between a mortgage
or an alienation has a material effect as to
questions of reversion or devices.

(See Sir A. Denman, Forn on sess 579. 614. 15
1 all & 6th. Forn on sess 18. 17. 3 all & 798.) Forn in ch 14
40. 4. 49. Forn 18. 3 Vesey 47. 680. 5 Do. 656.

Every contract for a loan of money for
pay of a debt secured by real estate or of a chattel real or not intended as a
disposition of the estate is in the form of a mortgage.

2 all 475. Forn on all 18.

And all private agreements made at the time of making the mortgage to prevent redemption
or redemption on any equity, or in equity, right to whom
absolutely void, the original nature of particular
the mortgage cannot be altered by any subsequent
contemporaneous agreement. 1 Vern 33. 190. 2 Vern 92.
192. 2 Tentral 364. Forn on sess 19. 21. 25. 389.
If at the time of making the mortgage it is stipulated that if the mortgagee fails to pay at a certain time the conveyance shall be deemed a sale, the stipulation is utterly void. "Once a mortgage always a mortgage." The object of the rule is to protect the mortgagee from the oppression of the mortgagee.

And it makes no difference whether the agreement intended to empower the right of redemption is in the same deed as on a separate deed, in a distinct instrument.

2 Simeon 93. 2 Vern 84. Comment P 103. Powell onulla 29.

Or even if the agreement is that the conveyance shall become absolute if the mortgagee fails to pay on the day provided the mortgagee will pay an additional sum of money through in equity. 1 Vern 485. 135. 2 D 6520. Powell onulla 28-26. 2 Cuv 94. This supposes the agent contemporaneously with the mortgagee.

But an agreement that if the mortgagee should elect thereafter to sell his eq of redemption the mortgagee shall have the privilege of preemption is good even the made at the time of the mortgage. 2 Eq ca 599. Powell onulla 26-7. This does not afford the mortgagee the mean of oppressing. This mariners once a mortgage always a mortgagee contemplates some collateral agreement made at the time of executing the mortgage.
But these rules do not impair subsequent mortgage agreements. 

If a subsequent mortgage sale of the estate of redemption, or an absolute sale of the mortgaged estate is good, so for the time of the mortgage. In the time of the mortgage, if the mortgage is decided the time of the mortgage is decided.

And there is one case of exceptions to the rule: Once a mortgage always. 

This is the case of a family settlement where the contract is between members of the same family and where a benefit or gratuity is intended in a certain event to the mortgage. In this case an agreement that in a certain event the estate shall become irredeemable will be good. E.g. will not enforce a redemption.

The reason is that this case does not come within the principle of the rule stated above. For in this case there is no danger of oppression or imposition on the mortgagee. 

An agreement that on non-payment at the day the mortgagee may sell the property and hold the surplus for the mortgagee is good. 

2 Eq. ca. 375. 1 Vern. 364. 1 Vern. 214. 232. 198.

1 Vern. 364. 1 Vern. 214. 232. 198.
A deed absolute by its terms cannot be qualified by a past condition. This is inadmissible even at common law without reference to the act of fraud — for at law a deed cannot be altered by parol.

But it is laid down that an absolute deed may be construed and treated as a mortgage when the fact there was a condition is inferable from facts which are notorious. Where there is no danger of injury. It was once decided so in Gorg; but afterward reversed by our own court when was then the supreme C. of errors. But the rule is laid down by respectable authorities.

Powell 65. Talb 60. 3 Mason 429.

Rice in G 526. 2 Atch 171. 3 Fla 267. (J. and 4)

These rules must be considered as mere dicta. It must be admitted that a strong objection to this rule arises from the act of fraud — the common law.

If there was a past condition, the rule be saying that such parcel evidence is admissible to show that an absolute deed was intended as a mortgage, that the defendant by fraud omitted the debt of the mortgage debt may be proved by parol evidence. If the mortgagee forgives the debt, the debt by parol the fact may be proved by parol evidence.

In case A made a mortgage to B & B on the deathbed, said to A I pay you the debt, parol evidence of that fact was admitted. Powell 335 5 Barn 90.
This parole evidence is admissible for it is in the nature of a fact in favor. It is an act which cannot in the nature of things consist in writing.

Vendor of real estate has a lien for the purchase money somewhat in the nature of a mortgage. 4 Kent C. 157:230.
Mortgages

The case of the mortgage on the estate

The mortgage has upon the delivery
of the title deed the legal possession, but if there
is an agreement that the mortgagee shall con-
tinue in possession for a fixed term, the mortga-
gee is considered tenant for years, but the agreement is merely
that the mortgagee shall continue in possession without any express time he
start at all. Pavel 667. 79 2 Bl 155 2 Cm 106.

The very fact that the mortga-
gee continues in possession at all after the
delivery of the deed is evidence presumptive that
there is an agreement that he shall continue
in possession till the day of payment. (So decided in New Jersey, U.S. court). If the mortga-
gee continues in possession without any express agree-
t, he is considered at law quasi tenant at will
as far as respects the right of possession.

Indeed as to the right of possession,
he is viewed in a light of equity as to the possession
as quasi tenant at will for 6 of equity do not take
possession after possession at law until regards to possession. So if law
had 6 of equity, he may therefore be sued in ejectment
by the mortgagor evicted without the time
notice to quit allowed to tenant from year to

This is the English rule and probably notwithstanding
the decision in the Circuit at New Jersey the rule will
would be adopted by our Circuit at present.
A mortgagee, then, left in possession is not like other tenants at will, obstructed into tenants from year to year. In this state however, the mortgagor may be sued in ejectment by the mortgagee without any notice at all to quit. 2 Com. p. 1. 445 2 Cum. 107.

The decision I think is obviously wrong. The prior ought to have the notice to quit to make a tenant at will is entitled. In New York the mortgagee entitled to 60 days notice to quit. 2 John 275. 44 Ib. 156 2 Cum. 107.

But a mortgagee thus left in possession is not like other tenants at will entitled to emblements, but he is not obliged to pay rents for he pays instead of rent. The emblements however must be applied to meet the debt of the mortgagee. Doug. 22. 66 67 5 70.

An ordinary tenant at will cannot underlet the estate, but a mortgagee may make a lease to another, yet it is valid unless the mortgagee elects to defeat it. He may at his election treat the under tenant as a wrong done by a tenant to himself, or he may permit him to remain tenant to the mortgagee. Doug. 22. bro. 606. 608 6303-5. Bow 374. 47 40 2 Cum. 107 5. Such an under lease is in effect the estale of an ordinary tenant at will.
But the underrenter of the mortgage may be treated as a trespasser without any notice by
the mortgagee.

2 Ib 34. Dow 74:8. 108:9. For the mortgagee is per se
may consider the entry of the underrenter as a trespass. *See him in ejectment* without any
notice. If the mortgagee may as before said
treat the underrenter to the mortgagee as
tenant to himself & compel him to pay to
himself all rent arrear & all accruing rent,
no notice to that effect. But he cannot
compel him to pay rent already paid to
the mortgagee, before notice. 40th 606.
Doug 26:9. Dow 68:80:1. See if the evidence is

The mortgagee when sued in ejectment
by the mortgagee cannot deny the mortgagee's
title by showing the title in a third person.

If therefore A makes a mortgage to B of land
which belongs to D, A cannot plead to an action on ejectment
that D owns the land. 7 R 768. 1 Bl 450. Dow 464. 2 Bl 295
308. He is estopped by his own deed.

On a similar principle if the
mortgager, sue his underrenter in ejectment
the underrenter cannot defend himself
on the ground that the legal title is in
the mortgagee. For here is something analogous
to estoppel. 17 R 760. Dow 470. 1 Noy 258.

For he has gone into posse under the
mortgage & enjoyed the benefit of the
possession & to create this quasi estoppel
a deed of lease is not necessary.
Mortgage

Interest

the mortgagee himself & all strangers of the
mortgage title which will entitle him to redeem.
2 Cor. 110.

As regards the mortgagee's ultimate
repetition of the mortgage is regarded
in eq. 4 for many purposes at law as the
real owner of the estate & the mortgagee's
right as regards the question of that
considered & called just.
2 Bum. 979. Doug. 606. 610

If then the mortgage is at a freehold
interest the reality is in the mortgagee & he
by remaining in poss. may gain a
settlement at law. He may also acquire
a right of voting but a mortgagee in
まで簡單 even in poss. does not acquire
a settlement or right of voting.

If the mortgage of a freehold does
his part pass under the denomination
of land or real estate. His interests
also be conveyed as real estate & require
all the solemnities of a conveyance of
real estate.

Song 616. 2 Wis. 302.
2 Bum. 975. Bow. 15. 76. 92. 113. 124.
170. 2. 9 Baw. 341. 1 Ack. 615. 2 & 3294. 212a. 61.
Still if the mortgagee commits waste, interest of
the estate will grant an injunction in favour of the
mortgagor if the mortgagor may not demand
the security of the mortgagee — 3 All. 728.

Paw 75.

But if mortgagee in hope settle timber, bond will not be by mortgagee
since innocent. — As to the end of the mortgage.

It is deft at different stages
As in between the time of receiving the
deed & before the time of payment before
the estate is forfeited.

As if at this time is precisely
the same as it was at common law before
foreclosure before b of eq interfaced.

The whole legal title is in harm
defeasible on the mortgagee paying the debt
on a before the day of pay. Of course the
mortgagor may if he pleases take immediate
recovery & lots of equity do mere interface
before foreclosure. 2 Vern. 156. Powd 79, 80, 228
See in Ch. 428. — Equity has no jurisdiction before
foreclosure, before this there is a complete absolute right of
ademption law & hence it is between the time of
delivering the deed & the day of pay before
the mortgagee making conveyance or lease it is
void as against the mortgagee, as the mortgagee
has then no estate except his conditio in
his favour. — Doug 22. Powd 80.

During this period the mortgagor
has no vested estat in the land at all but
march a contingent right to reseve it in
future. But during this time the mortgagor
may pass his interest by way of estate, precisely
as the owner of a contingent interest may convey
his interest,
And hence if a first lease land to B 4 then mortgage the same to C the mortgagee must still compel the principle to play the rent to himself because the mortgage has now the legal title to the demesne & rent is incidental to the recovery and he may compel them to pay arrears but not yet due before the mortgage was made nor the rent will before notice he had paid to the mortgagee.

When the lease of a term for years mortgage by trust the mortgagee in the nature of an assignee of the term provided the whole term is mortgageed is 9 "Covenant broken" The rule formerly indeed was that the mortgagee was not liable for the covenants of the lease unless the mortgagee took possession of the land. But the doctrine now is that the mortgagee is liable upon the covenants of the lease even tho' he does not take possession.

Doug 2:35, 444
Pyc 35, 83, 92. 2 Vern 275, 374. 1 Ves jun 235. 3 Bro. 659, 66. 172, 12
3 ath 512. Alb. 3: 21: 2. 2 Cin 112. 3.

If the mortgagee does take possession be it by all the opinions liable upon all the covenants with rents with the land. 1 Bro. 6, 105. 3 Py. 92, 1, 2 the tenant is really an assignee he then takes the profits.

* Or is he liable if only part of the term is mortgaged to him for instance if the reversion of a day a week is left in the mortgagee?
After the mortgage is perfected by non-interest
payment on the day appointed the mortgagor has the
mortgage even tho he has actually taken possession in law
indeed the right when the mortgage has is absolute.
Doug 610. 694. Wall 605. Pinal 70.

113. 170

The forfeiture of the mortgage makes
then this diff at law that the mortgagor that
then has the absolute title.
But the law
of equity is the law of mortgage.
After forfeiture the inst of the
mortgagor will not pay in equity under this
title of lands hereditaments for it prima facie it
will not so pay. There is the qualification however
that if the mortgagor devises all his lands to
having no other lands than those mortgaged
the mortgage inst will pay for the intention of the testator

governing 2 Vern 321. 1 Vern 321. Winsor 331

The mortgage is considered in equity
as having only a chattel inst until a fore
closure.

If he dies then after forfeiture before
foreclosure the mortgaged premises will go
to the executor not to the heir.

1 Vern 367. Powl 921. 170.
Interest of the Mortgagor.

The assignment of the debt as of the bond to carry with it the mortgage's rent in the land without any mention of the mortgage, and the principle that the

interest follows the principal

1 Pn. 455. Powell 453, 454. 2 Pn. 348, 428.

This is in equity, and not in law. For in law the assignment of the debt is nothing—

The devise of the land mortgaged by mere carrying the debt, Poole 162, 13.

The interest of the mortgagee, hence, cannot be taken on execution, Case in App. 12, 34, 41.

Because the mortgagee is not a chattel he cannot do any act of ownership which will encumber the estate of the mortgagor: if therefore the mortgagee leases the land for 20 or 50 years, he cannot plead the

right of redemption of the mortgagor.

1 Eq. ca. 610. Powell 49.

It is said that where the security was

defective, if the mortgagee would otherwise sustain

a loss, the lease might be good. But I think it

doubtful—1 Eq. ca. 610.

A mortgage even if a few years is

not allowed to commit waste. 3 T. 723

2 Vern. 392, 392. Powell 94. A bond will in such

case will grant an injunction to stay waste.

If however the security is defective i.e.

if the value of the land is small compared with

the debt a & of 29 will not interfere to prevent

the mortgagee from selling timber &c. but the

value of the timber thus felled must go to pay

the debt. This matter is wholly in the discretion

of the chancellor. Powell 95.
And in all cases in which the mortgage is a trust, the interest of the mortgagor is to be applied to the benefit of the mortgagee. If the mortgage is a trust, it is to be applied to the benefit of the mortgagee, but the estate in reversion of the reversioner may be incurred in additional to the principal debt. 1 Wilson 344. 2 Vern 344. 1 Den 95. 35 V. 44. The rule is equally beneficial to both parties to the mortgage because it increases the value of the inheritance to the mortgagee because it keeps his security good. If the mortgagee can estate at all he has no title at the time but afterwards purchases the land while the mortgage is in force, the sale will pass to the benefit of the mortgagee.

2 Vern 344. Prin 97. Rule the same if the estate is acquired by the representative of the mortgagee.

This rule however imposes that the new has a duty to hold for the old, very independently of any rule of equity the same would be case at law. A new rule of common law would result in the same rule according to the principle of estoppel. The declarant is estopped by the covenant in his deed to deny that he had title at the time.

If the mortgage of the term for years, is renewed, a renewal of the lease from the lessor at the end of the term, after the expiration of the original term, the new lease will be regarded as the renewal of the lease for the benefit of the mortgagee. On the original lease is considered in equity as the extinguishment to the new lease.
Every mortgage takes the estate subject to the same incidents to which it was subject in the hands of the mortgagor.

If therefore a having mortgaged an estate for life or for a term of years, and then attempts to retrieve it for the mortgagor forfeits his estate at the mortgagor's instance.

2 P. R. 1. 146; Pick. 4. 672; 591; 97. 106 (contra Pleas in Ey. 105).

On between mortgagor & mortgagee the latter ought not to lose the security, but as to the remainderman the mortgagee ought to lose his interest.

Is also is if a particular tenant having mortgaged his interest commits waste this forfeits the whole estate including the the mortgagor's interest, the right of the remainderman is paramount.

But if the particular tenant commits felony a treason he forfeits only his estate of redemption.

[Post III] In no commission of these crimes the crime can forfeit only his interest. For the right of the Crown is subject to the right of the mortgagee — being in the same case.

Who may claim a right to redeem —

The eq of redemption is called a trust, for the whole legal title is in the mortgagee, the mortgagee therefore regarded a trustee for the mortgagor immediately after forfeiture before

[footnote]

Any person having an estate under the mortgagee law the land subject to the mortgagee before it may redeem — of persons who have the land as a gift before mortgage may redeem. The his title is not good if the mortgagee — tho' it is good by the mortgagee he can hold the land, however only by redeeming.
If the mortgagor becomes bankrupt, his mortgage absences may redeem. His interest is transferred to who may claim. The heirs of the mortgagor may redeem.

Pope 64, 109. Doug 22. 1 Vern 35. 190. 1 Bn C 71.

If the estate mortgaged is a fee simple of the mortgagor dyes the heir may redeem or if the mortgagor devises his estate of redemption the devisee's right supervenes that of the heir—2 Ves 304 (109 Pope) 2 Barr 778.

An equity of redemption in heirship is governed by the same rules of descent will issue the descent of real property (54).

If a term is mortgaged the wife of the mortgagor may redeem Pope 64, 2 Ves 304.

And by the common law a just creditor of the mortgagor may redeem, but this is not the law of Court—that is a just creditor unless he has a lien by attachment he cannot redeem if judge in Court cannot be lien with attachment 3 Alt 200. 2 Do 440. 1 Vern 379 20 Bitt 104 Al 318 428.

In this state however, an equity of redemption may be taken in Eq by a bid the mortgagee precisely like a legal estate this is founded on the construction of our statute—This cannot be done in England—2 Alt 297. 132. And in this case in Court he who has linded on the Eq of Redemption may redeem, for he then becomes owner—
Mortgages

Who may redeem?

After the mortgagor's death, the eq.of remittance is by the English law upset to pay debts in equity + plain paper — that is, all debts without distinction of bond debts, deed debts, &c.

In this state, when an eq. of redemption is taken on Eq. it is abounded of a set-off proceed. like a legal estate — deducting of course the debt due from the value of the land.

The eq. with the proceeding completely vested in the Eq. the right of redemption.

But many other persons may redeem —

The widow of the mortgagor of the land, having no joint tenet settled on her from the land mortgaged, she may redeem if it extends only to a part of the land she may redeem the whole of the estate where part without redeeming the whole as the will of the mortgagor — the rule supposes the joint tenor to be after the mortgage if made before the mortgage she would be entitled to the land in exclusion of the mortgage —

At any consideration.

I suppose the mortgage here is made after marriage, and a joint tenor settled even after marriage will give the wife the power of redeeming the mortgage. (2) 1732, 193.

19. 2a. 2b. 1., 34. 9. 14. 1. 112. 1.

O The point here is made after marriage if the joint with the husband, not making the mortgage she bears equally with one third of the redemption money. So if she has the whole she will hold the land forever as the heir of the mortgage until the heir to reimburse her 1/3 of the redemption money.
As intimated, at law a life estate is next. Who may own third of the fee — This is a quiet rule — redeem?

If she did not join the husband in making the mortgage & she redeems she holds the whole land forever as the heir of the mortgagee unless she is reimbursed the whole of the consideration money.

The question is here supposed to be made before marriage, as is the supposed in all the preceding rules.

The reason why the wife ever joins in the mortgage is, to postpone the wife's right of dower to if the mortgage is made during coverture her right to dower is paramount to the right of the mortgagee.

When a free soil mortgage, her estate & marriage deprived the husband has a right to redeem being tenant by the courtesy of her eq: of reconstruction.

1. 2 Th. 603. 2 Cor. 112-115

But the mortgagee's wife is not entitled to dower on his death & she cannot therefore redeem. This supposes the husband to make the mortgage before marriage.

Dish 391. (see ante

There is no reason why the difference should exist between coverture & dower.
In principle the wife certainly ought to have the right to redeem.

In this state the widow in such a case is entitled to demand & therefore to redeem as in New York - 1 Vern Rep 587. 6 John 298
7 Id 275.

But to entitle the husband to convey in the wife's equity of redemption there must have been something similar to a seizure - an actual possession of the estate of redemption is not sufficient there must be something equivalent to legal seizure - i.e. they must be a possession & a receipt of the profits in the husband wife living cement - 1 Vern 298, 307. Pow 114. 116

A subject incumbrances as a 2d in 3d mortgage may redeem of the first - the legal title if in the first & the 3d cannot have the legal title without redeeming the first.

So also a joint creditor of the mortgage may redeem from the mortgagee but the title does not hold here except to "the date" - 2d in 170. 2 Vern 163. Pow 117-114

And the 2d mortgage by redeeming the first acquiring a right in the land to the ant. of the first mortgagee - able to the ant. of his own debt.
If a mortgagor is a jurist creditor, who may on an undertaking of the mortgagor redeem? the mortgagor himself has still an ultimate right of redemption out of the hands of all the mortgagors who have thus redeemed?

Suppose A mortgagor an estate to B then to C, now by that is a second lien on the estate. If then to redeem the first mortgage A may still redeem by paying to B his own debt + the debt of B and the ultimate right to redeem descends to the heir the devisee + to the devisee etc.
Real Property

Jan 3, 1835

No. 8

Mortgages

Who may order an eq. of redemption,

If there is a tenant for life + a remainder or
reversion in fee of an equity of redemption, the tenant
for life is to pay one third of the remainder man to
must pay two thirds of the mortgage debt.

And therefore if tenant for life pays the
whole his representatives may hold on to the estate
until the remainder man or reversioner pays two
thirds of the mortgage money. Dice in 67 68 44
Pond in 67 120 1 Ch 431.

The rule establishing this proportion
holds, however only when the proportions are
adjusted during the life of the tenant for life.

If the redemption is agreed upon & had during
the life of the tenant for life the proportion is as
before stated.

But if the redemption money is paid after
the death of the tenant for life his representatives
are to bear that proportion of the mortgage-

moneys while the actual enjoyment of the tenant
for life was worth

136 in 404 1st vol 120 2

If the mortgage money is payable on a certain
not yet arrived the remainder man or reversioner,
may exhibit his bill of the tenant for life requiring
him to keep down the end of the mortgage money
during his possession or lose the proportion of the
bill in the 3d rem. 182 11th vol 144 442

This is called a bill for tenant.
If tenant for life pays the whole debt and takes from the mortgagee a reconveyance and makes improvements on the land, the remainderman or redeeming from the representatives of the tenant for life must pay for two thirds of the permanent improvements.

But he pays no interest on the money and these improvements both.

No does he pay any interest on what the tenant for life paid to the mortgagee, 3d. 26. 126. 442. So it is the duty of tenant for life to keep down the interest.

An Eq. of Redemption is never a pet in law. For the estate of the mortgagee at law is forever gone after the condition is broken. Hence when an action at law is brought one who inherits an eq. of redemption he may plead nothing by descent notwithstanding the eq. of redemption.

But where a term for years or an estate for life is mortgaged there is a revision of this revision may be aptly at law, this the Eq. of Redemption more can be, 2 Vern. 61. 2 Ath. 294. Barn. 182.

But an Eq. of Redemption is a pet in equity. In equity a b. will compel a sale of an eq. of redemption for the purpose of paying the debt of the mortgagee. So if the b. of a mortgagee are obliged to resort to an Eq. of redemption he must apply the money to the payment of debts, 2 Vern. 61. 1 Vern. 411. 2 Ath. 294. 3 P. 309. 384.
The rule however supposes a deficiency of personal assets for neither an Eq of Redemption nor the estate is liable for debts while there is an eq of Redemption to be paid pari passu, so in equity there is no priority. 2 26 511. 16.)

In this state all eq of Redemption are assets at law. The rule is founded on the construction of one statute. It is in both assets in a strict sense.

The eq of Redemption is desirable for the payment of debts. In this case creditors are not paid pari passu. 2 205 411 2 Cuth 50. 2 26 63 19 118. 1 Nis 63. 69. 101. But this devise is good only in Equity.

There was formerly this distinction of an eq of Redemption was devised to a heir trustee to pay debts. the eq of Redemption was equitable assets. But if it was devised to an executor be it was legal assets but it is now held that in both cases it is equitable assets. He is liable for the payment of all debts. 2 26 63. 69. 1 15 118 11. 118. 16. 1 101. 1 20 130. 1

But the in general there is no priority for debts in equity yet a second mortgagee will be entitled to the payment of his debt before any gen creditor or before a subrog mortgagee because the mortgage has a specific lien. It is therefore preferred before other creditors. It will not be preferred before the subrog mortgagee because he is prior in time.

1 Nis 10. 1 2 130. 1.

This rule however is no exception to the general rule that in equity there is no priority of debts for the second mortgagee is preferred merely because he has a prior lien.
Mr. Powell says that no one can redeem except
him who is entitled to the legal estate but
the meaning is that no person is
entitled to redeem unless he has a vested
title in equity i.e. a right to call for the
legal estate by a bill in equity. If a well
creditor then is not entitled to redeem, he has no
equitable vested interest in the eq. of redemption,
A bill of equity will not allow a
younger son to redeem while an older is
yet living for the younger son has no vested
title in equity & no right to call for the legal estate
by a bill in equity. 1 Eq. ca 605. 1 Nen. 182. Post, 133.4

But if he in whom the title to the eq.
of redemption is, refuses to redeem any other
person having a claim to the mortgagor's estate,
may in equity redeem Bacon 30. 10b. 133.4
Post 120. id. after the death of the mortgagor,
indeed the rule is the same after he becomes bankrupt,
but in the common case of a mortgagor's
heir refusing to redeem his own creditors may
redeem but they may not redeem unless he
refuses for they have no title to the eq. of redeem
(5)

It is a prevailing principle of justice of equity that the right of redemption is a mere
creature of equity, these bills will always make
it subsequent to their own rules, therefore
he who seeks equity must do equity.
And hence a lot of equity will occur. But it is a redemption either absolutely or conditionally. The court, as the justice of the case may require. The holder, redemption not only as to the mortgagee but as to all who may claim under him a right to redeem. 2 Vern. 350. Cow. 661.

For example a mortgagee applies to redeem on part of the debt provided he cannot set aside the mortgage in a lot of law. A lot of say in such case will not decree a redemption unless he will withdraw his suit at law. On the principle that he who seeks equity must 2 Vern. 536.

So if a mortgagee having previously attempted to set aside the mortgage at law, having failed, he then applied to redeem this mortgage, it will compel mortgagee to pay the expenses of the mortgagee in the suit at law or not redeem. 2 Vern. 356. 507. 1 Vern. 245. 2 Eq. ca. 325. Pow. 135-140. 470.

There are various other cases in which a lot of equity will impose conditions.

The mortgagee can never compel the mortgagee to redeem before the day of payment. Yet a lot of equity in case of a hard bargain will decree that the mortgagee may redeem before the day of payment if the value of the land mortgaged suddenly rises in value so that the rents are not sufficient to satisfy the debt later. Before the day of payment. 1 Vern. 132. 183. 394. Pow. 377. 4. 124. 137. 9. Provided the tenant satisfaction of the debt.
If mortgagee is entitled as the mortgagee to have a right to redeem, a bill to redeem a lot of land will not decree redemption until the mortgagee gives up the possession. 2 S. 120. This is not an act of fraud; no stuffing, no unreasonably.

If a man mortgage black acre to secure one debt, and white acre to secure another debt, one of the securities being insufficient, the other deficient, the mortgagee may not redeem one piece of land without redeeming the other. 2 Vern. 267. 268. 1 D. 29. 245. 1 Vern. 207. 286. 1 D. 29. 245. 1 Vern. 245.

If the same rule applies, where the mortgagee is how applies to redeem vide. 2 S. 125. 26. 22. 1 Vern. 245.

The interposition of a bill of equity in a case merely equitable is said to be discretionary. Therefore a bill may say that he will not decree in favour of the plaintiff until the plaintiff will do so and so. a bill may not make a new contract on the ground that the party altering the contract but they may withhold their interpositions until the plaintiff will agree to some terms.

As in the last case if the mortgagee had brought his bill that the mortgagor should redeem both the pieces of land a bill of equity would not make such a decree for that would change the contract. The discretion of a bill of equity consists in withholding its interposition not in extending it.

Mortgage

Terms of

Redemption

The interposition of a bill of equity in a case merely equitable is said to be discretionary. Therefore a bill may say that he will not decree in favour of the plaintiff until the plaintiff will do so and so. a bill may not make a new contract on the ground that the party altering the contract but they may withhold their interpositions until the plaintiff will agree to some terms.

As in the last case if the mortgagee had brought his bill that the mortgagor should redeem both the pieces of land a bill of equity would not make such a decree for that would change the contract. The discretion of a bill of equity consists in withholding its interposition not in extending it.
The mortgagor of a mortgage may hold the land of the mortgagor and his heirs until the whole debt is paid whether he gave more or less than the whole debt. If the purchaser paid more the mortgagor may redeem by paying the whole debt. 1 Vern 536. 464. 476. 1 Wali 335. 1 H. 1410. 1411. If he paid less the mortgagor must still pay the whole debt or not redeem. 2 Vern 127.

But as at a subsequent incumbrance on a leasehold mortgage the purchaser if he gave less than the sum due can hold only for the sum he gave + the sum incumbrancer may redeem by paying what the purchaser paid. The subsequent incumbrancer has as good an equity as the purchaser. But I think the reason for this rule is unsatisfactory. The rule ought to be different. 1 Vern 476. 464. 463. 353. 1 Eq 630. 1 Vern 49. 1 Wali 141. 142. 1 Vern 129. The rule seems to take from one man his right to preserve another from loss.

If the mortgagor is indebted to the mortgagee otherwise than by the mortgage debt it was repeatedly held that the mortgagor could not obtain a decree to redeem unless he paid both debts. But this rule has been denied. It thinks properly denied. 1 Vern 411. 2444. Salk 84. 2 Vern 639 603. 1 Wali 343. 3442. 3 Bro 69 162. 1 Wali 4373. 46376 386. It has always been held that if the mortgagee had brought a bill to foreclose the mortgagee could not have been compelled to pay both debts. 1 Vern 511. 515. 2 Vern 603 (3 Ey 397 contra). 1 Wali 383. It was only when the mortgagor was *in that such condition was imposed.
Yet if the mortgagor's heir bring a bill to redeem he must pay both debts this according to late authorities the mortgagor himself would not have been compelled in such case to pay both.  

2 Rev. 245. 13 P. 1114. 1776. 1 D. 450. 3 Att. 630. 3 Bro. 691. 62.

The reason of this is if the heir was allowed to redeem without paying the debt not secured by mortgage the heir would immediately make himself liable for the debt whereas he was not before made personally liable to pay the other debt and circuity would beoccasioned by not making the heir pay both debts.

But if a bill were brought to enforce the rule w? be difficult, conditions cannot be imposed on a debt in Chancery.

If a lease for years is mortgaged & then a new debt is contracted by the mortgagor & then he dies his executor cannot redeem the mortgage without paying both debts for the reason above. 2 Rev. 177. Once in 67 P. 5. 3 Leech 260. Post. 144:5.

In the case of the executor it makes no difference whether the debt not secured by mortgage is a simple contract or a bond debt. But in the case of the heir the debt must be a bond debt or he is not obliged to pay it on redeeming. for here the reason gives the heir no option the land w? not become liable to pay this debt when redeemed by the heir & therefore no circuity is prevented by decreasing the heir to pay both but on the other hand such a decree w? make the heir liable where he was not otherwise liable.
If there are several incumbrances on the mortgagor's land, besides the mortgage debt, the debt will be preferred to all the incumbrances for that debt. The bond debt is in lieu of the land, and a subsequent incumbrance has a higher claim both in law and equity to the land covered by the mortgage than any prior incumbrance can have.

2 Atk 52; 3 John 246; 1 Nod 17; 3 Atk 353.

3 Mill 14; 3 Mill 145.

This rule holds of all subsequent incumbrances as of prior incumbrances, only that it holds also as to the assignee of the mortgagor who may redeem without paying. Now, under the act of fraudulent conveyance the devisee as well as the heir must not only pay the mortgage debt but the debt secured by another debt must I suppose be bond debt. See in 1 Eq: Ca 325.

The assignee may redeem without paying more than the mortgage debt, his equity is like that of a subsequent mortgagor, he has an interest in the land Nov. 27, 1626. Eq: Ca 325.

But the assignee of the mortgagor has the same equity as the mortgagor has himself if he has a bond debt as the mortgagor himself would have had in the same case.

(3 Mill 145.) If part of the mortgage money Nov. 27, 1626, has been paid, a further sum that the mortgagor cannot redeem without paying the latter debt. But this rule must now be qualified.

Where the mortgagor is to use the site to a bill in ch. that it will carry the debt beyond the principal penalty of the principal debt, and to more than the penalty. 3 Eq: Ca 611. 3 Atk 573; 1 Nod 146. 7.
But on a bill to foreclose the debt, the court cannot extend the debt beyond the penalty for the debt has no discretion to increase it, and the debt to a bill (ante) 1 Ch. 154. Con. 144. 2 B. & C. 32.

Laws of late have of late sometimes given more than the penalty, where the principal did not exceed the penalty. But the decisions on this subject are contradictory.

The mortgagees may be defeated if his right of redemption by lapse of time after the forfeiture when the mortgagee is in possession, but when possession by the mortgagee under a forfeited mortgage is not for 20 years a defeat of the equity of redemption for mortgages are not strictly within the 20 years limitations for that it does extend only to legal estates (Con. 144. 1 Eq. 815. 3 P. Wms. 383) if the estate of the mortgagee is an equitable estate.

There is another reason why the 20 years limitation does not run at all is that the mortgagee possession is not adverse to the mortgagor for he holds under a trust acknowledgment of the mortgagee as tenant in possession cannot be a defeasor. There is nothing with any title to an owner of the mortgagor he goes in under the deed of the mortgagor. But 6th of Eq. 80 foreciate the title as to consider it as possession after the forfeiture by the mortgagee as prima facie a bar to the mortgagee. In Lamb, the time is be fifteen years. 1 Eq. 3d 315. 3 P. Wms. 237. 2 B. & C. 313. Con. 144: 160.
The grounds of this rule is a presumption that the mortgagor has abandoned all through redemption of redemption, and another reason is the difficulty of making up the accounts between mortgagor and mortgagee, but another reason is the policy of discountenancing stale claims, which was the principal reason of making the law of limitations.

The presumption then is that after 20 years' possession after forfeiture by the mortgagor the mortgagor has abandoned the right to redeem but circumstances may rebut this presumption. These circumstances are such as bring a case within the saving clause of the law of limitations in the case of a legal estate.

As where the Eq of Redemption when the mortgagee takes possession after forfeiture is owned by an infant a some covert an idiot, a person beyond 20 years of any circumstances which shows that the intention of the mortgagor of mortgagee has been recognized by the mortgagee within 20 years before the bill brought will remove this presumption. 2 Vent. 340. 1 B. 

2 Cth 335 2 Vern. 618. If the mortgagee has income interest in the mortgage debt within 20 years, etc.

Now the time from which this presumption begins to accrue is that of the mortgagor's taking possession of a forfeited mortgage or at the time of the forfeiture when the mortgage is already in possession. The presumption here commences until the forfeiture. In before the time the mortgagor had no means of redeeming and obtaining as either in law or in equity.
Since of
Redemption account of rents of profits, the fact rebuts
the presumption of removal the presumptive bar
26 years from that time. 21 CR 333.

The time allowed for redemption
after the removal of any of the legal
disabilities mentioned before, as infancy of
10 yrs in England, 7 yrs in this state, following
the 26th of limitation, 3 & 17th. 207. 1st ed. 147.

And if any fraud has been practiced
on the mortgagee to prevent his taking
advantage of the right of redemption, no
length of time will operate as a bar to the
right of redemption. No length of time will be
relief as a fraud if, where it is made a condition
that the mortgagee should redeem with his
own money, or where the deed was made absolute
and falsely read to the mortgagee. If mortgagee remained?
in fact more than 26 yrs. 21 CR 65. 1st ed. 157.

But if the 20 yrs have begun to run
the intervention of any of the legal disabilities
will not save the right of redemption. In
such case also the 26th of limitation is followed.
As suppose upon forfeiture the
mortgagor taking possession while the mortgagor
is within the realm; if he immediately leaves
the realm 20 yrs, the eg. of redemption is prima
facie gone from the mortgagor. 21 CR 4138.
1st ed. 315. 21 CR 333. 1st ed. 152.
But when it agrees that the mortgagee, time of redemption, shall take possession and hold until the rents of profit shall satisfy the debt, no length of time will bar the right of redemption. For the possession is here not adverse, but on the other hand this according to agreement. 1 Mere. 118. Prov. 156.

And here is no chance for the presumption of abandonment to arise, the mortgagee could not yet possess until after the debt is satisfied.

And in the case of a real mortgage, length of possession by the mortgagee is never a bar to the right of redemption.

For a real mortgage is never even at law suspiocous. Prov. 356. 1 Ath. 363. 1 Pol. 291. 2 Pol. 201.

Indeed any act of the mortgagee, whatever by will he has tacitly recognized the right of the mortgagee to redeem will preserve the right of redemption so far from that time.

And if the mortgagee has entered into a train to perfect the act of redemption, the mortgagee may remain so good from that time. 2 Eq. 1296. 1 Bc. 7699. 5 26 1241

Prov. 154. 8. If the mortgagor brings a suit to foreclose, the tenant recognizes the right to redeem.

If the mortgagor continues in possession, the right to redeem is never barred.

Prov. 1501
Device of mortgage.
The end of the mortgage & mortgage is
devisable & when the end of the mortgage is
devised the devise may foreclose 2 tum. 166,
for devise is a testamentary assignee of the mortgage.

And under the words "all my mortgage" the
whole end of the mortgage in the mortgage
will pass, without any words of inheritance.
This was formerly deff, but the rule is
correct for a mortgage is only a chattel in the
mortgage 2 Burn 97 & Barne 170 (Bro 6 447 9 50)
the whole end of a mortgage will
pass by such words in a devise as in case of
a devise of legal estate will only carry a
legal estate. On the other hand, the mortgage
will not pass under such words as these "all
my lands "all my houses" etc. (ante) Burne 437,
2 Eq. ca 626. 2 Vern 621. 1 Vern 3. 2 Vern 357.

If the mortgage devise his end the devise
may bring a bill to foreclose & the heir of
the mortgage need not be a party, for it
was formerly held differently for the heir
has no title to the land a mortgage
2 tum. 175 475. 1 Eq. ca 318.

It has been questioned whether a devise
of a mortgage will be good until thecircum-
tance required in the deed of devise of a
foreclosure. But it is evident that it would be
good, for the mortgage is a chattel thing of not
2 tum. 175 9.
Priories of Incumbrances

If there are several mortgages on an estate, priority of claim takes place between according to the date of the several incumbrances, if their deeds of security. As prior est tempore potior est in jure. 2 Vern. 524. 1 Ed. ca. 142. 2 Vern. 81. 2 Vern. 477. Tal. 68. Port. 181-190. And in this respect mortgages stand on the same ground as judgment statutes. The result create being according to their respective dates.

But this priority may under some circumstances be forfeited to prior incumbrance be postponed to a later one. This happens first where a prior incumbrance has been guilty of fraud or neglect, to the injury of a subsequent incumbrance.

And 2. Where a subsequent incumbrance purchases the legal title for the purpose of taking his mortgage to it. of excluding a prior incumbrance called laches. 2 Atk. 429. 3 Ed. 117. 250. 1 Vern. 360. 15 Ed. 75. Port. 183-185. 194-5. Vern. 187. 8. 2 Vern. 573. 855-2410.

If a first mortgagee conceals his mortgage by artifice to induce a third person to lend money on the same security. the third person is prior to that of the first. If a first mortgage is present when I S is lending money to the mortgagee on the security of the mortgagee’s premises, he holds his interest the 2d mortgagee is will be prior to the first. Roberts, 528. 9. Barna. 101. 2 Atk. 429. 1 Port. on Con. 132-5. 1 Vern. 370.}

Pre-c. 67. 35. Port. 181-183.
If the first mortgagee is witness to a second mortgage deed of the premises, and knowing the contents of the deed does not make known to the mortgagee he will be responsible to the second

And it has been held that in this case the witness shall be presumed to know the contents of the deed, but this is a harsh rule and probably is not law. Neva 6. 1837-6737

It has disappeared of by Harrell 1847, on common experience the witness knows nothing of the contents.
Real Property

Mortgages. — Modes of losing priority.

If the first mortgagee is guilty of any neglect by not another is encouraged to advance money on the same security the first will be postponed to the second as if a first mortgagee leaves the title deeds in the hands of the mortgagor & in consequence of this a third person is induced to lend money on the same security this third person will be prior to the first mortgagee.

For while one of two innocent persons must suffer the who is guilty of the neglect which occasions the necessity must suffer rather than the other.

Res. 360. 1 Nen. 136. 5 P. W. N. Y. 280

This rule however has no application to the law of this state for here title deeds are no evidence of an absolute right as it is in Eng. But registering is here evidence of title — Here title deeds are never delivered over to the purchaser.

In Eng. the mere act of pledging of title deeds is a lien upon his land of a b'f Eq. will enforce this lien — It makes an irrevocable mortgage.

Res. 1296. 18 East 486.

This rule too is inapplicable to this state.

How far such a pledge would be regarded as between the parties in this state I cannot say but as a third person it can have no effect. If this act does not appear on the public register —
If one who is about to lend money on a mortgage inquires of a former mortgagee if he has a mortgage on the estate & the mortgagee denies that he has any mortgage the former mortgagee will lose his priority if he knew that the latter was about to lend money on this security did not. (2 Rev. 554. Prov. 189:90.)

For a man is not bound to satisfy insipid curiosity.

Where a subsequent claimant obtains the legal estate he becomes prior to any other.

The first mortgagee always has the legal estate & the subsequent claimants have from the mortgagee only an equitable estate, but if a subsequent mortgagee purchases from the first mortgagee the legal estate he may thus protect his equitable estate by the legal estate. For where the equity is equal the legal estate must prevail, this is the great principle on which is founded the doctrine of laches.

They suppose these mortgages in succession to A, B & C, how C by purchasing A's mortgage has a priority to B not only for A's mortgage debt but also for the debt due to himself. There is this proviso that but the time of lending had no notice of B's intermediate mortgage. 2 Trent 557 Case in Ch. 226. 1 Mov. 127:8. 2 Ves 575. Stra 240. Post. 198, 149, p. 125.
Why does it obtain a priority over B for both Sack's debts? Because the equity is equal to B, has the legal estate in addition to equal equity with B. If, however, at the time of binding B, even if Sack gave an equal mortgage to B, he has not then equal equity with B in respect to his own debt. 1 Term 229, 2 Dttb 59, 170, 629, 2 Term 577. (1 Term 229, 2 Term 577, 2 Vent 329, 38 Term 329, 212, 251: 7.)

But the third mortgagee may thus tack the one he had notice of the intermediate mortgage at the time of making his own mortgage if he had not such notice at the time of making the loan or of contracting the debt for then he does not want only interfere with another man's right, if there is nothing inequitable in it. (20)

As to this last case if one of two innocent persons must suffer with any fault on either side each has a right by any legal 3 56, 379 means to catch the tabulae in Naufragio! 353 195, 644 and the underincumbrance may thus tack 329, not only by purchasing the first mortgagee but by purchasing the first incumbrance as an outstanding term, a judgment, a statute, a merchant, a staple, or a recognizance.

An outstanding term is meant a long term created by an ancestor who wishes to make provision for young children. It is placed in the hands of trustees until the heir pays to young children certain portions and obtains a release.
The great rule of priority is subject to the exception, where one of the parties has more equity to each for the legal estate than the others, the the right to each for the legal estate is not perfect he is precluded to prior incumbrance.

If there are several incumbrance, a sub debt incumbrance has contracted for the legal estate he is bound to pay for it, tho the legal estate is not actually conveyed to him, nor has he yet paid the money for the legal estate. 21 Ilis 456. 21 Ilis 660. 21 Ilis 474. 214 212. 261 240 438.

The principle of this rule is that equity will consider as done what ought to be done or have been done. This is an universal principle in equitable cases of equity, in the case of securities, which will hold the \( a \) will enforce.

If a sub debt incumbrance has charged a prior satisfied incumbrance, judge to all carry the legal estate he will by this means obtain a priority over a mortgage made before his. 21 Ilis 157. 21 Ilis 359. 1579. (Handraft 172-30m b a) 21 Ilis 281 1752 see argument.

A satisfied term is one in which the tenant is the case before supposed to the parties but not taken, 

A satisfied mortgage is one paid but paid after forfeiture in all cases if not released it still carries the legal estate. Suppose then 3 mortgages to A B & C. If C’s mortgage is paid after forfeiture but no conveyance to make this mortgage then purchased by C will give to it the legal estate. Therefore a priority to D.
The principle of this rule is that in the case supported & has equal equity with B. & the most trivial circumstance will give B. claim the preference.

And this rule holds the the subject incumbrance obtained the legal estate without paying a forthing for it 1 Eq. ca. 332. 2 Vern. 279. Prov. 2 214.

If the subject incumbrance has the actual possession of the prior mortgage, it does not convey the legal estate. Whether he has bought it or not, the mere possession of it will give the subject incumbrance the privilege of tacking the slightest circumstance turning the dealer. This rule prevails not in this state.

It has been determined that if the subject incumbrance obtains the evidence of the legal estate by fraud even then he will have a priority over the intermediate incumbrancer. 2 Vern. 157 126. 52. Banbury. 295. 1 Prov. 215. This rule does not satisfy I'll very well.

Where the first incumbrance purporting to carry the legal estate is defective in respect, it will carry no privilege tacking to the person in possession of it. Thus suppose an absolute deed made to A. will be deficient in legal requisites 1 by purchasing et obtaining no priority over B. 2 Vern. 034. 1 Prov. 340. 2 Eq. ca. 592. Prov. 215.

For now the purchaser has not the legal estate.
If a subsequent incumbrance has not equal equity with an intermediate one he can obtain no priority by purchasing that will carry the legal estate. A creditor therefore cannot by purchasing the legal estate take to that legal estate his judgment, supposing him to have obtained a judgment for the 6½ cent is but a quiet one of the subsequent incumbrances have a specific lien the equity therefore is not equal for a quiet lien in equity is always less than a specific lien. 2 P.R.M. 491. 2 T.C. 662. Also in Ch. 494. 310. 1 Eq. ca. 325. 4 Eq. 224. 6. 2 Eq. 347.

And a subsequent incumbrance can obtain no priority by tacking by purchasing in any incumbrance will does not carry the legal estate. (As suppose from mortgage if D purchases B's mortgage so obtains for his own debt no priority over C. For he has not the legal estate. 2 P.R.M. 495. 1 T.C. 773.)

A prior mortgage purchased in will of subsequent incumbrance will give no priority unless it is foreclosed for a lot of Eq has no concern with it before Jnstricture. 2 Vern. 156. 4 Vern. 228. 9.

And in such a case as this if the 6th of Equity should decree a priority in favour of the third aet the second the latter pays up the debt before Jnstricture & then the legal estate is in the mortgage.
A prior incumbrance having the legal estate may tack a subje\textsuperscript{t} of money lent on the same security so as to gain priority for the last loan before a subje\textsuperscript{t} incumbrance provided however the first mortgagee did not know of the subje\textsuperscript{t} mortgage when he lent the money for if he did know he would not then have equal equity with the subje\textsuperscript{t} incumbrance.

For when he lent the money without notice, he has equal equity with the subje\textsuperscript{t} mortgage.

If the first mortgagee obtains a judgment he may tack on an intermediate mortgagee \\textsuperscript{2} by \\textsuperscript{1} 1677-1687, 2 Eliz. 3rd, 1662. (2 D. & P. 552, 3 D. & P. 494, 2 D. & P. 662.) 1 Eliz. 3rd, 2 Eliz. 3rd, 3rd. 2 Eliz. 3rd, 2 Eliz. 3rd, 3rd.

When the prior incumbrance is defective a subje\textsuperscript{t} mortgagee with notice of that mortgage will have priority over the prior incumbrance not by tacking for he does not need it for the legal estate is at issue in him.

20th 1677-1687, 2 Eliz. 3rd, 1662. 3 Eliz. 3rd, 1664. 4th, 3 Eliz. 3rd, 1664.

I doubt this rule the second mortgagee with notice certainly has not equal equity with the prior incumbrance.

An defective mortgage will in equity be enforced not only at the mortgagee but at the subje\textsuperscript{t} creditor of the mortgagee who have no specific been upon the land for the mortgagee can in equity be forced to supply a good mortgage when it was first defective. By claim under the mortgage he is liable to the same equity. 2 D. & P. 552, 3rd, 494, 1 Eliz. 3rd, 320. 2 D. & P. 554, 1 Eliz. 3rd, 494. Equity is considered as done what ought to have been done.
Notice

If the first mortgage contains a clause making the mortgage security for future loans of the mortgagee, not knowing if any other mortgagee lends to the mortgagor money, he will be allowed to tack this money to the original mortgage; but if he had notice of the subsequent mortgage when he made the second loan he will have the right to hold for the second mortgage if the subsequent mortgagee had notice of this clause respecting future sums of money in the mortgage.

Brown 235, 236. Farmer 39. Sec in 62 336 2 366 361 2 380 420. 5 420. 3 423. The future loan has relation back to the original contract and will be part of the original mortgage debt.

But suppose neither had notice. I suppose in that case the first mortgagee would have priority for he has equal equity, and in addition the legal estate.

In the state such a clause a? have no effect for here the incurrence and must appear on the record, and here the same does not appear this clause does not appear. The right of tacking incurrence seems to depend very much upon notice.

Notice is of two kinds, actual and presumptive. One is paid to have had actual notice when he has been subscriber to any instrument at the time in question; it subscriber as a party, and when regular notice has been served upon one party. General rumour is not actual notice. Notice by a party to or person is not actual notice (16)

Once where one receives information from a
Preemptive notice is a conclusion of Preemptive law that a person has notice when actual notice cannot be proved.

Ex. A made a deed to B reviving a power of rescission B contended the same was subject to C. A afterwards invoked B this was held to be a good rescission of B. For any purchaser, he ought to examine the title deeds. 1 Nrem. 819, 296 U. 2 Eq. cas. 515. This example could not happen under our law for a clause of rescission must be upon the public record.

If B devises land to a subject to certain legacy & A mortgaged the land to B, who has no actual notice of the legacy, yet he is deemed to have notice for he ought to search out the devise. This case is applicable here. 1 Nrem. 815 (16) Pon. 257.

Where an executor sells the personal effects of the testator the purchaser is not presumed to know any charge upon the effects & he will hold agt the person who has the charge on the effects. An imputation of evidence of title to personal property. 1 Nrem. 173, 3 All. 230, 10 Nrem. 441, 56. Rob. no J. & Co. 609, (n) 2 Nrem. 444. And the purchaser may with imputation of fraud or negligence by the other of the vendor as evidence of title need not look at the title deeds at the will of the vendor. Those in whom favor the charge is made must look to the order.

If there is collusion between the seller, vendor, purchaser, the latter will be liable to the former charge. 2d 301.
Presumptive Notice

If a deed creating a charge upon an estate is delivered over to an intended purchaser, the purchaser is presumed to have notice of the prior charge of the presumption cannot be rebutted for it is his duty to examine the title deeds. 2 Nen. 384. 2 Nen. 436. 3 Nen. 266. 271.

A recital in one deed stating a granting an incumbrance on the estate created by another deed is presumptive notice that he who has had possession of the prior deed has had notice of the incumbrance 2 Atk. 547.

1 Nen. 387.

And equally whatever facts are sufficent to put a party charged with notice on inquiry is deemed notice in Equity.

Upon this principle when certain infant children were of full age found a certain person in possession and paid rent from that person this was deemed sufficient notice that a former lease was made to him by their guardian and their acceptance of rent was deemed a ratification of the lease--in the possession of the third person was sufficient to put them on inquiry.

1 Atk. 490. 522. 299. 970.

And hence possession by a prior mortgagee is sufficient to put a person afterwards making a mortgage sufficient notice of the prior mortgage.

And notice to any agent under the subject matter in question is notice to the person himself. 1 Nen. 61. 9. 2 Nen. 477. 415. Pow. 272. 2 . 289.
And this rule holds where one person is agent for both parties. *1 Ves. 65. 216; 2 Mov. 689.

But a judge, the upon record is not deemed notice to any third person for this is not an ordinary common appearance. If then a has obtained a judge of 1B of 1B afterwards mortgage to be. It is not deemed to have notice of A's judge a subseqt mortgag may tack upon a judge therefor—* Mov. 285:5.

1 Ch. 35 107.

It is doubtful whether the doctrine of tacking is applicable in this state for the records are deemed notice to all mankind. But yet there is an analogy in the English law which seems apt this rule for there are counties in England where mortgagor are recorded & yet tacking is allowed in these same counties. What purpose then do these records effect in England? They appear to be good for nothing—* 1 Eq. 36 618. 2 R. 609. Mov. 285:6.

Yet the English rule does not of course support the opinion that that a subseqt mortgagee may tack in these counties; the only case decided is that if a person having a mortgage lends money after a subseqt mortgagee he may tack but perhaps this is not sufficient to support the rule that a subseqt mortgagee may tack whereby is kept. * Mov. 287-92—while the subseqt mortgage is recorded a rather when the mortgagor is recorded—
But a subsequent mortgagee having actual notice of a prior mortgage if the prior mortgagee is not registered the subsequent mortgagee is registered the second mortgagee will obtain a priority over the prior mortgagee they have upon registering it according to Corv. 1412 257 116 64 3 Ad 64 6 286 664 2 Ad 275.

In the subsequent mortgage here the notice while the registering was intended to give him.

But a subsequent mortgage registered is preferred to a prior mortgage not registered where actual notice is out of the question. 3 Ad 64 1 Ves 64 2 alt. 775 Pow. 256 4 2 Br P C 425.

A purchaser for valuable consideration will hold as to a prior voluntary settlement even when the purchaser had actual notice of the prior voluntary settlement or the principle that a voluntary conveyance is fraudulent as to subsequent purchasers as a mortgage e.g. is the prior voluntary settlement void as to subsequent purchasers is void and notice if it is no notice of a void conveyance.

1 Eq 324 610 36 7 711 9 East 57 10 63 64 145 2 New 332 143 2 132 13 432 13.

This rule has hitherto been much complained of and I think by reasonably complaint of for the reasoning made use of begs the question for the conveyance void if voluntary is made void as to a subsequent purchaser for value it as dabbers on the ground that the purchaser would be fraudulently injured by the conveyance without notice. But in the case supposed he has notice. 1 New 32 1 432 13.
If one purchases with notice of a prior encumbrance he is held to another, the second purchaser will hold as if his grantor had had no notice of the same. The principle is this, that he who has no notice holds precisely as if he held directly from the mortgagor, and therefore stands in the same ground as if he had purchased from the mortgagee without notice. And if one purchases with notice of a prior encumbrance from one who has no notice of the prior encumbrance, he is deemed to have no notice for he stands in the place of him from whom he purchased who had no notice (23). The prior encumbrance cannot be injured by this rule. The assignee might have tacked to the estate all the advantages of an encumbrance with notice. The assignee by taking the same privileges does not injure all the prior encumbrance.
There was formerly much question whether the mortgagee's estate should go to his heirs or to his executors at his death. 

But it is now settled that the money due to the mortgagee should be paid to his personal representatives unless the mortgagee manifests a definite intention as if he purchased the Equity of redemption or forecloses in which case it goes to his heirs. (If he has taken actual possession.)


For it is a general rule in Equity that the fund which has been diminished a charge by any debt shall receive the avails of that debt. Now as the mortgagee is supposed to lend so much money to the mortgagor the personal fund has manifestly been diminished; therefore the mortgage debt must be paid to the personal representatives.

But if the debt is made payable to the heir or executor of the mortgagor on the day of payment may pay either to the heir or executor. Yet this is made payable yet if it is not paid on the day of pay the mortgagor must at his peril pay to the executor. The reason of this distinction is that before foreclosure a mortgagor has no jurisdiction of the mortgagee fulfills his agreement by paying to the executor a heir.

Port. 299. 1 Ch. 62. 283.
Mortgages.

Mortgages inst.
in his death,

Where on a settled mortgage the
mortgagee pays the debt to the exor. the heir will
be compelled to reconvey the mortgage to the
mortgagor if he is no more than a trustee, he has
(1 B. 49, 50, Port 300-2) the legal title

We have a lot on this subject when the
heirs are infants in which case the executor or
the guardian of an infant heir may make an
effective reconveyance of the mortgage and
will reconvey the legal title (3 T. 32, 519 1st Bomb)

But there was no need of this if for
upon common law principles the act of an infant
are valid if that act is such as they may be
compelled to do in a lot of equity therefore in
this case their reconveyance would be valid.

3 B. 411 1801

And if a mortgagor should by
ignorance or on a settled mortgage pay
the debt to the mortgagor’s heir the heir
will be compelled to pay over the money to
the executor; but if the heir is not
responsible the mortgagor would be obliged to pay the
debt to the executor notwithstanding payment to the heir.
2 Vent 3418. Port 302.
And this the mortgagee is to do before Mortgaes's
forfeiture in all cases if the terms of the
condition are to the mortgagee may on the
day of pay pay to the heir. Then here the heir will
be compelled to pay over to the executor.
2 Rev. 35. 20. 30. 2

And these rules apply as well to an
administrator as well as executor. This is the
case even tho' no debts are to be paid; that
it may be by heir distributed according to
the act of distributions. 2. Rev. 367. 193. 1 Ep. 328.
21 363. And in these cases if the heir has
possession the Cpt. may compel him to convey and
deliver up the possession

If after the mortgagor's death after
forfeiture the mortgagee can prove the Cpt. of
Redemption to the heir or to the original
mortgagor's child is in the executor to the heir.
In such case is virtually the mortgage
he may redeem by paying to the executor
the mortgage debt

And the rule is the same when the
mortgagor has foreclosed debts. He has not
also taken possession for he has not before
possession converted his debt into reality.
2. Rev. 109. 1 Do. 4. 170. 20. 30. 4
That is has not sufficiently manifested an intention
that the mortgagee should go to his being to induce
at a of equity to depart from their usual rule.
Mortgages

Mortgage's intended to consist the mortgage as real interest in estate it will be treated as real estate in whose cop hands the mortgage is 1 Term 271 Port 305. Thus if the mortgagee makes an absolute conveyance & a redemption is after the death of the assignee ought for, the money will go to the heir for here the assignee clearly intended to realize.

If mortgage devise the land mortgage as real estate in the death of the devisee the devisee's to goes to his heir not to the executor. Thus if the mortgage devise they give such a mortgage to it 87 & his heirs the devisee's heirs take unless the devisee manifest a different intention.

2 Tom 967 2 Term 551. Prev. in 67265. Pro. 8316

If money secured by mortgage is advertised that is agreed by the mortgagee to be paid out in the purchase of land that money in the death of the mortgagee will go as land according to the stipulation of the mortgagee, is to the heir's personal special deed. As if to hold a mortgage for $1000 he then enters into an agreement with his children that he will invest the money in land now the money will go precisely as the land is if it had been purchased would have been gone according to the stipulation.
If two persons make a loan with their interest of
several funds & take a joint mortgage they are tenants in
common & not joint tenants of the mortgaged estate & there is no
survivorship.

For the mortgage is not regarded as a
purchase of land but as a security for the debt.

And if they should foreclose before the death
of either & one dies the jus accretendi does not
take place for the intention governing throughout, they are
not purchasers — 2 Sir 258. 3 Penn 158. 5 Atk 703
1 26467. 2 2655. 1 Nov 15.

Jist of the mortgagee's wife.

A wife by joining with her husband in a
joint mortgage her husband's real estate
incumbers her dowry.

But her right of dower is paramount
to that of the husband's mortgagee of a
husband's sole mortgage with marriage
(1 Nen. 294. Pow. 311. 313) her right is prior it
commences at the time of the marriage.

But a joint tenue settled on the wife
during coverture on a mortgaged estate if it
is merely voluntary will not be good a
subsequent mortgage like the mortgage has
notice of the jointure. 2 Nen 280. 711. 9 East 59
3 Br. Ch. 144. 2 Nen R 532. 3rd 432. 3.

If the jointure was for valuable consideration
the rule is to be entirely diff.
If the husband before marriage give the wife a bond to give her a certain sum of money if she survive him, the surviving may redeem her husband's mortgage precisely as any bond creditor may redeem. See ibid. 387. 2 Rev. 430. Pow. 316.

If she may redeem under the same circumstances in all any bond creditor may redeem.

If a husband lends money alone to buy a mortgage in the name of himself and wife. She surviving will take the whole estate by survivorship provided the husband leaves sufficient assets to pay his debts. But if there are not sufficient (personal) assets she must pay the debts or give up the trust in the mortgage she is postponed to creditors because this is a voluntary settlement.

2 Rev. 653 2 P. Wm. 286  Pow. &17:18 366.
Mortgages by husband & wife
of her preh hold. 6c.

The husband by marriage gains no
other title in the wife's preh hold than an estate
during their joint lives or the life of himself
if he survives, hence he cannot make a mortgage
binding any longer than their joint lives
or the life of himself if he happens to be entitled
to Curtesy. In any event the mortgage cannot
be binding after husband's death. The
rule is the same if she joined with him in
the mortgage by any other way than by fine
& recovery for her deth in Eng. Does not bind
her. Colet 351 2 2 117 3 337 341.

But by joining with the husband in a mortgage
by fine & recovery a mortgage may be made binding after his death
Tab 641 Eq: ca 61 Pow 335 3 66 Law 66.

Such is the rule of the common law but
in this state the wife's inheritance may be
either aliened a mortgage by the joint deed
of hus & wife. We have no express statute for
this, but we have a statute taking it for
granted that this rule is so. But still it is clear law. Rule the same throughout
New England.

If the wife's land is mortgaged to secure
the husband's debt his personal estate will be right to the
applied on his death in discharge of the
mortgage tho' the mortgage was made by hus & legates.
wife in a fine & recovery & hus by a joint deed
1 2 12 264 1 66 60 659 5 343.
Husbands, right to mortgages.

And if the joint is encumbering her own real estate for the purpose of encumbering the real estate of her hus-

Band in the condition of a mortgage to the encumbered land 2 Ath 384

Pem. 346. The is of course entitled to compensation out of the husband's estates.

The husband is entitled to the wife's mortgage precisely as he is to her choses in

action. 2 Vem. 561. Egeia 65. 1 Pem. 474. 1558.

The quit distinction is this marriage does not ipso facto make him owner of her choses in action but gives him a power of making them his own by reducing them to possession. But an assignment of the wife's mortgage is not a reduction of it into possession unless the assignment is for valuable consideration.

If he assigns without consideration the assignee has no higher claim to the land than the

husband would have had he not assigned.

2 Vem. 401. Pem. in 64 ch 156. 2 Vem. 170. The voluntary assignee always stands in the same situation as the assignor.

If the husband's creditors get possession of the wife's mortgage so that she can have no relief but in equity that it will not

interfere to take the mortgage from them.

In the equity it is said to be equal 1 Pem. 257. 1559.
But if in this very case the wife had kept possession of her mortgage a life of estate would not interfere to take it from her; for the equity is equal to the lease has possession. 1 P.M. 152, 154. 2 P.W. 316. Pow. 359-363.

But equity will interfere against the wife in favor of a specific assignee of the mortgage if the assignment is for valuable consideration for the assignee has a superior equity to the wife & besides that the legal title & Ven 270. Pow. 316, 365.

And an equitable assignment by the hus. to assignee with the wife's mortgage as security for a debt with a delivery of the mortgage deeds will bind the wife, Pow. 364, 6.

Out of what mortgages are to be redeemed on the mortgagor's death

It is a general rule in Equity that the fund held by has been increased by the contracting of the debt shall be charged with the payment of the debt in the first instance & hence on the mortgagor's death his personal fund is first to be applied to the payment of the mortgage debt. This is the rule while the law prescribes when the mortgagee has manifested no intention on the subject.

Salk. 449. Tal. 34. Pow. 368- 410. 416. 3 P.M. 358.

Price in 67 61. & 1 P.C. 470.
of what fund the debt the heir at law may indeed be sued on that bond yet if the executor has spot debt must he can be compelled to pay the debt if to be paid to repay it to the heir if the heir has been obliged to pay. (26)

The same rule applies to the devise as to the heir. 1 Atk. 457. Per. in Ch. 1770. And the devise may compel the heir also to discharge the mortgage debt.

And if the mortgagor bequeath his personal estate or devises his real estate to another the devisee of the mortgage may call upon the legatees to pay the mortgage debt.

But I would entertain some doubt whether this is true of any other than residuary legatees. Per. in Ch. 61. 477. Talb. 374. 1 Term. 701. 1 Term. 698. Pemb. 385. 6. 374.

Now the great principle on which the mortgagor's heir is entitled to call on the personal fund is that the debt must first be paid out of the personal fund but where the personal estate is itself devised specifically the legatees are to be considered creditors.

But the heir at law or devisee is never entitled to the aid of the personal fund to the prejudice of the creditors even simple contract creditors of the mortgagor. 1 Term. 698. Talb. 33. Pemb. 385. 6.
Their rules are however subject to the direction of the mortgagor; his intention must govern.

And this the real estate is by the statute expressly charged with the payment of debts. Even in this case the real estate is not charged unless the personal estate is exhausted. The only effect is to make the land subject to simple contract debts if the personal estate is not sufficent.

"But if instead of such a general direction he directs that his real estate shall be sold for the payment of his debt, the personal fund is not first to be applied at in this case—"

1 N.C. 51. 1 Dec. 223.

See in 1 Ch. 451. 2 Penn. 715. 1 Eq. 2a. 271.

The heir on devise of the mortgagor is not entitled to the personal fund of the mortgagor if the personal property is specifically devise.

A legacy is said to be specific when the property is specifically marked out. 1 P.M. 693. 696. 390. 391.

But this the mortgagor devises his real estate with the words "with all the incumberance thereon" hence if no other words are used showing an intention that the devise should take some where the personal fund will be taken to pay the mortgage debt, in these words are only words describing the property itself 2 P.M. 396 1 Bk. 627 352. 392 393.
Mortgage.

And where there appears a clear positive
out of what intention on the face of the mortgagees will the
fund redeem? the devisee shall hold the estate free from
incumbrances even the real estate in the hands
of the heir will be applied to discharge the
devisee’s estate. For 392. 405. 407.

All these rules depend upon the intention
of the testator.

If the mortgagee sells a legacy
his test to another, the heir of the devisee
on his death has no claim on the personal
fund to pay the mortgage debt, in her
the personal fund of the devisee is not
increased by the purchase of the mortgagee’s
but rather diminished by it.
1 Bro. Ch. 101. P. 41. 410.
1 Bro. Ch. 454. P. 412.

And this is the universal rule
where the owner of the equity of redemption
at the time when the question arises is not
strictly the debtor to the mortgagee.

Where therefore the mortgagee has
devises the land, the devisee is not entitled
to the personal fund of the heir to pay
the mortgage debt, for the personal fund
of the heir was not increased by the mortgage.
1 Bro. Ch. 454: 57. 1 P. 41. 447. P. 412. 416.

If compound interest is reserved the compound interest will not be enforced either in law or in Equity. See in 6 Ch. 116, 2 Atk 331. 1 P. M. 1652, 1 B. H. 439. 440.

But if the mortgagor apprises the assignee of the mortgage in writing that the assignee pays principal and interest, one consolidated debt, the assignee will be bound. 1 N. B. 169, 2 Vern. 135. 2 Pont. 426-7. If there is no agreement between the mortgagor and the assignee that the latter shall pay the debt of the mortgagor, but if the assignment is made with the concurrence of the mortgagor, the assignee can never enforce the payment of interest on the interest paid by him to the mortgagor. 3 M. B. 371, 1 Vern. 168, 1 Pont. 427. For if this were the case, the creditor would have concurrence of the mortgagor to convert interest into principal. But the first rule does not hold when the assignment is merely colourable, for if the assignment is merely for the purpose of subordinating the mortgage to compound interest, even without the mortgagor's concurrence, it will not prevent

1 Ex. ca. 249. 2 Pont. 426) compound interest at 8% in such case a 6% of courts will not confer the mortgagor to pay more than simple interest on the original debt.
When the mortgage assignee, the act taken interest. between the mortgage & his assignee does not conclude the mortgage 1 Rev 168. 2 Rev 426. If where the mortgage is not a party to the act it is then it is concluded until he can impeach the act for part a mistake—But the report of a master in chy computing the act on a mortgage makes that just principle from the time of the acceptance of the report by the 5. For this report is in the nature of a party. 1 Rev 475. Ree 1 6180.

Eq: ca 530. 1 Rev 453. 480. 376. 3 Act 722.
2 Eq: ca 530.

But a master's report as an infant on a bill to foreclose does not regularly carry in his action. For the ground of the same rule is that neglect is suffered by the left but laches are not imputed to infants. 1 Rev 1432 3. 2 Bro 56. 2 Rev 392 to 1 5402. Id Rugg 25. 2 Rev 392.

But where an infant is put to a bill in chy to redeem the account of the master cannot act on inst. for as he requires equity he must do equity.

4 Rev 34 64. P S 334 7.
And if an infant entitled to an equity of redemption agrees to pay inst or inst. by that means obtains a benefit to himself the infant may be compelled to pay inst or inst. &c. 20. 1. 257. 19. 28. cont. 437. 8.

Yet a mortgagor merely signing an act does not convert inst into principal for this is merely an agreement that this account shall be considered correct—1 P. 147. 6. 2. Pow. 429.

An agreement after inst has actually accrued to the mortgagor to pay inst upon that inst is binding both in equity & law 2 221. 449. 2 221. 33. 2. Pow. 441. 12.

Yet tenant in tail in possession is never compellable by the remainder man a remainder a issue in tail to pay down the inst on a mortgagor of the estate tail for they are in the hands of tenant in tail 1 477. 474 477. 50. Pow. 443. 5. 3 221. 235.
Real Property

Mortgages.

If tenant in tail of an estate in reversion is an infant and his guardian in possession is competent to keep down rent because the infant cannot bar the remainderman to writ special licence from the Crown, 567, 2 Atk. 427, 1 Vesey 477, 80.

But if tenant in tail in possession does keep down rent the remainderman shall have the benefit of it! Ves 477, 1 B & A 218.

Because the trust of the remainderman is deemed so remote that he is not to be compelled to reimburse.

If the first mortgagee enters and afterwards permits the mortgagee to take the profits of the land, the profits in favour of a second mortgagee will be applied to the debt of the first mortgagee, for otherwise the second mortgagee might suffer. See in 6 Ky. 30, 1 Vern. 270, 1 Cowp. 453, 468, 3 B. & 1. 118.

If a bond is given to the mortgagee as security as is usually the case any holder of and may the bond having become fairly 4 legally enforced while the bond may receive the rents and profits of the estate.

But the lawful holder of the mortgage deed has authority to receive no more than the last half. 1 Vern. 130. Pec. in 6 Ky. 209. 1 Ky. Ca. 145, 146, 453, 4.

The holder of the bond must however account for the profits to the mortgagee.
If the mortgagee on tender made after su śed the mortgagee by no previous notice that he will pay on a certain day. I actually tenders the money on that day.


To give the tender the effect of barring title the mortgagee must make out in the English practice that the mortgage his since the tenor been always ready to pay the money so that he has made no use of the money since the tender.


The money due on the mortgage is regularly to be tendered to the mortgagee in person unless some place of part is appointed in the contract. The rule is the same as if the money was not secured by mortgage but by debt.


All Proverbs lay down the rule that the rate of rent on a mortgage may be altered by a subsequent parcel agreement. But there ought to be some qualification to this rule for it is a principle of the law that a written contract cannot be altered by a verbal agreement. The rule ought to be that when the mortgagee brings a bill to foreclose the mortgage may prove this parcel agreement but they do not alter the agreement. It only inactivates the conscience of the Chancellor to foreclose the mortgage only on the mortgagee receiving the agreed rate of rent. Proverbs 16:12. 667 675 6550.
Method of accounting. A mortgage being only a pledge or rent in securitisation, the mortgagee cannot take the profits unless he takes possession, while the mortgagee remains in possession he accounts to himself for he pays out rent.

But the mortgagee must account for the profits during his possession, and they must go to the discharge of the debt. 1 Ner. 4, l. 2 Att. 544. Pov. 464.

If the mortgagee in possession manages the estate himself he has no allowance for his care and trouble, but this means no more than that he has no claim for salary wages. But undoubtedly, his time and labour he is to be taken into account in ascertaining the net profit. The same rule holds even if the mortgagee agrees to pay a salary because I suppose it tends to oppression if complete justice is done to the mortgagee if he is to account for nothing more than the net profit.

But if he employs a skilful agent he is entitled to charge a salary but this only to nothing more than that he may charge reasonable wages for the labour and care of an agent.

1 Ner. 316. 3 Att. 576.
If the mortgagor, with the consent of the mortgagor, he is to be answerable for the rent and profits, if being in prize, he assigns the mortgage to a person unable to pay for the profits. 1 Eq. ca. 321. Post 467.

The mortgage, however, is to account to the mortgagor only for the actual profits, even unless it appears that the mortgagor might have rec'd more. He is not of course then obliged to account for the greatest possible profits. 1 Vern, 476. 1 Eq. ca. 323. 3 Dow 697. Post 457. For the mortgagor is supposed to be obliged to take care therefor the purpose of securing his own interest; therefore he ought not to be obliged to account about it.

But if the first mortgagor takes the benefit of the security, yet he is obliged in their favour to account for all the profits which he might have been made with all reasonable care. The reason of this distinction is that it is not the fault of the subsequent incumbrancer that the first is obliged to answer for the surplus of securing his interest. No in 61 30. 3 Dow 468. 1 Vern 270.

But he is not bound to this extent even in favour of subsequent incumbrancers until he has notice of the subsequent incumbrance. 3 Dow 468-9.
Where there are several mortgages a subseff mortgage may recover in ejectment of the mortgagee for the mortgage is estopped to deny that a subseff mortgage has the legal title. If therefore the first mortgagee permits the mortgagee to remain in possession and keep out other mortgagees the first mortgagee is chargeable with the rents and profits from the time in which the subseff mortgagee might have obtained possession had he not been prevented by the first mortgagee. 

1 Vern. 267. 2o1e 1469. 3 Bae 65. "mort."
Where there have been several assignments of the mortgagee's rent the last receipt is not bound to act for previous rents of profit but they will be taken to go off at the last, because in such case it is impossible to make out the act.

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There are two modes of making out the account between mortgagee and mortgagees.

The one by making annual rents is by applying each year the annual surplus of profits above the rent to the sinking of the debt. (This reduces the debt in the same manner as annual rent increases it.)

The other mode is by making all the rents & profits into one aggregate sum & all the rents into another. This sinking the debt as simply that would increase it.

As to the application of these rules, the rule is:

If the yearly rents of the land greatly exceed the annual rent of the debt then a new mode is adopted; if not the alleged is not bound to make annual rents, but some division is in the manner in the last case 2 afo. 534.

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After a foreclosure a bill brought by the mortgagee to recover the debt will be decided on. If the mortgagee will pay the debt within a time limited by the decree itself all the mortgagees will be forever foreclosed and extinguished. Post 475.

When however the mortgage is of a reversion the decree will order a sale of the estate if not redeemed within a limited time. This is never done when the mortgage is of an estate in possession. The reason is that in case of a reversion the mortgagor may never be able until it is sold to derive any advantage from the mortgage. Post 475 510.

If the mortgage is made to several parties all the mortgagees must be made parties to a bill to foreclose, otherwise the business would be entangled as also if the mortgagee assigns his suit to A B C D E F G must be parties to a bill to foreclose.

1 Pe 132 2 Pe 135 3 Pe 475 6 If part refuse to join the remainder may make those who refuse defendants. The same rule holds of several assignees of the mortgage. If foreclosure can never be ordered until after forfeiture for a foreclosure is an extinguishment of the equity of redemption but the equity of redemption does not exist until after forfeiture.

1 Pe 132 2 Pe 135 3 Pe 475 476.
It is laid down that on a bill to foreclose the title of the mortgagee cannot be investigated but the rule is very blindly expressed —

What is meant by this rule is that if the title of the mortgagee is defective it will not be cured by a bill of equity on a bill to foreclose. 3 H. 6. 2144. 476.

If then the mortgagee's deed is defective in requisites he must bring a bill in equity to compel the mortgagee to rectify the deed & a bill of equity will enforce such a rectification if this shows the deed is made perfect a bill to foreclose may be brought & maintained.

And a mortgagee may at one & the same time pursue as the mortgage a three different actions & the remedy of neither of these suits will abate the other. viz. he may have an action of debt or assumpsit & he may have an action of ejectment & he may have a bill to foreclose. 2 Atk 3144. 401. 477.

If the state if he recovers on his action of debt he may in his execution levy on the land mortgaged & this gives him in law & in equity a complete title to the land. but in Eng. this cannot be done. In this case in this state the land must be appraised as if it was unincumbered. For by this levy he acquires a complete title to land but if an execution is for one of a stranger the appraisal is only of the eq. of redemption for he only acquires a title to the eq. of redemption.
Whenever issue arises whether a foreclosure a bill of equity will not leave a foreclosure for where a mortgage being paid off a prior voluntary family settlement bought in of the trustee the legal estate in this case the bill of equity will leave him to his remedy at law or in law the right of redemption forever remaining in the trustee or in those who claim under the family settlement

And I suppose a bill of equity will leave a foreclosure where a mortgage being money on the security of an estate which has been purchased voluntarily settled for the benefit of the family, knowing if the voluntary settlement at the time of loaning the money

If the mortgage applies to redeem + the bill of equity decree that the mortgage may redeem without before a certain day if that pay clings without redemption the decree will operate after that time as a foreclosure. The above rule is doubtless in Pom. 479 the rule is this. "If upon a reference to a master to see what is due for principal interest + costs the bill does not redeem the mortgage the bill will on his application dismiss the bill as against him and will be equivalent to declaring a foreclosure" Pom. 425 of the 15th edition.
If the mortgagor's heir brings a bill to foreclose it is a good cause of demurrer
that the mortgagor's personal representatives are not made a party for they are entitled to the
money due on the mortgage debt, but if the Ct. on the hearing will dismiss the bill without
demurrer if the Expr. is not joined.

But if the mortgagor's heir has obtained
a foreclosure it will be good the the mortgagor's
executor be is not a party, provided the
heir pays the debt to the personal representatives
1 Vern. 367. 2 1st 66. 1 Know. 480.

But the mortgagor's executor must
not be party to a bill for foreclosure if
the mortgagor is of a freehold, but if it is
of a tenement for years the executor must be
a party to a bill to foreclose 3 P M. 383 note
Port. 479. 80.

For the mortgagor is not bound to
make any other person defendant than the owner
of the equity of redemption. The fact that the
mortgage debt is to be paid by the executor is a
matter entirely between the executor or heir of the mortgagor.
If the heir of the mortgagor does
not pay the debt to the executor or where
the executor was not party at praecipe the
equities may compel the heir to convey
the land to them 2 Vern. 67. 193. 367. 16 Pec. 528.
Port. 303. 408. 2 480.
On a decree foreclosing the eq. of redemption unless the money is paid within a certain number of months the months are computed by calendar months. Pw. 481. 2 Eq. ca. 485.

A decree to foreclose a tenant in tail of an eq. of redemption would not only the free in tail but the remainder man & reversionists because the mortgagee shall have all the rights of the tenant in tail the tenant in tail has a power to bar remainder man & reissuers (Pw. 481) and this is true whether the remainder men are made parties to the bill or not.

But a decree of foreclosure does not include the remainder in fee unless the mortgage is of an estate for life unless the remainder men is made party to the bill to foreclose 2 cith. 101. Pw. 483

If there are several encumbrances and some of them are made parties & some not the decree of foreclosure includes only those who are made parties to the bill 2 Ren. 518 Pw. 483. 2 Ver. 518. 663. 185. Pw. 492. 304 185
An infant may be foreclosed by a bill brought for that purpose, but in such a case the decree is that "the decree is to be binding on the infant unless he shall in 6 months after being served with process for that purpose show good cause to the contrary."

2 Vern. 392. 442. 479. 1 Do. 295. Pinc. in 6 C. 185
2 Vesey 23. Pinc. 485. 6432. 5 Vesey 1418

In the practice of this state the decree of an infant is precisely in the same form as an adult decree, but he has, of course, 6 months after he becomes of age, to show cause against the decree. In the English practice a new decree is made only if the infant shows cause at supra, but here, no new decree is necessary for the former decree becoming absolute in such case by the terms. But in Eng. when he does show cause he may on motion make a new defense as if there were under 2 Ath. 525. 1 Pynchon 574. 2 Pynchon 401. 5 Cr. R. 6301. Port. 486.
The process for him to show causes is to be served on his coming of age the proof is a judicial writing like a rein-fencing—Port 486
3 Bl 369. 3 Bar 148 “infant” no such process in Conn.

But it is not to be understood that he can set aside the decree merely because he was an infant. He cannot therefore plead infancy. Nor is he by any means entitled to redeem as a matter of course after becoming of age. This period of 6 mo. is allowed for him to show some cause or injustice in the decree. He must show some cause which would have prevented a decree in favor of an adult at the time when the decree was made. If he shows such a cause the decree will be opened by the court.

3 P.M. 352. Port 487:9:70

But if a female sole or her ancestor mortgaged land of the equity of redemption with in the during coverture a decree upon her is preemptory she has no day after discovery to show cause. On account of the inconvenience of the thing as no body knows how long her husband may live & besides she is under no natural disability as an infant is & it is presumed that her husband will take care of her interest.

3 P.M. 352. 3 2th 7/12 10 63 43 2 2488 9:6:8

24: bart 95
But after discovery of these it may be opened in favour of any creditor or beneficiaries in obtaining the foreclosure. For then when a mortgagee obtained a decree for the sale of mortgagee's interest in application of the mortgagee the decree was calculated to do complete justice to the mortgagor.

In another case where the mortgagee had obtained a foreclosure after the mortgagee had tendered to the mortgagee the land of his debt the decree was opened on application of the creditors of the mortgagor. It was said in the last authority that a decree in such case would not be opened unless the mortgagee gave notice of their debt.
When a foreclosure is opened in favour of a subrect incumbrance, the first mortgage is allowed all his expenses in obtaining the foreclosure. But this holds I trust only when the foreclosure is obtained without any unfairness.

2 Vern. 185. Pont. 492.

And upon various special circumstances, a decree will be opened where there was no unfairness or where the mortgaged land is much greater in value than the debt, and where the mortgage is the embarrasment 1 Eq. co 395. Bacon 221. Pont. 473 44.

And when the mortgagee is prevented by any inevitable circumstance from paying in the day limited by the decree, the foreclosure will be opened Pont. 494. 1 El. ii 2 El. iii. 16 El. co 49.

But it seems that a foreclosure cannot be opened in favour of a man volunteered by whom is meant one who has obtained the equity of redemption with consideration. 1 Eq. co 317. Pont. 494. 15 El. co 57.

If the first mortgagee on obtaining a foreclosure of a subrect mortgage derives his title to the mortgagee, the foreclosure is also to be opened in favour of the subrect mortgagee. For the second mortgagee's deed is an obligation to the mortgagor's paying that he has foreclosed against the mortgagee. 2 Vern. 285. 1 Do. 148. Salt. 276.
A foreclosure may be opened by operation of law as if the mortgage were obtaining a decree of foreclosure, and the mortgage in the debt for all the mortgage is given the party for opening the foreclosure. 1 Eq: ca. 217. Dow 406. 1 Br 5 6 119.

But in this state it has been decided that foreclosure will not advance to satisfy the debt if it have not been afterwards brought in the debt for all the mortgage was made.

1832.

This rule if strict does not adhere and it is now overruled, but since it is the old rule is revived. When a mortgage has lain for a number of years unexcised in its decree of foreclosure, they soon find will not prevent an opening of the decree of foreclosure. If there is any reason for opening a decree the ought to be asserted in reason 2 Eq: ca. 177 597. Dow 497 500 101 1 Br 644 2 86 111 3 5 8 15.

In Eng. the practice is if the money is not paid within the time limited in the decree for the to make a further decree making the same absolute. Dow 497 500 101. This is never done here for the former decree here becomes absolute with any subsequent decree.
Estates in severalty and joint tenancy

I have herefore been writing about estates as regards the quantity of interest and the time of enjoyment. I now come to consider the number of tenants.

An estate held in severalty, one of which is but one owner during the continuance of his interest.

2 Woodes 112. 2 Bl 6 179.

An estate in joint tenancy is an estate in lands or tenements be limited to two or more persons. It may be limited in fee simple, for term, for years, for life or at will until.

2 Blc 118. It 2 tenants. 2 Bl 179. 2 Woodes 114.

As to the creation of this estate it must be universally created by purchase in the yeild accpetation of that word. It may then be created by deed by devise by fine recovery or indeed by any species of common为准. 2 Bl. 170

2 Woodes 114. It is always created by act of the party never by act of law.

If an estate is given to two or more persons with words denoting an intention that they should not hold as joint tenants they will hold as joint tenants. But if land is limited to two persons to be held the one half to the one and the other to the other the persons taking will hold as tenants in common.

2 Bl. 170 173. 2 Blc 5798.
Joint Tenancy

The properties of this species are derived from its unity; its unity is found only by time, if interest, of title, of possession.

If any of these units are wanting, the estate will not be a joint tenancy.

They must have one and the same quantity.

Of joint tenants commencing at one and the same time and by the same conveyance held by one and the same undivided possession.

One joint tenant cannot have one quantity of estate and another for in this case the they held by all the other tenants they are not joint tenants. 2 Wroth 127, Pitt 827. 2 Bl. 150. 1.

By this unity is required not merely sameness but identity of interest. An estate to A for life remainder to B for life here the quantity of estate is the same but there is no identity of right. But if an estate is limited to A and B for lives they are joint tenants, and each has an estate in the whole for their joint lives and the survivor the entire estate for his own life.

Blackstone lays down the rule in this case difficultly and erroneously.

If an estate is limited to A and B for their heirs they are joint tenants and the estate will go entire to the heir of the survivor. Pitt 827. 2 Bl. 157.
If an estate is limited to A+B for their lives, joint tenancy
+ to the heirs of A. "According to BL they are joint
+ tenants for their lives + on the death of both the
estate goes to the heirs of A". But if I B say they
are joint tenants for their joint lives + if B dies first
+ of her not an estate for the life of B or of herself
for the life estate is merged. But if B surviving
+ A, they indeed have a joint estate for their respective

If a grant is made to two men for
life + the heirs of their bodies or to two women
+ the heirs of their bodies or to a man + a
woman who cannot legally intermarry + the
heirs of their bodies they are joint tenants for life
with several inheritances. 2 Bl 184 a 12 Mori 370
Ditt 5283. The issue then of each will have a
minority of the estate after the death of both
but the heir of necessity can take until after
the death of both for the survivor will hold
the whole estate until his death + after
his death the heirs will hold as tenants in
common. Dit 5283.

And if either of the donees die with
issue on the death of the survivor his moiety
reverts to the donee.
The rule is the same if an estate is given to one man + two women + the heirs of their bodies or to two men + one woman the rule is the same. the three take the estate for their lives with several inheritors.

C. Lett 184

But if an estate is limited to a man + a woman who may lawfully intermary + to their heirs of their bodies they two together take the estate tail whether they actually intermary or not + in this case if one die without heir of his or her body + the other has lawful heirs the whole estate on the death of both will go to the issue.


**Unity of title**

The estate must be created by one + the same act as by one + the same conveyance or by one + the same designation.

If an estate is limited to two persons by different conveyances they have not the same title. If a person makes one conveyance to A + another to B at the same time the fact that the conveyances were different is not to prevent them taking a joint estate.
Unity of time

Their estate must commence at one time, so if an estate is leased to A of an undivided half to commence at day 1, at the same time, or in the same deed to B of the other undivided half for the same length of time to commence to run as they hold as tenants in common, not as joint tenants. 6. 6t 188. 2 & 3 181.

If a remainder is limited to the heirs of A + B if A + B should die at different times the heirs of A + B will be tenants in common. 6t 5 283. 2 Bl 281. 181. 6 Words 129. 13 Co 55.

These distinctions are all professorly technical & arbitrary. "In pain shall a man go about to inquire the principle of them.

It seems that two persons may hold a use as joint tenants of the same estate, beginning at different times. Hence a fiefment made by B to the use of himself & his heirs under for the estate in fee will be joint tenants of the use for by fiction the use commences at the time of the fiefment. "In all things executory relate to the first act of take effect thereby."

1 Co 101 13 Co 56. 2 Bl 181. 2. 60 040.
Joint Tenancy

Unity of possession.

It tenants are seized of an undivided half of the whole net of the whole of the half, that is they are seized "in moi et foret tout" 2 Bl 182. 5 Co 100, 2 Worsd 120. 37 Bar 526.

The consequence is that one tenant cannot enforce the other if any part for the other is already seized of the whole but one can release his right to the other but even a feoffment or a bargain he will ever as a released "by bon om bap" Birke 5193, 197. 1 Vent 78. 3 Bl 2060. 6 Bl 992.

If a fee simple is granted to husband and wife they are neither joint tenants or tenants in common on account of their legal union 2 Bl 182.

Hence the husband cannot dispose of any part of this estate as other joint tenants, and nor can the wife laying her disability out of the question. In such case the whole of it must remain to the survivor this is a known rule it is conveyed away in a fine or conveyance in whole both join in one cannot convey whilst conveying the whole one cannot convey the whole 37 Tre 584.

This is an anomaly thing in the law definitely, but as each holds the whole neither can alone convey they appear to be something higher than a legal personal possibility but a legal possibility.

This does not hold as to chattels, but the property all are vested jointly in husband and wife for the whole 2 Worsd 128. 37 Bar 526. 516 Mil 65 37a 94.
If a married man is joint tenant with joint another person his wife in his death is not entitled to dower for the other joint tenant has a paramount right by survivorship. Lett 545 Corlett 30 n. 3 R. 183.

In a parallel case the husband cannot be entitled to dower, 2 Words. 128, in which a doubt is expressed but there is no reason to doubt.

In this state however a married woman in such case is clearly entitled to dower for our judges always have held that there was no jus accessorii of any description, & in fact in the U.S. there is no jus accessorii.

Upon the intimate union of interest & possession depend the principal incidents of joint tenancy, one of which is that acts done by one of the joint tenants with relation to the subject matter in joint tenancy is operative as to both. If therefore a verbal lease is made by the lessee in a joint tenancy to one of the joint tenants, the lessee will have an estate in the same, for the same reason.

If the joint tenants surrender to one of the lessee, the surrender will inure to both.

2 Words. 130. 2 Bl. 185. 60 Lett. 414. 192

Hence liberty of seisin made to one is operative as to both as to all the joint tenants.

So the entry of one is effective as to both & all. 4 Bl 120. 60 Lett 49. 819. 564. 2 Bl 182.
On the same principle in all actions relating to the joint tenancy they must sue or be sued jointly, the both must sue in ejectment if they are divided v. D. But there is one decision to the contrary in Eng. & one in the St. of NY. But of all the late decisions sc. Lit. 160. 195. 2. BL 182. Smith 328. 2 Boc 257. 16
(12 East 57. 61. 2 Bing 169 cent.)

What the rule will be hereafter is doubtfull. In some the rule always was that joint tenants in common may either join in action or sue separately. The reason assigned for these late decisions is contrary to former precedents is that it is more convenient to allow them to sue or be sued jointly or severally as the case may require.

Joint tenants cannot be sued by one another in trespass with relation to the joint estate — c 21 183. 9 Leon 262. For each has a right to act upon every part. For at c 11 could one maintain an action at law against the other separetly by statute. Notwithstanding the general rule that the act of one is the act of both. One joint tenant cannot regularly as any act of his own which will defeat the estate of the other. Hence one joint tenant cannot cause the whole of the estate without consent of the other 1 Leon 234. 2 De 133. One joint tenant may however make the other bailiff of his moiety & in that case have an action of account against him but unless the one has made the other bailiff at common law the one could not maintain an action of account against the other. Also by 11 4 Anne one may always have an action of account against the other. 6 Lit 200. 2 Mor 130.

The practice however, now is to apply to a court of equity to compel an account (21 185 3rd note)
Upon this intimate union of interest, possession depends also the grand incident of joint tenancy, which is the right of survivorship.

The survivorship is the right of the survivor to the whole estate upon the death of his companion.

2 Mordey 125. 2 Bl. 183:4.

Therefore if A B & C are joint tenants on the death of A the whole joint estate in B & C on B’s death C takes the whole estate & holds the joint estate in severalty. On the death of one disposing the jointure as to him. This rule holds whether this estate is in fee for life for years etc.

2 Mordey 125.

The reasoning upon which survivorship depends is this. The original interest of each joint tenant is the same & as the survivor cannot be divested by the death of his companion no person can now have a joint estate with him & if any one claimed a separate interest that would be to deprive the survivor of the right till he has in all & in every part. Now as the survivor’s original interest remains as no one can now be admitted either jointly or severally his interest must be entire & several.

This right of survivorship is paramount to the claims of his & even of judgment by except where execution was pressed out of the joint tenant before his death for in this case there is a specific lien that cannot be defeated with the death of the debtor.

2 Bl. 183:4 & c. 3 Shee 209:10.
The same rule holds in general to chattels personal and real, held in joint tenancy, but not universally. It does not hold as to persons in joint trade for here the law merchant provides 2 Woodes 125 1st 5296 11 Co. 3 Bl Watson 49 140. 146. 294. 299. 302. 3.

Partners in trade are not therefore joint tenants to all purposes and the same remark applies to what are called joint tenants in


Co. 449 814. 2 Woodes 175.

Nor as to stock on a farm occupied jointly for the encouragement of husbandry 2 Bl 399. Co. 1st 182.

Neither the King or any other corporation can be joint tenant with another person. Bl 240 because the right of survivorship is not mutual & equal 2 Bl 184. Co. 1st 190 2 Ves 12. This reason of Bl does not appear to be the true reason for corporations may not be joint tenants with one another 1st 5296. 2 Woodes 126.

But the reason of Bl is unsound in principle for it is not necessary to the existence of joint tenancy that the right of survivorship should be mutual for A & B may be joint tenants for the life of A & yet B here has no chance of survivorship 2 Woodes 126. Co. 1st 184.

The true reason is this that a right to hold property jointly is not within the purpose for which corporations are created. For it is general rule that a corporation is entitled to no rights but such as are necessary to its existence & to the exercise of that business for which it was created — 3 Bell 18. 3 T & C 594 47 B & N 870. 872. 4 Bro 642 in "Statute" Dir construction.
The right of survivorship does not however as has been said 1st
herefore incidentally remarked exist in some

Yet it may be destroyed 1st by the destruction of any of its units. Unity of time cannot in the nature of things be destroyed —
But any of the other units may be destroyed 2d by destroying the unity of possession 3d by a tenancy in common to reduce them in Detail in Leith 184. 193. 2 Bl 185.

But by the common law one joint tenant cannot compel the other to make partition the they might by agreement make a partition Leith 829:12. 2 Bl 185.

But by st 31+2 Henry 8 one joint tenant may compel a division by will of partition 36. We have a lot to the same effect in this state. Our st however expressly excepts
respective lands in lands appropriated to the support of ministers + schools + ecclesiastics lands also will a are excepted as town commons
st Com 56:52. + at 54:53.

Our st also enables guardianes of infants to make partition for their wards but there was no need of this statute for at common law infants were capable of
making a partition
(3 Th. 1805)
A joint tenancy may be destroyed by the destruction of unity of title, if one joint tenant conveys away his interest, the purchase of the other joint tenant held as tenants in common.

But a devise by one joint tenant does not destroy the joint tenancy, for it cannot take effect for the other joint tenant has a paramount right to the estate. See 5 257. Co. Litt 155 6. 2 Bl. 156.

And yet if an estate is originally granted to two persons for life, for the life of one of them, they are joint tenants for life for these by being created by one conveyance are not separate estates, but branches of one and the same estate; therefore no merger.

2 61 60. Co. Litt 152 2 Bl. 156.
If one joint tenant in fee makes a lease for life of his share it destroys the joint tenancy for it is a severance of the freehold.

If one of three joint tenants alone by share the joint tenancy is destroyed only in part. A + B + C are joint tenants + a lease his share to B + C return two thirds in joint tenancy the purchaser therefore holds the whole of one undivided third in common with B + C.

If one of these releases his part to one of the other two who the releases holds the whole of one undivided third in common with himself. If the other + as to the remaining two thirds is held in joint tenancy between B + C.

Whereas the jointure ceases the free secession of course ceases with it.

It is in joint advantageously to destroy the jointure. But where there are joint tenants for life it is plainly advantageous to continue it. For if A + B are joint tenants for life if S dies first he has the whole estate until his own death but if he had served he would only have enjoyed half after the death of B. But if he dies first he enjoys as much in one case as in the other + the same is true of B if A die first.
If two are joint tenants for life and one dies, for any other life than his own, he ipso facto forfeits the whole of his interest. For such a convenience has in the first place an effect if severing of the grant of it is a forfeiture the grant is void + the whole estate comes to the other.

6 S. Litt. 252. 4 R. Com. 237 2 Bl. 117.

1. If one joint tenant erects his companion, the tenant erected may have ejectment against the other not to put the other out, but to restore himself to the joint possession, but to entitle one to this action there must be actually an actual joint possession by one of the reception of all the profits will not entitle the other to this action for when there is no ouster the possession of one is regarded in law the possession of both + the reception of the profits by one is the reception of the profits by the other by both.

The sole possession of one however denying the title of the other + refusing to permit the other to inter is sufficient evidence of an ouster. It is not necessary to make an ouster that one as little manslaughter says should take the other by the shoulders + face him out.

American shelf no books in the one undertaken shelf.
One of them may also maintain an action of waste up to the other by the construction of the 27th 103 of Westminster, but by the common law no such action could be maintained.
Real Property [No. 19].

Estate in caparreny.

are such as have descended to two or more persons from their ancestor or ancestors.

This estate at common law exists only between a, a male, and their representatives; for at common law the co-tenant. oldest son takes the whole but primogeniture does not exist between females. By the custom of gavelkind all the sons are co-parceners.

The children of a deceased ancestor are co-parceners, and that is the law of every state in the union. The land law in caparreny is not the same.

But all the parceners, however numerous, is at 163 are considered in law as constituting but one heir. At 187.

I have but one estate among them.

The properties of this estate when created, are, in most respects, like those of joint tenancy, then are, however, only three essential unitings for unity of time is not required.

Like joint tenants they may sue and be sued, at 164 jointly. The entry of one is the entry of all, 188. 234. 240. The seisin of one is the seisin of all, and 288, 388. an entry by the guardian of a parcener is the entry of all the co-parceners. (169)
One parson cannot have trasnsp at
both 174 the other nor can one have waste of
2 BL 1858 another for one parson could always
2 Mod 1190 protect herself from waste by writ of partition
with 7 tenants could not do until the statute
The reason why parson even at common law
would have a writ of partition is that as
they became parsons with mutual consent
therefore the coparcenary can be dissolved with mutual
consent.

Differences between coparcenary and tenant

2 BL 1858 An estate in coparcenary is always created
by descent. It cannot always, by purchase.
2 Mod 1146 No other than estate of inheritance can be held
in coparcenary, any estate can be held in
joint tenancy.

2 Mod 116 Everything which can be inherited may be held
in estate 1645 in coparcenary lands tenements & heritaments.

So an estate in coparcenary, no unity of
time of possession, if therefore, one parson
dies the survivor & the heir or heirs of the
deceased parson are coparceners.
The interest of co-parcees must be the same (see Tit 164, 174, 2 Moore 114, 5, 3 B.C. 181). For they inherit one and the same estate together.

This estate differs from it tenancy in that parcees then they have unity of interest yet they have no intitley of interest each is entitled to the whole of an undivided half.

Hence there is no survivorship (36).

If those who claim in co-parceancy are related in equal degree to the common ancestor & each claim immediately of their own 66, Tit 164, right they take per capita that is each has an equal share.

If an ancestor dies leaving two daughters two nieces to each takes per capita that is each has an equal share.

But if the parcees are not related in equal degree or if they are entitled only in right of an intermediate ancestor the shares are unequal. They an ancestor by two daughters one dies in the life time of the ancestor leaving two children. The daughter of the ancestor claims in her own right but the grandchilder take in the right of the mother & take what she would have taken had she lived that is the two grandchildren take one half & the daughter the other half.
But if the parties are all in equal degree but are not entitled in their own right but by right of representation they take by stipple, that the ancestor has two daughters, both of whom die before the ancestor, one leaving one daughter and the other five. The five on the death of the ancestor take one half of the estate and the one the other half of the estate.

2 Words. 114. c. 118. 114:15.

This same doctrine prevails under the statute of distribution in the case of personal property. (vide tit. Executors.)

2 Words. 115.

In descent from coparcenary males are preferred to females as in other cases of descent at common law.

1. Descent in coparcenary at common law obtains only where there are no other children except females.

2. As long as land continues in a course of descent if no partition is made it continues to be held in coparcenary but as soon as a partition is made or as soon as one alienates her share if no partition is made still the purchase does not claim by descent; the coparcenary is destroyed, the purchase of the purchaser held as tenants in common.
But if one of the coheirs dies, the heirs of the coheir and the other coheir hold as coheirs for the estate continues in a course of descent.

W. Woodson says if one coheir dies the other, the coheancy is at an end, but he has neither authority or principle for this rule.

If two coheirs marry and die, the husband entitled to courtesy the husband holds as tenants in common for they do not defect by descent, but the heir of the two coheirs after the death of the husband holds in coheancy, for they claim by descent and the inheritance is not broken by the intervention of the life estates.
It seems to be settled that a husband is entitled to dower in the lands held by the wife in coparcenary. And in a parallel case I have no doubt that the wife is entitled to dower. Pet 3264. 2 Writs 119.

Voluntary partition may be made in four ways by coparceners.

Compulsory partition may at common law be made between coparceners because since the 1st Writ 120 estate is created with mutual consent it may be destroyed with mutual consent. Fitz 62. A suit of partition therefore will lie at law. Pet 1696 common law in the partition may be effected by this suit or by a bill in equity. This is now the practice where the estate is complicated as where there are incumbrances to
On a writ of partition two judgments are always necessary: the first that a partition 
should be made on the writ and to the sheriff commanding him to cause partition 
to be made by the jury. On the return of 
the jury's inquisition the second judgment is 
made viz that the partition be ratified 
this second judgment is of course given unless the 
inquisition of the jury can be impeached for fraud or 
unfairness.

And this partition binds as well infants as adults. Since infants may make a 
voluntary partition it will be binding. 3 Edw. 3. 1592-3

When the thing held in coparcenary 
is indivisible with destruction of it compulsory partition is never made in this 
case the practice is for the eldest sister 
to enjoy the thing and make the other 
sister's compensation or for the several 
sisters to enjoy it alternately.
A tenant in common are those who hold by several distinct titles but by unity of possession. But by this is to be understood that no other unity than that of possession is absolutely necessary. 3 N. Pidd. 134. To a tenancy in common, but their titles may be distinct. 3 Bac 185. Lord Coke's definition is those who hold lands by one title or by several titles or by distinct rights, not by joint rights. This as far as it goes is correct. Where the interest and title are the same as where they commence at the same time if there is unity of possession the estate is prima facie a joint tenancy and will be a joint tenancy unless such words are used to create an estate in common. If these words are used the estate is an estate in common. 3 N. Pidd. 134. Or give the estate is granted to A.B. for life by the same conveyance. This is prima facie a joint tenancy, but if it is said to hold as 'tenants in common' this is a tenancy in common. If there is no other unity than that of possession the tenants are of course tenants in common (2 G. & S. 191). Thus suppose if seized in fee convey one moiety of his estate to B for life here there is no other unity in the estate than unity of possession and if B are tenants in common for B's life unless the possession is divided.
The tenant in common may hold in tenancy for a term or in fee simple for life for years term. One may hold by purchase from a one from purchase by 3.

The estate of one may commence at one time and the estate of another for (2 B. 192) unity of time is not necessary to a tenancy in common.

A tenancy in common may be created either by such a destruction of an estate in joint tenancy a co-heirship as does not destroy in a joint tenancy the unity of possession or by special limitation. 3 B. 194

Thus if one of two joint tenants aliens to A, and the other joint tenant is tenants in common or if both tenants alien to differ persons the alienation is a tenancy in common.

If one of two beneficiaries alienates her share the others remain common 3 B. 194

If an estate is granted to two men or two women they men or women are tenants in joint tenancy for life and on the dropping 2 B. 192 of the life estate the issue are tenants in common.
Tenancy in Common. A tenancy in common may be created by special limitation in a common assurance, but where it is intended to create an estate in common one must be taken not to use words creating a joint tenancy.

If by deed or devise there is granted or devised to two or more persons an estate which is not an estate in joint tenancy, it must be a tenancy in common (provided of course the possession is not divided).

The rules of construction however by the common law favour joint tenancy more than tenancy in common if therefore an estate by one of the same conveyance is limited to two or more persons it is doubtful whether a joint tenancy or a tenancy in common is intended but will construe an estate into a joint tenancy but as the reason for this rule is feudal it is doubtful whether it will now obtain.

The safest way of limiting an estate where a tenancy in common is intended is to convey to the grantee expressly to hold "in tenancy in common not as joint tenants" for this excludes all doubt.
But other words will answer if a grant is made to A & B to be held the one half by one of the other half by the other A & B are tenants in common, (2 Bl. 190, 28 St. 193) for he by the very words they take distinct moieties, 2 Bl. 190, 3 B. 194.

If one grants an undivided half of an estate to A & B he & I am tenants in common, 2 Bl. 193. They have half lately commencing at different times. Co. Cite 190, 3 B. 194.

A deed or devise of land to two persons to hold jointly and severally will create a joint tenancy. In joint tenancies are favoured, 2 Bl. 193.

The reason given by Blackstone however is that the word "severally" merely denotes that the estate may be divided. But this reason is unsatisfactory. The truth is the two words are inconsistent with joint tenancy.

An estate devised to two or more to be equally divided between them is an estate in common, 2 Bl. 194.

2 Bl. 193.

So also a devise to "A & B equally" or "A & B hold equally" creates a tenancy in common, 2 Bl. 194.

"To hold equally" creates a tenancy in common, 2 Bl. 194.

"For equally" means severally! 2 Bl. 193.

But it has been held that either of the 2 Bl. 193 expressions in the two foregoing examples in a deed will create a joint tenancy.

There is however a modern case 2 Bl. 194. at the last rule 2 Moore 135. 1 W. 193. 1 B. 569. where such expressions in a deed create a tenancy in common + the modern rule Judge Gould thinks is the true one.
Tenancy in common

A tenancy in common may exist in any sort of property (2 Words. 135 ctt. 320) and in any estates.

Ct. 344. 5

Words. 135

The wife of a tenant in common of an inheritance is entitled to dower, and it seems that in a similar case the husband is entitled to dower at any rate there is no reason why he should not be. There is nothing in a tenancy in common to exclude down a curtesy, no jus accrescendi.

As tenants in common have distinct

2 Words. 25 interests that is distinct rights one may directly convey his estate to another tenant in common and such tenant cannot do this for such tenant is already seized of the whole.

Tenants in common are not at common law compulsory to make partition for the same reason that joint tenants are not.

But by st. 3142 Henry 8. tenants in common as well as joint tenants may have a suit of partition.

Between tenants in common there is no jus accrescendi. The reason is that they take by distinct moieties (2 Ed. 134).
Tenants in common could not formerly join in an action relating to the reality because their interest is several. But this is a late decision in E & H one in Engl, in whch it is held that tenants in common at common law can act jointly as coparceners. See also in the case of a several.

Litt 5311, 2 Wood., 109, 62, 177, 177, 390, 340, 2, 4 B. 317. 6 180, 60, 340, 317, 340, 1 (Coat) P. 37.

2 East (1 + 1, Game, 89) led In Do these cases go any further than to say that tenants in common may make a joint demise and thus virtually join as heirs in ejectment? I think not. A joint estate is held in common they must always have joined. Litt 177, 1, 2, 31, 177. In relation to personal actions founded on their interest in common I think that the old rule stands viz. that all the joint tenants or tenants in common must join as in an action of trespass quasi eleanor. For personal actions in all cases survive to the survivor even among tenants in common. For this reason they must always join in personal acting, and besides for one wrong it is as to policy to allow several actions.

The common law one tenant in common could not maintain an action of account against the other for receiving more than his share. Of the profits until he had made the other bailiff. But by it a man tenants in common may in all cases maintain actions on account of one another when one receives more than his share of the rents and profits.
Tenancy in Common

By Stat 119 C. The tenant in common may maintain waste, at the other's expense. He cannot have this at C. D.

3. Wil. 115

If one tenant in common ejects the other, the latter may have an action to quiet title, not however to turn the other out but to restore himself to possession. But in this case there must be an actual ouster as in joint tenancy. See 12 De G. 113. There must be a forcible ouster or what the law deems equivalent, as sole possession claiming title to the whole.

Str. 531
960. 115
4950. 1150

Great length of time of such sole possession acquired in the other of one during which there has been no accounting of profits will be sufficient evidence of an actual ouster by the jury to set in the statute of limitations. In order to bar the ousted tenant. This between tenants in common as much the statute of limitations do not run for the benefit of one if prima facie the fault of both. But we are told in the books that the

3. Wil. 115

confession of the lien is sufficient evidence of actual ouster. The common rule is sufficient evidence of ouster. But this means no more than this that

5. B. R. 115

this is sufficient to prevent a contest so that the case may go to the jury. The actual ouster may be contested on the trial notwithstanding the confession. 115265. If tenant in common confesses lease ouster to be guilty of ouster, could he show that there was no actual ouster? Must he not confess the ouster especially? 4 John R. 311.

2 Selw. 838 (w. 6).
And after recovery in ejectment by the tenant in chief, he may, of course, have trespass by the mesne profits during the discretion but the trespass is merely an action of account as in from trespass besides the word in ejectment prevents the right from taking advantage of the trespass.

These judicial remedies in the action of ejectment & trespass as above extend only to tenants in common of things real or things personal of the nature of the realty, but if two or more persons are joint tenants or tenants in common of a personal chattel there is no judicial remedy, the joint tenant may solely use the property the other has no remedy but by seeing his time and Leake says that is but by seizing the property when he can get a good opportunity.

A tenancy in common may be destroyed by voluntary or compulsory partition or by uniting the interest of possession in one of the same person by purchase or by descent.
Real Property 10/14

Modes of acquiring real property

Purchase will includes every mode of acquiring an estate except by descent. As it is sometimes 2 Bl 244 4 used in a more limited sense. Thus an estate acquired by forfeiture, by escheat, by occupancy 2 Bl 244 67 by prescription, by alienation, is said to be acquired by purchase. I shall not touch on any of these modes except of that by alienation. For the others see Blackstone.

The most usual mode of acquiring title to real estate by purchase is by alienation 2 Bl 287 alienation by which is comprehended what is usually denoted by purchase in its limited sense. That is it comprehends every mode of transmitting property by mutual agreement from one to another.

During the early periods of the feudal government, the tenant could not alienate his

or incumber his estate without the consent of 2 Bl 37 287 the lord or of the heir apparent.

Nor on the other hand could the lord 2 Bl 288

alienate his fief without the consent of the tenant unless consent was called attenuation to the alienation of the lord.

This restraint of alienation was 4 Brin 3 4 then mutual. Indeed during the reign of

of 1471 the conqueror of his sons lands were absolutely unalienable.
And even some time after the right of alienation was introduced, the highest estate that could be granted was an estate during the life of the grantee.

These restrictions have however been gradually abolished. The first statute which made the greatest inroads on the restriction of alienation was that of 18 Edward 1st. 1st of Edward 3rd. Still the right of alienation was travelled by fines until the 1st 12th 2d. which abolished fines for alienations for freehold estates and abolished the military tenures and converted them into encourage alienable at pleasure.

This last statute removed all the restraints on alienation except that arising from attainder 4 bmo 9 47 2 Rol 77 9 249.

And at length the necessity of attainder was removed by 25 47 5 Ann 2 Rol 290. This is a very gentle account of the progress of the right of alienation.
Acquisition of title by deed

The legal evidences of the acquisition of real estate property are called, in law, common assurances, because it is by these that every man's estate is ascertained.

These assurances are of 4 kinds

1st. Deeds, or as they are called, matters in pass are distinguished from matters of record.

2nd. Matters of record, or judicial assurances, transacted only in the king's court of record.

3rd. Assurances founded on special custom, of which our law has nothing to do, for we have no local customs.

4th. Devises, which are not common law assurances, but were introduced by statute.

Of the 2nd. & 3rd. I say nothing for these modes are extremely rare both here and in England. But see 2 Bl 344. 365.

Alienation by deed.

A deed is a writing sealed and delivered. Cf. tit 171. 2 Bl 295.

writing and sealing constitute the deed, but delivery it cannot take effect, therefore, is of the essence of a deed, 11. bruns. 10.

It seems doubtful whether in the law of corn sealing is necessary to a deed, for an statute prescribes writing, signing, delivery, and acknowledgment and recording as requisites, for a deed or devise; so nothing about sealing.
The making of a deed is the most solemn disposition with which a man can make of his property, hence it is said that a man shall be estopped by his own deed. Bodl. 47, 457, 227 a.

The meaning of this maxim is that no one shall be admitted to prove anything in contradiction of his deed. Bodl. 47, 457. by this it is not meant that he cannot deny the making of the deed, but if he acknowledge that the deed is his, he may not aver a prove anything in contradiction to it. In contradiction of the terms a legal effect. And therefore if A makes a lease to B of land to which at the time A has no interest whatever but is after Ward; purchases the land, the purchase Pott in B will inure to B for A is not permitted to deny the covenants in the deed by will. He had allowed that he owned the land. The fact that A had no interest in the land at the time cannot therefore be proved and therefore the land will convey nothing in which he has no interest at the time of making the conveyance, yet as A is estopped by his deed, it is the very same to the same thing as if he could. In this state however it has been decided that a total fraud in the consideration of a deed might be alleged to defeat it but this proceeds to a departure from the principles of the common law, but the common law remedy would be an action on the covenants in the deed.
But this at common law a person might not over a fraud in the consideration, being stopped.

Yet a man might at common law indeed over a fraud in the execution but not a fraud in the consideration. For an averment of fraud in the execution amounts to a plea of non est factum.

In a deed of conveyance or a lease, the estoppel is created by the covenant express or implied. And in the same covenant, there is no estoppel.

Wards of this kind: deeds convey that the grantor has a right to convey only such estate that a deed of quit claim is no estoppel that is, it does not estop the party making it from denying that he had any title at the time of making. And he may afterwards purchase the land and hold up the release in the quit claim deed if he had no interest in the land at the time of making the deed. Because the quit claim deed contains neither expressly or impliedly any covenant that the releasor has any title to the land at the time of making the quit claim deed or release as it is called in England.

Any bond or covenant is as much an estoppel as a deed of conveyance, thus the obligor in a bond cannot deny that there was a consideration if he has acknowledged it in his bond.
Deeds

A deed executed by one of the contracting parties only is called a deed poll or single deed.

If executed by all the parties to the contract, the deed is called a deed indented. In case of an indenture of description, the lessee is estopped to deny the title of the lessee, but the rule does not hold in case of a deed poll.

Where each part of an indenture is executed by one of the parties only and delivered to the other, the different parts are said to be interchangably executed, and in such case the part executed by the grantor is called the original, and by the grantee the counterpart. But where every part is executed by all the parties, the several parts are all called originals.

This distinction has a material effect in the law of evidence, for where the deed is interchangably executed, that part only is called the original in the better evidence.

And where lessee by indenture is estopped by judgment of court, when sued, he may deny the title of the lessee. 33 R 441.
Requisites of a deed

2. That there be parties able to contract for the purpose intended and a subject matter to be contracted about. In every grant therefore there must be grants granted things granted.

If the whole interest in any subject is to be granted, all those who have any part must be parties to the deed otherwise only a part will be conveyed for the interest of those who are not parties will not pass.

All those intending to take any immediate interest under a deed should be parties to it, i.e., all those intended to take any other interest than a remainder must be parties to it, if not those who are not parties take notice. If then it is intended to make A and B tenants for life, they must be parties for at C D every of virgin was necessary.

But one may take a remainder by a deed to whom he is no party thus if D be

If it is about to make a deed to A for life remainder to B. B need not be a party he need not receive it yet he will take, he must however be named in the deed.

The reason is that the investiture of the particular tenant issues to the remainder man, as both interest are created by one of the same act.
Who may convey by deed?

All persons under no legal disability may convey by deed. 2 Bl. 280 4 bro. 14

This disability contemplates only 214. 390. the disability of persons but there may be 3 bro. 356. something like the disability of an estate, Touch 89. to be conveyed. Thus a person desirous bro 513 447 the rightful owner of the estate may not convey the estate while out of possession to any other person than him who is in possession for the same reason that choses in action may not to be conveyed viz. that it encourages maintenance.

In the state we have a penal statute prohibiting a sale of land under these circumstances. It not only declares the conveyance void, but subjects the party to whom the conveyance is made to a penalty amounting to the value of half the land. But at common law the mere conveyance is innocent the void.

But a conveyance by the deceased owner of land to the devisee is not within the common law as within our statute for this is not selling a law suit. 42 bro. 310. does not encourage maintenance.

But the owner of land is not prevented from conveying his interest by the possession of another unless the possession is adverse for such conveyance does not contribute to maintenance.
And hence the owner of a remainder on
reversion may sell his interest there, the particular
tenant is in possession for the possession is not
adverse. 1 B. & El. 296.

And whenever one is in possession of
another's land claiming under that owner the
owner may convey to a third person for the
possession instead of being adverse is altogether
recognizing the right of the owner.

The rule respecting the sale of lands 1 Robt 449
by a devisee does not here extend to sales of lands Robt 221
by the state, by its proper off a treasurer.

Nor does it extend to sales made by executors
and administrators under the order of a C. of Probate Robt 449
or other prerogative court. for this is substantially Robt 103
a judicial sale.

And further an agent of the law
is not subject to this rule.

In the same way a sale by a guardian Robt 491
of an infant's land, by order of C. of the
legislature is not within the rule.

Again a collector of taxes may sell Robt 491.
lands of all the owner is diseized for the purpose
of collecting the taxes from the owner. He again acts by order
of law.

If a mortgage in bona fide going into
possession under the mortgage afterwards holds Robt 499.
advocally to the mortgagee the mortgagee may
sell his equity of redemption. because the
mortgagee goes into possession tacitly admitting
the right of the mortgagee. Besides if the
rule were not to the mortgagee might always force
the mortgagee from selling his equity of redemption
for here the mortgagee cannot bring ejectment of
the mortgagee as the cases in other cases can
not the devisee.
Deeds

With regard to the incapacity of persons to convey by deed see “for infants parent & child”. I only remark here that the conveyances of infants are only voidable & not absolutely void. This is the general rule and it is the rule most advantageous to infants—Idiots & lunatics cannot make valid conveyances but their conveyances are only voidable may be set aside by their heirs see “Contracts”.

If an idiot or infant devises a fee or part of a common recovery of their lands they cannot avoid it neither can their heirs avoid it for neither have they contradist the record.

The general rule of the common law is that an idiot or cannot avoid his own deed as the maxim is, “no man may slay himself”. But this doctrine is exploded in the case of the idiot.

If a person “non resident” purchase an estate on recovering his understanding he may ratify or avoid it. If he ratifies it his heirs cannot avoid it but if he dies without recovering his understanding or if having recovered he does not ratify it his heirs may either avoid or confirm it. If there is no express dissent the purchase is of course good.

For conveyances by a wife during coverture see “Hus & Wife”.
If a deed is obtained from a person under duress on removal of the duress he may ratify or avoid it. The rule is the same if he purchases an estate while under duress. In either case the duress makes the conveyance voidable not absolutely void.

If a deed is made by two persons Touching one of whom is capable of making the deed and the other not. The deed inures as the deed of the person capable of making of it. It may be pleaded as his sole deed. If one person having an interest in land joins in making a conveyance of this land with B who has no interest in the land as to passing the interest this deed will inure as the sole deed of A. But as to the covenants A thinks that they are binding both upon A + B. For B is in the character of a tenant.

If only one of two grantees in a deed is legally capable of taking a deed the person capable of taking will be considered the sole grantee and he will take the whole estate.

If A who is a person legally Touching capable of making a deed joins with a fictive covert in a conveyance the deed is the sole deed of A and may be pleaded as the sole deed of A. For the deed of a fictive covert is in general void.
Deeds, Who may be Grantor?

In general all persons may be grantors, infants, felons, coverts, idiots, &c., because a conveyance is presumed to be beneficial to them. In this case, I think the law dispenses with a great deal of writing necessary to a contract. But in these cases their conveyances are voidable. That is, if the conveyance is made on the death of her husband, may avoid a sale if she chooses to do so without understanding its.

And an alien enemy may at some law, purchase land by deed but he cannot hold it at the crown after office found that is the land passes from the grantor to the crown until office found that is, until it is found by a jury that he is an alien. Then the land granted passes immediately grants in the state as in England in the crown.

An alien friend may however hold a lease for years, but he cannot hold real property without a special license. This rule holds in the state and in most states. One it law is that an alien may not purchase lands within the state. Any exception in one statute in favor of British subjects having held lands here before the revolution.

But a license from the legislature will generally be granted a respectable alien to purchase land. According to the letter of one statute a conveyance to an alien will be void the whole is not void from the grantor, yet in another whether such license without special license from the great assembly.
Those who are naturalized under the laws of the U.S. are not within the rules respecting aliens. From the moment of naturalization an alien becomes in this respect a citizen.

In the state of Kentucky aliens may inherit real property & in Penn. aliens may take by devise or descent but in neither of these states can he take by deed unless he is domiciled to. Ency (Ed.). It “Alien.”

By certain English statutes alienation in mortmain are forbidden a very much restrained. 1 Bl. 479. 2 Bl. 256. 4 H. 25. 3 By act is meant an alienation to any corporation.

In this state we have no such it with & ecclesiastical & many other corporations may purchase lands, unless prohibited by their charters. But Banks & insurance companies are in general forbidden in their charters to purchase more land than is necessary for house etc.

We have a statute providing that all lands be given to charitable uses. to the support of schools & of the gospel ministry shall forever remain to these uses according to the intention of donors. But this statute is frequently evaded by long leases. St. Com. 54, 55. These leases when made for a sum in gross have been sanctioned by our courts.
2. Request of a Deed

A deed must be founded on legal consideration.

It seems however not to have been necessary at common law that any consideration should be expressly in a deed.

The necessity of expressing a consideration in a deed arose out of the doctrine of uses. In which all the uses were under the jurisdiction of Chancery and in Chancery a deed expressing no consideration was deemed a invalid use (if no use was limited to a third person) it became necessary to express a consideration in a deed of conveyance.

Since 27 Geo III. uses are at an end for by this the legal estate is transferred to the estate uses. In other words that statute a deed expressing no consideration money to the grantor for under the doctrine of uses the grantor in such case was the estate uses. This is the case at law as it formerly was at equity.

Under the doctrine uses if an estate was limited to is for the use of B. B had the beneficial interest and the legal estate in B. In such case B had the legal as well as the beneficial interest. But the use have avoided this statute by creating trusts all are precisely what uses formerly were.
But it has lately been doubted whether the rule that a deed not expressing a consideration induces to the benefit of the grantee extends 2 Bl. 296, to any other than deeds of bargain & sale. Roberts 15.

It is thought this doubt a very reasonable one. Touch 221. If a judgment be made without consideration, the grantee expressly declares it to be for the use of another. There will in no case resulting therein. 4 Bl. 380.

In a deed of bargain & sale, a valuable consideration is absolutely necessary — 2 Bl. 330. 335.

And by the English law to this day, a deed without expressing a use induce to the grantor. This rule I think is not the rule in Connecticut in any of our states. We know with us the law of uses. 4 Bl. 24 30. 358. A consideration is either good or valuable. Either of these are sufficient to support a deed of conveyance to uses.

It has been a most question in this state whether the rule that a deed not expressing a consideration shall induce to the grantor may or cannot prevail under our laws in this state for here the doctrine of uses never prevailed.

Now as to executory agreements, a valuable consideration in necessary that as to deed of conveyance a good consideration is sufficient.
A valuable consideration is one of money or property. A good consideration is one of relatives or kindred. The only persons Robert, or however who come within the description of relatives so as to support a deed or the ground of the consideration being for kindred are those of child, parent, brother, nephew, niece, sister, & heir at law.

If a person is not as nearly related as nephew or does not come within the legal idea of near relative unless that person is heir at law.

The conveyance to the heir of my nephew in consideration of kindred unless that person is my heir at law is void.

But marriage is always considered a valuable consideration. It refers to future marriage. There is the material difference between the effect of a good and valuable consideration will support a conveyance between the parties.

But a good consideration merely will not support a deed of conveyance as a consideration of the grantor. Such subsequent bonds from purchasers for value under the grantor.
Deeds. Consideration.

The consideration expressed to have been is.
in the deed cannot be denied by the grantor or 1 68125
his representatives for the purpose of defeating the 7 60 40
title of the grantee & his heirs &c. for they are 1 60 6 340.
estopped by the acknowledgment. It even an averment of (3 7 8 408)
found in the consid. will not aid the party. 1 60 6 479

But the grantor may impeach the 2 74 1 09
consideration for illegality. & this for the sake 2 68 3 44
of the public. this is not denying the consider. 2 6 6 96
tation. It is merely avering fraud in the consid.
eration. If this could not be done the law declaring
a contract founded on an illegal consid. void it be a
deal letter. & strangers as creditors & bona fide
purchasers under the grantor may deny the
existence of consideration, they are not party
(see precedent concerning) to the deed &
therefore not estopped.

A deed expressed to be for 'dray 1 60 76
good considerations' a 'fa suff. consideration' 1 60 151
is regarded as expressing no consideration for bro. 6399
the b cannot here judge what the consideration 1 60 151
was & what 'a good & suff. consideration
is a question of law & the parties are supposed
not to know what a good consid. is that
being matter of law.

But it has been held & properly 3 68 3 474
60 in New York that the expression 'value '12625
implied a suff. consideration for this is supposed
to mean that money or property is recd as
consideration & as to the amount of consideration
it is not material that it be expressed in a deed.
But when the deed is expressed to be "for divers good considerations" and may arise from the money or kind made or delivered in consideration of the same manner a deed expressing no consideration may be avowed and proved to be for valuable or good consideration. This does not contradict the deeds. And if upon the face of the deed the relation of the parties appear to be the instrument within that of Nephew, the instrument imports a good consideration, the now is expressed and no avowment is necessary. It is sufficient that a consideration appears on the face of the deed that must appear in being to be the consi....

The particular species of common appurtenance adapted to good consideration is "covenant to stand seised." Such conveyance or valuable consideration is void as a covenant to stand seised. And where the consideration was 16.76. 70s. expressed to be free from debt lands 76.39.40 were limited 17 for years with remainder to B and C. It was held that avowment was allowable that the deed was given as well in consideration of management between B and C as of the consideration of the 70s. In this case it was contended that the remainder was voluntary but the C held that it might be proved that the consideration was a management between B and C. For proving such consideration was consistent with the deed and with respect to B or the remainder was the same as where a deed expressed no consideration in all cases a consideration might be avowed and proved.
There are some cases in Johnson which at first sight appear to contradict this last rule but they are consistent with it, and the rule in Johnson is that: "when a specific consideration is expressed no other consideration can be proved", but this is confined to the parties, as in the last case it could not prove any other consideration than the 70 £. But if 87 £ not being parties to this consideration of 70 £ may prove another consideration.

Further, where a specific consideration is expressed no other consideration can be implied from the face of a deed the if no consideration had been expressed a consideration might have been implied.

If then it enters into a concord with his lordship to stand seized in consideration of 20 £, no consideration of kindness can be proved.

The reason is this: it appears that the grantor was the son of the grantor but as there is a valuable consideration expressed it appears that the relation was not the real consideration of the deed according to the maxim expressum non est tacitum.

1 John 91, 40 John 135 are in opposition to this rule but it appears that the English authorities are in principle correct. Expressio unius est exclusio alterius.
An acknowledgment in a deed of
the receiving of consideration by the grantor.
2. Do. 97 is not conclusive on the grantor. in a
3. Do. 97 essential notice. If therefore the grantor
acknowledges the receipt of the consideration
& the grantee gives the grantor a note the
grantor may recover on the note notwithstanding
the acknowledgment. For the acknowledgment is inserted merely for form. for the
purpose of protecting the title of the grantee.

nothing more

2. Bl. 297 3° Requisite to a deed is that it be
written & printed on paper or parchment

But the deed may be in any language
or in any characters. 36) If it can be inter-
preted & understood it is suffi-

2. Bl. 310.3

By the common law writing is not
necessary for the conveyance of lands. But
now by 29 Geo 2. no interest in land. for
a longer term than 3 years with writing is valid.
And if a parcel lease for a longer term is
made it will work as a lease from year
to year. 4 at is things incapable to be conveyed
only by deed. 4 I presume that writing is required
to the conveyance of land in every state.
It is required in some by the legislature.

And the deed must be written
before it sealed & delivered. If one seals
& delivers a blank paper & gives authority
to another to fill it up. this can never
be a deed.
In the case of bills of exchange & Promissory notes the rule is different for they is a simple contract & a formal delivery is not necessary. But a deed takes effect from delivery & if at the time of delivery they are blank pieces of paper they will always be so in law.

The next requisite is that the subject matter should be clearly set forth. But it is not necessary that the formal parts of a deed should be set forth in one piece in order, but it is well to follow the customary form. Three formal parts are chiefly kept.

1. The Premises contain the names of the parties & by 2. the consideration. The description of the subject matter to be conveyed. The exception if any out of the subject matter described.

The premises comprise all preceding the habendum.

The omission of the grantee's name in the premises does not vitiate the deed if he is named in the habendum.

And a wrong name in the premises may be corrected in the habendum & the better wrong name rejected as surplusage. The regular office of the habendum is to qualify & to bring in a particular case where the name of the grantee was omitted in the premises & the consideration was expressed to be paid to him the deed was held to be good, as the deed of him to whom the consideration was paid. This was going very far.
...
The habendum and tenendum follow next. Deeds, the proper office of the habendum is to express by the quantity of interest to be conveyed that 280.293. is may be expressed in the premises. The usual mode is to express it in the

habendum.

But where the quantity of interest is expressed in the premises it may be extended 940. enlarged and in any way qualified by the 280.293. habendum.

If therefore a conveyance is made to 20 + the heirs of his body in the premises habendum to 20 + his heirs. It takes an estate tail with a fee simple executant.

A conveyance to 20 + his heirs habendum to heirs + the heirs of his body according to most authorities it takes a fee tail only as the estate is described in the habendum. for it is a great rule that the expressions in the premises 18.293. concerning the interest are to be restrained by the habendum + the habendum is to be considered as an explanation of the premises. Any general, in the premises may be explained by the habendum. If however the habendum is totally repugnant to the premises it is void. for it is a great rule in deeds that if two clauses are utterly incompatible the first must govern. as also 860.56 the first deed governs in preference to a later 46.443. 12. 64. 35a. 154. 154. 154. 154. 154. 154. 154.

Ex: gratia. To A + his heirs habendum to him for life or for years, the habendum is void. for tho' the habendum explains the premises but it may not altogether contradict them.
Deeds

The same rule of construction applies to the habendum with reference to the premises as applies to the construction of saving clauses in statutes.

2 Blk 229

The vendee was formerly used, to show the tenant in chief the lands granted were to be held. But at 12 60 2, reduced all tenants to one, the vendee was of no use, but it is still used.

Indeed here there never was any duty of tenure, therefore there never was any use for this deed.

6 M 71

The redemderum expresses the terms to be complied with by the grantee or lessee, so as rendering the usual cent 10.

4 Blk 473

2 Blk 229

The next orderly part is the condition, this is the 5th orderly part.

4 Blk 300

Next comes the warranty, by will the grantor for himself and his heirs warrants the estate to the grantee and his heirs.

Where there is a warranty, if the grantee is evicted, the grantor is obliged to convey to the grantee lands of equal value (62).

6 Blk 64

54 M 54

Mac ab

Cor. 6.4

2 Blk 304

This warranty may be express or implied; it was formerly implied when each of title is now implied.
In the ancient deeds the covenants follow: deeds
the warranty but now the covenants come covenants
in the place of warranties. We have indeed what
is called a cov. of warranty but this is different from
the warranty. The covenants in a deed of conveyance
are those parts in and between the parties covenants
something for the benefit of the other.

The usual covenants in all deeds of
conveyance except quit claims releases are two.
first that the grantor is well seized where it
is a freehold he has good right to convey,
or where the estate is not freehold that
the lessor has good title. This is called in
this country "cov. of seisin".

The second is what we call the
"cov. of warranty" which is that the
grantor shall warrant and defend the title

to all claims. or in case of leases the
usual covenant is that the lesse shall quietly enjoy etc.
And by this is meant that the
grantor shall defend the title to all rightful title,
but it does not extend to ensuing claims.

The principal difference between a
covenant and a warranty is that a cov.  
and binds the grantor the as the case
may be his heirs to convey other lands
of equal value in case of eviction under Bae.abs
a paramount title. It is a real contrast cov.c.
and binds the heirs when they have rights by descent.  1 John 11,
but never binds the cov. de
A covenant only binds the grantor.
If the land conveyed is described
by abutts or by courses and distances and
answers that description the grantor
is not bound on his covenants the
lands which fall short by any distance
of the quantity mentioned in the deed.
And one of these modes is the usual
mode in this country.
The first mode is this: I grant
lands to be bounded north on ye. south or
west abutted north on the land of ye.
The other mode is this: I grant
lands & commencing at such a monument
thence running south to such a monument
& west & north & then east to the first mon-
ument.
The rule is the same if the deed
refers for a description to some other
deed or document that document
describes the land by abutts or by
courses and distances. In this case if there
is no description in the deed of conveyance
& the land falls short by any part of the
quantity mentioned in the deed the grantor is
not liable on his covenants, if even or warranty.
But if the description by abuttals or by courses does not correspond with the distances and quantities but does correspond with the monuments or abuttals mentioned the grantor is not liable on his covenant.

And if the distance or quantities are greater than those mentioned in the deed the grantee takes under the deed all the land which answers to the description by abuttals and distances.

If the description is land commencing at a known monument running north 100 rods to another known monument. Now if the distance is only 10 rods the grantee is not liable. But if the land is described by quantities without being described by distances or abuttals if the land fails that the grantor is liable on his covenant for here the principal and indeed the only description is that by quantity.

It appears always to have been conceded that in this case the grantee is liable on his covenants unless the quantity is qualified by words of this kind "more or less" or "so much by estimation" etc. There is however no direct decision of this point.

When it is described by abuttals or by metes the words "more or less" added to the description by quantity are of no use at all the as they are frequently used out of the abundant caution of our conveyancers for the principle if all the preceding rules is that when there is a description either by abuttals or by metes this description will govern in preference to the description by quantity and therefore the the quantity is mistaken such mistake cannot injure the grantor.
Deeds

The orderly part is the conclusion which includes the date and execution of the deed, and it may either mention the date expressly or refer to a date mentioned before in the deed. But a date is in strictness no part of the contract, it is merely a memorandum of the time when the contract is made.

If a date then is not essential to the validity of a deed, anciently no dates were used in conveyances.

And when the date is inserted it is only prima facie evidence of the time of execution; either party may prove the date to be different from the one expressed.

If there is an impossible date, the time when the contract was made may be proved by parol, and a false date by parol; the true date may be proved by parol.

These are all the orderly parts of a deed.
The next requisite to a deed is the reading of it before execution.

If either party desires the deed to be read before execution & it is not read, as he requests it will as to him be void if he himself is unable to read. In this case the mere fact that the deed was not read will vitiate the deed.

If on the other hand a party is able to read he then shall read it himself. His request to have it read & a refusal to read it will not make the deed void.

Now a man may be unable to read from various causes, as he may be illiterate or he may be blind etc.

In such cases however if he doth not request that it be read he will be bound by his sealing. So were unable to read he voluntarily in this case waives the sealing. If hand is practised in this case this vitiate the deed and actual fraud is not necessary to make the deed void in these cases. Actual fraud need not be averred. It actual fraud is not necessary to render the deed void when a party is unable to read. Request of a deed is falsely read to 2627 one of the parties it will be void as Touch 70:1 to him at least as to the part falsely read to 2627 read, only if it is so falsely read by collusion between himself & the party reading for the purpose of defrauding him, in this case it will not be void for he may not take advantage of his own wrong.
But it may be asked when the deed will be totally void & when void as to the part falsely read.
If the part falsely read is connected with the part correctly read that the one ought not to take effect with the other the whole is void & where the deed contains only one entire indivisible contract.
On the other hand if one deed contains several distinct contracts then the deed may without injury be void only in part.

2. M. 26. The 6th requisite is sealing. This is necessary at common law to every deed of conveyance and by the 6th of March & Feb. 7th necessary.
6th. It is doubtful whether sealing is necessary in this state to a deed of conveyance now allowed to be necessary.
4. M. 25. At common law signing was necessary.
2. M. 23. In this state signing is necessary & absolutely so in case of a deed of conveyance not only by one of the parties but by the distinct it on the subject of conveyances M. 35. 1st. 5686.
of deed by be executed by an agent legally appointed in all cases the execution is to be made in the name of the principal. The most proper mode in this case is this of B by his attorney D. but no particular mode is necessary.

If an atty signs a deed in any other way than in the name of his principal he binds himself and his principal. 1727 181

But an atty cannot bind his principal by deed or one executor bind his partner. So little can a partner by deed without authority bind his partner legally in any wise the reason I take to be founded 1778 207 on the doctrine of estoppel. A man cannot 47 2313 by an other be effected by way of estoppel unless he has subjects all of estoppel.

But this rule must contemplate an execution of a deed in the absence of the principal for it has been settled that A on the 218 of one man executes a deed for another, in the presence & by the verbal direction of the other the deed binds the principal. This rule is founded on necessity for wise it not for the execution a man physically unable to sign a deed that would be excluded from making a deed for he could no more execute a power of attorney than a deed itself.
If several persons are named in the
body of the deed as grantors and only
one of the persons so named seals the
deed, it is the sole deed of the person
so sealing it, for as to the others it
is merely blank paper to them.
Title by deed.
The last requisite to a deed at common law is that it be delivered.

And a deed takes effect by its delivery, whatever be the date of it, that is, it never vests the estate in the grantee until delivery. It is true in qu'il that a deed takes effect from delivery.

If then a deed is made and dated during the grantor's minority but sealed and delivered by him during his full age it will bind him.

And even if it be sealed during minority but delivered after he attains full age the deed will bind him.

And this a deed be sealed by a third person yet if the proper party delivers it it binds him for by delivery he adopts the sealing as his own.

But if a deed is sealed after delivery it is no deed for a deed takes effect by delivery and as delivered.

The act of delivery with words is effectual unless there must not be any great formality in the delivery of deeds.

And on the other hand there may be an effectual delivery with any act by words only, as when the grantor said this is my deed take it. This was considered a good delivery.
Deeds, Delivered. But if the grantee takes the deed as from a table when complete without actual delivery, and the grantor expressly consent, there is no legal delivery unless the jury find that the deed was placed where it was by the grantor for the purpose of being taken by the grantee; then this will be equivalent to a direction to the grantee to take the deed.

Direct and express proof of the delivery of a deed is not required; for as the matter of the delivery is one of little interest to the parties, it is not to be presumed that they will remember it. Here acknowledgement before the magistrate is prima facie evidence of delivery; deposition of the deed or of the land granted by the grantee is presumptive evidence of delivery.

A deed may be delivered to the grantee in person or to his agent having authority to receive it, or to a stranger in behalf of the use of the grantor.

There is this difference between the delivery to a grantee or his agent for he who takes immediate effect, and where it is delivered to a stranger it may or may not take effect, according as the grantee afterwards acts in a different way.

A deed cannot be delivered to any effect more than once; if the first delivery is not absolutely void, the second will be absolutely void as a delivery, for a deed cannot begin to take effect at two different times.
But if the first delivery is merely void a second delivery may be good hence if a fore covert delivers a deed after the death of the husband she delivers it again the second delivery is good for the first delivery was absolutely void & the deed takes effect by & from the second delivery.

If a deed once good becomes void the 2d
as by loss of the seal a second sealing + delivery will be good. here the deed does not take effect at two different times for the deed, with the seal is as no deed, if the subsequent sealing + delivery of it is precisely the same as the sealing + delivering of a new deed. The deed indeed become a new deed.

But if a person under d___ or one under age delivers a deed + in the one shop by case the person under d___ + in the other Roll aby the person under age after attaining liberty fails of or full age delivers the deed again the second delivery is utterly void. for the deed is no. 19 in both these cases in the first place is only voidable. This rule however means no more than that the second delivery is void as a delivery the second delivery operates to confirm the deed + the first delivery. so that the deed when thus confirmed by the second delivery is good but it does not take effect from the second delivery but from the first. (see note page before the last)
A deed may be delivered either absolutely or conditionally; this leads to the doctrine of escrows.

If a deed is delivered to the grantee himself, or to a third person to be delivered to the grantee absolutely, the first delivery is absolute.

But if it be delivered to a stranger to be delivered over to the grantee on a contingency, the delivery is conditional; the deed until the contingency happens or until it is delivered over is an escrow. When then it is, it is a deed.

It is settled, that a deed cannot be delivered to the grantee himself as an escrow, for the delivery to the grantee must be absolute for the grantor may not prove any thing against his own delivery.

The delivery in law vests the full benefit of the contract in the grantee and cannot be affected by any such hard conditions. (Cm 36, 1 Root 57).

Contrary but not law.

A bond delivered to arbitrators to be delivered to the prevailing party is really an escrow. And a note of hand ought to be considered in the same circuit than an escrow, for a note of hand has always been considered in bond as a deed.
If a grantor or delivery of a deed to a stranger says "I deliver this to you as my deed to be delivered over on a certain condition to the grantee" the deed is not an escrow but an absolute deed. But if the title vests in the grantee this the condition be completely never performed, this is a strict and unreasonable rule. The rule depends on the grantees using the word "deed." 4 Hinds 455. 2 All 2 452.

But where a deed is properly done Parts 138 as an escrow if a stranger it never can take effect until the condition is performed. 169 2430 even then the stranger should deliver over the deed to the grantee before the condition is performed for such delivery is with authority and a breach of trust.

And in such a case if the grantor Parts 138 in the deed eh? Force a fraud to obtain possession 144 of the escrow the deed does not take effect.

These things may of course be proved but they are extrinsic facts as every thing about delivery.

When however on the performance of the condition the deed is delivered to the grantee 169 3636 it takes effect absolutely. More if the condition is performed and the depositary destroys 169 in the deed the grantee can still hold the 169 good estate granted in the deed. The principle is 46 710 that unless the delivery has by its terms become absolute the deed in good title takes effect by 4 Doug 269 from the second delivery that is it does not Parts 138 take effect by relation. The case can come 5 679. 62. 3. in all it will take effect by relation to the first delivery, as in the case before stated where the depositary destroys it there it takes effect is from necessity.
Escrow
Relation

When there exists a disability in the grantor at the time of the second delivery, or an impediment at the time of the first delivery which
removes before the 2nd delivery, the doctrine of relation shall be applied to the case if that doctrine will make the deed valid, but that doctrine
will be rejected if it would defeat the deed.

Where in case of delivery to a third person, there exists a disability in the grantor, which did not exist at the first delivery, the deed will take effect by
relation — that if a person delivers a writing as an escrow and afterwards marries,
and the performance of the condition the deed is delivered over, the deed
takes effect from relation, it is much
valuer quam present, for unless this doctrine of relation is applied, the deed will be
void. If with the doctrine of relation it w? be delivered while she is a feme covert,

The second delivery is consumatory,
act & therefore may operate by relation and
original act can never take effect from
relation. For the original act can relate
to nothing but acts of consumation
may operate by relation to the first
act. for they are executory & Lord Coke says
times executory relate to the first act & take
effect thereb. But suppose a feme sole makes a
power of attorney, authorising sol to make a deed &
marry before the deed is executed. The deed is
void for the deed has been an original act
there is no relation.
If one delivers a writing as an escrow & dies & on performance of the condition the deed is delivered over the escrow will take effect by relation at as much value to benefit for unless it took effect by relation it could not take effect at all for the death of the grantor evokes the authority of the person having the escrow.

In the case of a joint sole & in the last case justice plainly requires that the deed shall take effect on the performance of the condition, but it cannot take effect except by the application of the doctrine of relation the doctrine of creation ought therefore to be applied.

In the last case that if of the grantor dying before delivery the deed will take effect on the performance of the condition whether the deed is actually delivered over by the depositary or not. for as the fraud of the depositary shall not injure the grantor so his fraud or neglect shall not injure the grantee.

Hence if one delivers a writing as an escrow to a third person to be delivered on the death of the grantor to the grantee. on the death of the grantor the deed will be good by taking effect by relation. it cannot take effect from Wilson as the second delivery for the death of the grantor does not vest into the power of the third person.

This is a very common method of making provision for children. It has been objected that the deed being made in contemplation of death is a will but it plainly does not purport to be a will but an absolute deed.
Everett. Relating to one of sound mind makes a deed of feoffment & a letter of atty to a third person to make livery upon it & the decease after wards becomes non compos before livery of seizen is made. & livery of seizen so made during the existence of his insanity the second delivery to the feesor will take effect by relation to the first delivery to the depository. The insanity does not revoke the power of atty but still a livery is made during the grantor's insanity either by him or his atty is voidable at least unless the doctrine of relation is applied. But if one executes a power of atty to another to execute originally a deed of conveyance & dies before the execution of the deed of conveyance the atty cannot execute the deed to any person for death revokes all powers of atty & it is impossible to apply the relation to this case for the execution of the deed is an original act which can have no relation to any thing.

If one makes a power to another to make livery upon a deed of feoffment and dies before livery made. livery can never be made to any effect. for in the first place death revokes all authority. But it has been before said that if a deed of bargain & sale be so made & delivered to a third person & then the grantor dies the third person may deliver that deed with effect the after the death of the grantor. the reason of this difference is that to a deed of feoffment livery is so necessary that it is not a complete-
conveyance until livery of seisin is made in the case therefore of a vendee until livery of seisin, the deed is not complete but in the cases before stated we suppose the deed to be of bargain & sale & the deed was complete at the time of delivery to the depository.

2. When a deed is d as an escrow & the doctrine of relation would defeat the deed it will not be applied. Thus if a devisee makes a lease & delivers it to a third person to deliver it to the lessee who is also out of possession, but to be d to the lessee on the land, here the lease will take effect from the second delivery. it could not take effect by the first delivery for the grantor was devised & therefore could not convey. to apply the doctrine of relation therefore it would defeat the deed.

and the rule holds as a general rule. This rule however cannot operate so as to violate to privilige of any person who is under any legal disability at the time of the first delivery thus if an infant delivers a deed as an escrow to IS fact 6.5 with power of atty to deliver it over to the grantee on the performance of certain conditions. On performance of the condition IS delivers the deed over. the deed takes no effect, for the power of atty is void. here the doctrine of relation is applied as applied for the purpose of defeating the deed so if it were not applied the privilige of the grantor would be violated for this privilige of the grantor is to govern in preference to the rules concerning relation.
Escrow, Relation

The general rule then is to repeat it. When a deed is delivered as an escrow & is given, the doctrine of relation shall be applied if it will make the deed valid. It shall be rejected if it would defeat the deed. But there is an exception to the last rule, where rejecting the doctrine of relation would protect a person in his privilege than it shall be rejected.

But a deed never takes effect by relation as to collateral acts so as to effect them or be effected by them. Thus if a bond is due as an escrow & then d. over to the obligor under circumstances that would give it effect by relation in such case a release of all claims between the time of the first delivery & the second is not a release of the bond. At some rate of time & age makes a bond to be d. over to the obligor on the performance of a certain condition & then marry & then the condition is performed now how the bond takes effect by relation that is from the time of the first delivery, but still if before the deed is delivered the second time the obligor gives her a release of all claims on even of all bonds, this release will not include this bond. For at the time of the release this bond was nothing, but now the bond by relation is a bond taking effect before the release yet it is only so by fiction, therefore does not include the bond.
This rule of relation only applies for the purpose of vesting the title in the grantee from the first delivery or mere for the purpose of affecting or being affected by collateral acts, to give another example of sound mind to deliver an instrument to A to be delivered to B on a certain condition, the condition is performed & the deed d to B. In the mean time a letter to A becomes non compos. Now the doctrine of relation is applied so as to vest the title in A. B from the time of delivery to D, but not so as to impair D's title to the land. In the event of A's title to the land C US

If a deed is d to B for the use of A to B. It becomes an inchoate condition. C188 (sic) knew nothing of the deed until delivered over to him yet if on delivery to him he accepts it, the title vests in him from the delivery to A. The grantee is deemed to have accepted. As example: C188 lent money to A to a mortgage to B the merchant. The day after B sold the mortgage to C. He attaches the land 2 weeks. C188 knows nothing of the deed until a week after. The 165 made out if he then assigns to the deed he has the title from the time the deed was d to a third person for his use if this was before attachment he holds ag the attaching creditor.

If a deed is delivered to a stranger 5671 it to be delivered over to the grantee & the 360 261 grantee in tendue of the deed refuses to accept it he can never claim the deed of 260 1 the depository sh afterwards deliver 5671 it over to the grantee it is no deed & non tendue 260 1st friction may be pleaded to it. It is a general rule that an offer on one side is rejected 37 165 for by the other is forever void unless a new offer 1895 37 165
Deeds.

There is one other thing which the not a requisite to deed at common law is yet required by statute in this state, & is usually added to a deed in English.

Attestation by Witnesses

Anciently, there were no subscribing witnesses to a deed; even after witnesses began to be inserted they were merely eye witnesses but did not subscribe their names.

In this state all grants & mortgages of houses & lands must be attested by two witnesses who must subscribe their names.

And by a late statute leases for life

or for years exceeding one year must be so attested, or they will be void as regards strangers; in other purchases or credits.

The witnesses must be subscribing witnesses

Certain other requisites prevail in this state & in most of the U.S.

All grants of houses & lands & mortgages of the same must be acknowledged before a justice of the peace or before a judge of one of the bcs with the acknowledgment the deed is incomplete & by a late statute leases for life a year not exceeding one year.

not acknowledged before a judge of the peace.

(Deeds of bargain & sale are also within this provision)
But there is still another requisite to the validity of deed, that of recording. And this is a requisite in nearly all the states.

By our statute all sales or mortages to create a debt of houses, lands, must be recorded or it will not be paid off creditors or by purchasers. While recording however, they are liable to the grantor and his heirs. This record is to be made at full length by the town clerk of the town where such houses or land lie.

The object of this statute is to give notice to strangers of the owner of every piece of land in the state.

And under this statute where there are two deeds of the same property, the deed first recorded will prevail in case of a prior deed, but now the deed first noted is by the town clerk will be considered as recorded first for (see post). The town clerk on receiving a deed is to note on the deed the time of receiving it and the record is to bear the same date.

But this rule does not hold as the prior purchaser uses due diligence to procure his deed to be recorded for a grantee must be allowed a reasonable time to get his deed recorded.
But if the prior purchaser does not within a reasonable time procure his deed to be recorded, a subsequent purchaser whose deed is recorded before his will hold in preference to him, and to an attaching creditor first recording.

In these rules I have supposed that the subsequent purchaser had no actual notice of the first deed, if it is shown to have been formerly decided that a subsequent purchaser in the case at supra even tho' he had actual notice w'd hold the estate.

This is the rule adopted in England in the registering counties in law but not in equity. For if the subsequent purchaser had actual notice

The rule adopted at law in England is wrong, & the rule in Equity ought to be adopted in law. For the question is merely a question of construction of the statute & the same construction ought to be made in both courts. For the judge of the courts of law acknowledge that the b's of equity construe the statute correctly. In New York it has been decided in a b of law that a subsequent purchaser with actual notice shall not have a priority over a prior purchaser when deed is not recorded. Even tho' the prior purchaser does not record his deed within reasonable time
The true principle is thus a subsequent purchaser shall not hold to the exclusion of a prior purchaser the he procures his deed to be recorded, first if the first purchaser has been guilty of no neglect, nor even then if the subsequent purchaser had notice of the prior purchase for the object of recording is only to give notice, notice in the case supposed the subsequent purchaser has.

If a town clerk having recorded a deed for record and deliver it back even at the request of both the parties, the town clerk is liable to the party injured by the want of the conveyance being recorded to a creditor who has attached the land as the property of the grantor or to a purchaser from the grantor to.

There are various rules of construction peculiar to town which are here omitted.

Where a deed is rec'd by a town clerk he is to write on the back of the deed the time when it was rec'd and his record of the deed at large must bear the date of the time when the deed was rec'd.
Title by deed.

Now a deed may be an idea or destroyed.

If an instrument wants any of 28.3.08. the requisites of a deed it is of course no deed.

Nor indeed the instrument never was a deed. It may be evident but it is no deed. But a deed may be destroyed by some 111.07. things of post facto as by pressure, interlineation. 28.3.08. or by other alterations in a material part after the delivery. If interlineation are made before delivery 28.3.08. they do not invalidate the deed provided it be 116.26. a memorandum of it is made either at the time of execution or delivery at the foot of the deed.

But the rule of the common law 10.6.08. was that any such erasure or interlineation 41.0.2. is void unless noted in the deed made the deed void. 28.3.08. of course. But now it is left to a jury to determine whether the erasure or interlineation is made before or after the execution or delivery of the deed. 111.07. But if the jury find that the erasure or interlineation is made before delivery the deed will be good. It will be good if the erasure or interlineation is made at the time of execution. But there is a difference between 111.0.27. an alteration made after delivery by the 41.0.24. grantee or one made by a stranger. If after 28.0.29. delivery the grantee or the person to whom the deed is delivered alters the deed in the most immaterial point the deed is void.

This severe rule is made to prevent the grantee from at all tampering with the deed.
Deeds.

Where an alteration in a deed is made by the grantee the whole deed becomes void tho' the deed contains several distinct contracts.

11 Geo. 39, 12 Roll 30, 9th April 1806.

But an alteration by a stranger does not destroy the deed unless it is made in a past material for here the grantee is not in fault.

2 East 309, 4 Ann 445, 4th April 1807.

But if the deed is altered in a material point with the privy of the grantee the deed is void — for here the deed can be in no sense the deed of the grantor.

But is the grantee to lose the benefit of the deed? I trust not. The deed is not indeed now the deed of the grantor. the deed is precisely the same as if the deed was destroyed by time or casualty. If by proper evidence the grantee can show what the deed originally was a bath of it, would probably deem it a new deed. And in this case the grantee may plead non est factum. for it is too E 626 not his deed as it now his deed stands.

Gill 106, 7
2 Web 881
2 Ker 35
4 Bro 622
1 Vent 185
4 Ann 291.

If a blank is left in a writing intended as a deed & that blank being a material point is filled after delivery the writing is no deed. But if the blank is immaterial & it afterwards filled up the deed is still good. So the deed would have been good had it not been filled up.
By an immaterial alteration is meant

If a stranger destroys a deed in any way without authority, he may maintain an action agst. the stranger, for the stranger destroys the grantee's evidence of title. That action may be maintained whether the grantee actually loses the title by the destruction of the evidence of title or not.

Again a deed may be destroyed by breaking off the seal, even tho' it was broken 2 Bk 308 by casualty. Thus where the seal was broken 2 Bk 29 off by a mouse the deed was held to be void.

A deed again may be destroyed by 5 Bk 23 breaking off the seal, even tho' it was broken 2 Bk 308 by casualty. Thus where the seal was broken 2 Bk 29 off by a mouse the deed was held to be void.

[Missed page]

In such case, however, as no alteration was made in the original deed or in the body of the deed, Equity will no doubt regard the writing as an executory agreement and compel the grantor in such case to make a new deed of the same tenure as the former writing. Thus they may do either under their power to relieve after casualties or under their power to enforce executory agreements.

A deed again may be destroyed by 2 Bk 308 the grantee's delivering it up to the grantor to be cancelled. This rescinds the original binding.

If two are jointly or jointly bound by a deed & the seal of one is lost 11 Bk 27 if the deed is void as to both, for now the law is, if any validity must be the sole of several deeds of 12, whereas originally the deed was either joint or joint.
A deed may be avoided by the subsequent disent of those whose concurrence is necessary to the legal operation of the deed. Thus if an infant makes a grant, and disent after coming of age, the deed is void, and the same where he is quintic.

By a subsequent disent is meant the refusal of an agent who was originally necessary. It does not mean that a bare disent after a valid deed has been made even by both parties will make the deed void; in this case there must be a reconveyance. Something as high as the conveyance according to the maxim, "exiguitas exigamur de.

A deed may, finally, be destroyed by the judgment of a Court of Law or the decree of a Court of Equity.

If the system of conveyancing in England were adopted here, it might be necessary to mention all the different kinds of deeds, but in this state and in most of these states, our mode of conveyance is much more simple.

2 Bl. 309-343.
Construction.

Deeds are to be construed as near the apparent intention of the parties as the rules of law will permit.

Bad English or false grammar will never vitiate a deed provided the sense can be discovered.

The construction of every instrument is to be made upon the whole instrument taken together and not from one part taken alone.

"Noscitur a sociis."

And the construction must be kept so made if possible that every part may take effect. It is a strong objection to a construction of an instrument that it does not give effect to every part.

It is a good rule that the words of a deed are to be taken most strongly in construction of the grantor or the party whose words they are, but this rule ought to be applied only where there is an ambiguity. For he who uses the words should explain himself.
If two clauses are irreconcilably repugnant the former will take effect and the latter be rejected. As if there are two distinct deeds the first will take effect to the exclusion of the second.

In construing releases a deed of acquittance there is a rule of construction peculiar when guilty words of release stand alone they are to have their full effect but if they are preceded by a recital that the guilty words are to be restrained to the subjects of that recital, thus Rec? of all five pounds in full of a certain note & of all demands the words "of all demands" are rejected for they are supposed to be put in respect of some. But if the release were thus Rec? of "in full of all demands" this Rec? will extend to all demands.

Where words will bear two constructions of which one is agreeable to law & justice & the other not so the former construction will stand & the latter be rejected.

Words repugnant to the guilty tenor of the deed & to the actual intention of the parties are to be rejected & hence it is that an exception in a deed including the whole of the thing granted is void of the deed stands. The guilty intent shall govern in exclusion of a particular intent where both cannot stand.
When a principal is granted all the necessary incidents pay with it even with the word "all the appurtenances," will be usually indeed, inserted.

Thus if one grants a house be of course grants with it a right of way to the house. If he grants a mill be of course grants with it the privilege of water to carry the mill.

When any subject is granted all the means necessary to the enjoyment of it be also granted pay with it. Thus if one grants to another a piece of land in the middle of the grantees farm a right of way is tacitly granted with it over the grantees farm to the piece of land thus granted.

A writing drawn in a form in which it cannot by law take effect may be made to operate as if it were in an active form for the purpose of effecting the intention of the parties. Thus. If one makes a deed of bond, 579, 50, bargain + sale in consideration of hundred 3, 300, it will take effect as a deed of covenant bond 140, to stand seised + may be pleaded as Park, 568, such + r. versa. Ifagreement by one to tend to the other may operate as a + a covenant + prove to sue a dehnt 408, r. may be pleaded as a discharge of the debt — 1KB 614.

Where the terms of a deed are 460, 313, so uncertain that the intention cannot be discovered it is void. Thus a grant to A or B, is void. or thus a grant to one of the children of B. S. is void having several children — A grant to the best man in a village to. 2 of the debt in this case app'd to A to the eldest son in this 2, not cure the patent ambiguity.
Deeds

In some cases a deed, being originally void in part, will make it void in toto in others.

2. Mil. 3574

But where any one covenant in a deed is made void by statute law the general rule is that the whole deed is void. Write it "contract"


The reason of this difference is that the phraseology of the statute almost universally is such that the whole deed must be void.

11. 203. 476.

If there are several distinct contracts in one deed, some of them are falsely read and some truly, the deed is said to be good as to the latter and void as to the former.

11. 203. 476.

But neither this rule nor the former holds when the different contracts are mutual considerations, the one of the other.

2. 203. 476.

If both the terms are dependent upon the other or is a condition of the other, the one cannot be void without the other is also.

The rule otherwise would make the greatest injustice, if two distinct obligations are written upon one paper and the one is falsely read and the other truly read. If the contract is duly executed the one is certainly then void and the other good.

11. 203. 476.

If a deed is void in part as to an entire sum of money or any entire thing it is necessary to void toto. If an agent to give to B a bond for twenty shillings the principal draws a bond for 20 s. and leads it for 20 s. it is said the bond for 20 s. for 20 s.
If a conveyance is made to two persons + one of them defeats, the part intended for the party defeated remains in the grantor.

This is deff from the case before stated where a deed is made to two persons, one of which is legally incapable of taking (ante).
in all cases the whole goes to the grantee who is capable of taking, thus a deed to a + to an alien enemy gives the whole estate to the latter, for in this case the deed is in its creation in law a deed to a alien, but in the other the deed is summary to two persons but varies as to either of them upon its defect. In its legal effect in its creation it is not a deed to one alone.

**Title by Executions**

By the common law + by our own custom in things real may be acquired by execution + by one to have the levy of execution has become a common mode of acquiring title to lands —

By the common law only three things execution

Peri facias, facias facias, & capias 360111.12
satisfaciendae. that is there were the only only 8. Bl. 444 15
which were issued as the person of the debtor company in personal actions. — Bae ab. op. 8.3.9

Executions in actions real are not
mode of acquiring title. for in those actions the title is supposed to be in the debtor. Rep.

On the first, only the goods + chattels personal + real can be taken but the person cannot be taken nor can the real property except chattels. real. This & company issue only as goods + chattels —

8. Bl. 171. Ex. 3.4.

Execution

The property thus taken on this cp is to be sold by the sheriff for the satisfaction of the cp.

3 Bl. 417, 8 Co. 171, Comyn Dig cp. 4.

Comp. Dig.

On the 23rd the sheriff may take not only the chattels, but the profits of land as the growing emblements, but if he does not intend to emblements.

25a 4

Brooke 470, 3 Bl. 417.

On this cp. may also be taken rents due to the debtor, that is the use of the
debtor may on this cp. be compelled to pay rent to the creditor instead of paying to the
land, the debtor. The rent is regarded as the growing.

28a 4

If there are cp. all the chattels, which personal or real, are the profits of land and

Comp. Dig.

may be taken. Indeed every thing except land and

are necessary wearing apparel.

Comyn Dig.

But on neither of these can the debtor's land

be taken for, or extend in terms, only to his

personal estate.

Bac. ab. 2. cp. 4.

3 Bl. 411

There is at common law no cp. giving

of the land of the debtor while the debtor is

alive, but such an cp. may be issued of the

heir. This rule is founded on feudal prin-
ciples, so to subject to cp. is to make indirect alienation

of at common law, company cp. will reach

fixtures belonging to the debtor as fences, doors,

windows etc., as these the strictly personal are still

annexed to the freehold.

There are a great variety of things

concerning this which has been much question

whether they belong to the reality or personally

by the "executor." Suffice it say here that these

articles which are not deemed fixtures may be taken

in cp.?
The third eye by the common law is the ca. sax under the act the body of the body only of the debtors might be taken, but this ca. was only be allowed at common law where the injury for which the ca. was issued was a forcible injury.

It was alleged in these cases on account of the breach of peace involved in the injury. The king indeed was in all cases allowed the suit on the act of his prerogation, but by the 25th of Elizab. 52 Henry 3, of 1721/12 Ed. 13, 8602 25 Ed. 3, the suit of ca. sax was extended to actions not sounding in force to nearly all civil actions.

But on a joint act the heir at law in a bond of the ancestor the creditor might at common law have an act of all the lands with the heir by inheritance from the indebted ancestor. 1 Black 647.

This right of the creditor was founded on the necessity of the case. It was the only case at law in which lands could be taken on ca. sax.

In this case, however, the act was only at the land with the heir by inheritance from the indebted ancestor and not at either the body of the heir his personal property or at the real estate with the heir may have obtained by lord 429.

But in this case the land in only extent that is given to the creditor until the rents profit shall satisfy the debt.

But in virtue of certain English statutes real estate may now be taken on ca. of the original debtor himself. 1721/12 Ed. 1

This entitles the creditor to take half the debtors land and is called "clerit." This is the same as goods chattels and half the land in the act.
In this state it has been determined that money may be seized on Eq to the Eq mentions money.

It seems it is held that the money in that case could not be taken because it had not become specifically become the money of the debt. But it appears to have been admitted that if it had been the money of the debt it might have been seized. There is a provision in the English law that if the debt is doubtful whether the goods belong to the debtor he must summon a jury to determine the fact. If the jury find the goods not to belong to the debt in the Eq the debt is justified in omitting to take them but it answers no other purpose. It is no evidence for or against the real owner.

But it seems that the jury find that the goods belonging to the debt belong to the debt and, do not the debt is liable to the owner.

And if a debt makes a willfully false return of nulla bona the inquisition will not justify him. The if he is guilty of no fraud the inquisition will justify him in omitting to take.

We have no such inquisition on the rule in our state in Eq in an action at Eq the debt for not taking goods it appears that there was not a suit ground for the debt to doubt whose goods they were. The debt is rejected.

If the debt in the first place takes goods all are not suit to sustain an Eq the may seize more goods see on all defences.

[Signature: Dideron 91.]

[Signature: Dideron 91.]

Bacaro 1S.

Comyns Dig 1S.

4th 2.
Execution. Under one act as has been before stated all the lands to of the debtor and the holders in his own right are subjected to 

By "his own right" here is meant holding a beneficial interest this is different from the meaning of the common law. In our statute it means all lands except those with the debtor holds as trustee or holder in equity in his land 1st day of June may be taken. One 2nd it extends to all interests even 2nd part 13. to equity of redemption. 3rd common law control 1st part 467. 2nd part 469. - An interest merely equitable can be taken by 2nd part a common law. And the mode of setting off an interest in lands on 467 is the same whether it is a fee simple or a life estate.

Before land can be taken on 467 the sheriff must make demand of the debt at the usual place of abode of the debtor if within his precincts. If real estate is taken with such demand no title can be acquired by the levy. The rule is the same where the sheriff takes land after tender by the debt of money or the personal property to satisfy the debt.

And the previous demand must appear in the sheriff's return if not no title proceeds except the return made before the 1st of August 1800.

The land taken is to be appraised by 1st part 109. 2nd part 109. the holder of the town where the land lies to be set off on this appraisal to the 3d it is not to be sold.
The word index excludes all persons related to either of the parties in a degree nearer, than uncle & nephews from being appraisers.

The seller must causes the executors with an indorsement of all his proceedings from it to be entered on the records of the town, & to the office of the sheriff where the executors to be there recorded.

But a recording in one of these places is not suff to vest the title. If the first tenant, the am't of the executors before the executors is entered for record, the seller is bound to meet the money. Under our law there is no such thing as extending an executors on lands by the whole debt of the debtor must be taken, & set off to the executors.

With regard to the mode of taking growing emblements. The usual mode is to levy on the executors a growing crop & then for the executors to seize the crop & sell it as personal property. The course appears to be improper. The proper mode is when the owner is tenant for a reason to take the whole out of the executors to appraise it on executors, then of course, the crop might be devised by the executor.

Under the laws in England, the former mode may be proper but not under our executors. Comyn, Dig. Exec. 4. Tit. 368.
Under our Stat the 4th must be made returnable within 60 days after date or to the next term of the Ct. (in case sixty days are remaining between the next court & the date of the execution). But the 4th. may be returnable according to law & when the 4th. is by a single magistrate this means 60 days, but when by a Ct. which holds regular terms it means to the
Real Property (Title by Esq.) (Var 18)

It has been determined under our law that a
levy of an esq. on land after the time when it is
required by law to be returned is void, the
esq. after the time for its return is then of no effect
as an esq. unless it is renewed.
And any def. who does not return the esq. within
the time limited he is liable to an action on the
cause in favour of the Plf. in the esq. In Engl. decy.

If however a levy is begun before the 16th of the
day of return the consumption by relation will be good, tho' made after the day of return.

Esq. goods seized on the last day of the esq. may be sold 20 days after + the service is good.

The levy of an esq. on land does not 330293.5.82
oust the def. of papers where it merely vests the title Bac al
in the Plf. + if the def. refuses to quit the esq.,
promissory the Plf. must bring his action for the esq. promissory for the law will not allow the def. to be ousted without giving him an opportunity of
questioning the proceedings on the esq. So the grantor cannot forcibly turn the grantee out of pos. 1685. 555/442.

An aliens esq. will in gen'l be issued
of course of the blk of the def. may db it
unless there has been a great lapse of times since the
return day of the esq.

Where an esq. is endorsed satisfied the 16th 453
Plf. may obtain a new esq. on a scene facing copy. By
if the levy in consequence of which the esq. was esq. a.3. +
edorsed satisfied was paid but he cannot 66516.7
do this in process with all scene facing. 456.60
Bac esq. do. 190

Lath 190
Execution

If the debt in an eft dies in prison or escapes or if an eft is superseded by a writ of error if the judgment is affirmed a new eft may be had—but in cannot be had unless a rei facies.

Bac. abst 6

cap. 28

The time limited by the common law for the taking out of efts after judgment is a year and a day that is after this period the eft will not issue of course the after this the eft may be taken out by secur

facies. The reason why after this period has elapsed

Plea. 21 H. 6. if secur is necessary is the presumption that the debt is paid.

In the state the precise time is limited to 4 years frequently taken out within two or three years after just

Com. Dig. 91

Plea. 21. 17.

By St. 17. 13 Ed 1. The secur facies is given in personal actions but in real actions the

Com. Dig. 90. secur facies may be given at common law.

Talk 256.
But in either case if the Pte. due after
$4^{2}$ dued out but before it is satisfied the
$4^{1}$ & $4^{2}$ itself may be executed & there is no need
of a new $4^{1}$ or of a piece face. The $4^{1}$ was
here properly issued & the death of the Pte
no superseded.

To whom shall the ship pay the money in the $4^{1}$?

If a judgement is rendered at two hearing express
one of them dies before $4^{1}$ issued & $4^{2}$ Bacab
may be had as the survivor with a piece $4^{2}$ & $4^{1}$
for; the reason is that with $4^{2}$ Bacab
the receiv'd. will be inconsistent for on the second
with $4^{1}$ & $4^{2}$ it appear that judgement was rendered at two
$4^{1}$ issued at one but with $4^{1}$ Bacab the whole plea 32.13.
is explained.

The same rule holds where one of two
self due after years, but before $4^{1}$ issued for
the same reason.

If judgement has been rendered at two who
the Pte. dies before $4^{2}$ & the heir has lands $4^{2}$ & $4^{1}$?
may be had out the lands of the heir.

This however is one of those cases in
which if the heir is an infant the proceedings $4^{2}$ & $4^{1}$
or the decease must be stayed until the heir
attains full age; or as the legal phrase is the
case must demand.
But the 64 may in this case if his pleasure be 
read for 64 out 64 of the personal representations instead of being out of the heir.

Bac. ab. 44, q. 2.

But if the 64 had been new 64.

Bac. 64, 64 issued before the death of the 64. It may 64. 64. 64 then be executed.

Bro: E 184
1 Ven. 218. Bac. ab. 44, e. 4. 1 Leon: 744.

But these three last rules cannot obtain in this state here is a man dies after judgment is made before 64 or after 64 but before satisfaction neither in the one case can a new 64 be obtained in any way or in the other can anything be taken on the unsatisfied 64 for this is at the spirit house laws will distribute equally the property of a person deceased among all his creditors of whatever description. The 64 must in this state go this a course of administration precisely like a bond or book debt which had not been sued for it cannot be ascertained before hand whether the debtor died insolvent or not if he died insolvent if in the one case 64 could be obtained or in the other property could be taken on 64 then this judgment creditor would get his whole debt while the other creditors would obtain only part of their debt would be contrary to the spirit one law which distributes all the goods of a deceased debtor equally among creditors with any distinction of kind judgment.

re—
Things which are the subject of property are by the law divided into two kinds, real and personal. And these two classes of property are subject to rules peculiar to each. This is not the place to dwell upon the marked differences which the law makes between real and personal property, but we will note some of the leading and prominent distinctions.

1. Real estate descends on the death of its owner to his heirs, whereas personal property passes to the owner, personal representatives, executors, or administrators.

2. On the death of the owner, personal property is the fund primarily chargeable with the debts of the deceased.

3. Personal property whereas real estate is in general controlled by the law of the owner’s domicile whereas real estate is governed by the law of the situs.

(4) The transfers of real estate are made with solemnities peculiar to the conveyance of this species of property.
These diversities are sufficient to show the importance of carefully distinguishing between the two classes of property. In general, there is but little difficulty in deciding to which class any particular subject belongs: things real are in general such as are immovable and the possessor of them personal such as are moveable. Hence personal chattels are frequently styled moveables. The law itself is the type of real property, and under the general term land, in the comprehensive sense in which the law gives to that term, all real property is embraced.

But however obvious the distinction generally is between things real and personal, very puzzling questions on the subject frequently arise. As a good many points on the subject have been long settled and are familiar to jurists which when they first arose were matters of considerable doubt and deliberation.

It may be well to dwell a few moments upon the equity what in law is regarded as part of the realty.

(a) The natural produce of the soil, while united with the soil is to all intents and purposes regarded as real
Property as trees, grape fruit, &c. plants that are not the product of animal labor or
upviny geography, &c.

annual crops, are in general also regarded
as part of the realty so long as they remain
unharvested. Subject known to some

ores, mining veins, minerals also so
long as unmined

all permanent structures upon the
land are part of parcel of the land itself,
and regarded as real estate, as houses,
buildings, &c.